

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA**

**BEFORE SHRI S. S. VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.548 & 549/Kol/2014**

**(निर्धारणवर्ष / Assessment Year: 2006-07**

<b>P. K. Rajgarhia</b> 2,Brabourne Road, 5 <sup>th</sup> Floor, Kolkata – 700 001.	<b>Vs.</b>	<b>I.T.O, Ward – 35(1), Kolkata</b>
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ADGPR 2565 N		
<b>(ASSESSEE)</b>	<b>..</b>	<b>(RESPONDENT)</b>

Assesseeby

: Shri A. K. Tibrewal,FCA

Respondent by

:Shri Dulal Ch. Mondal, JCIT

सुनवाईकीतारीख/ **Date of Hearing** : **25/08/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **18/10/2017**

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned two appeals filed by the assessee, pertaining to Assessment Year 2006-07 and 2007-08, are directed against the order passed by the Id Commissioner of Income Tax (Appeals)-XX, Kolkata, which in turn arise out of assessment orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2.Since these two appeals relate to same assessee, different assessment years, identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3.First, we take assessee's appeal in ITA No.548/Kol/2014, assessment year 2006-07, wherein the assessee has raised the following grounds of appeal:

*“1.The Id Commissioner of Income Tax(Appeals) and the Id Income Tax Officer has erred in disallowing interest paid on loan amounting to Rs.9,71,526.00.*

*2.The Id Commissioner of Income Tax(Appeals) and the Id Income Tax Officer has erred in considering the returned income of the assessee at Rs.1,84,260.00 instead of Rs.1,74,260.00.*

*3.The assessee craves for the right, without prejudice, to add, delete, alter, modify or otherwise present any grounds of appeal either at or before hearing of the appeal.”*

**3.1.The first ground raised by the assessee relates to addition on account of interest paid on loan amounting to Rs.9,71,526/-.**

3.2. The brief facts qua the issue are that assessee filed its return of income on 30.03.2007, disclosing total income of Rs. 1,74,260/-. The assessee`s case was selected for scrutiny U/s 143 (2) of the I.T. Act and assessing officer completed the assessment U/s 143(3) of the Act by making addition of Rs.9,71,526/- on account of interest on loan. During the course of scrutiny assessment, the assessee explained the sources of investments in various mutual funds during the relevant previous year. The assessee denied to have made any investment in Reliance Mutual Fund, Kotak Mahindra Mutual Fund which were verified and found to be correct. However, the investments in SBI Mutual Funds were repeated twice against one time investment. During the course of scrutiny assessment, it was observed by the AO that the assessee paid interest on loan taken to the tune of Rs.9,71,526/- whereas no interest was charged on loan given by him, which it appears to be the main sources of income of the assessee. The assessee was asked to show cause as to why interest on such loan shall not be disallowed and add back to the total income of the assessee. But the assessee neither appeared before the AO nor filed any explanation in this regard, therefore, AO made addition of Rs.9,71,526/-.

3.3 Aggrieved by the addition made by the AO, the assessee filed an appeal before the CIT(A) who has confirmed the addition made by the AO. During the course of appellate proceedings, the assessee had submitted before the CIT(A) that the assessee was having income under the head business, capital gains and other

sources. The assessee had taken unsecured loans as on 31.03.2005 at Rs. 1,86,602,47/- and given loans of Rs.2,22,59,492/-. The assessee had paid interest of Rs.9,71,526/- during the year. The Id. AO had disallowed this amount since no interest was charged on such loans given. The assessee submitted that non charging of interest on loans given by an assessee cannot itself be a sufficient ground for disallowing interest paid by the assessee on loans taken by it in the absence of any nexus between borrowed capital and interest free advances or in the absence of any finding that borrowed funds are delivered for giving interest free loan, therefore, non charging of interest on loans given by an assessee cannot itself be a sufficient reason for disallowing interest paid by an assessee on loans taken by it in the absence of any finding that borrowed funds or part thereof was diverted towards interest free advance. The assessee also relied on the judgment of Meenakshi Synthetics P Ltd Vs. CIT (2003) 84 ITD 563 (Lucknow), wherein similar facts were discussed. The assessee further submitted before the CIT(A) that where nothing had been brought on record by the revenue to prove that interest, bearing funds available with the assessee, was not utilized for the purpose of business but was given as interest free loans or advances, therefore the disallowance of interest on borrowed capital was not justified. Similar facts were held in the case of ITO Vs. Naresh Fabricks(2002) 750 TTJ (Jodh) 385.

Based on the above submissions of the assessee, the Id CIT(A) observed that the fact of the case is that the AO noticed that there was loans/advances taken by the assessee on which interest was paid. But at the same time, he had also given loan/advances on which interest was not charged. Thereby, there was diversion of interest bearing loan funds for non-business purpose. The CIT(A) further observed that assessee could not give the facts/figures/breakup to support that no interest bearing funds were diverted for non-business purposes. That is, the assessee did not prove the fact that the interest bearing loan funds were fully utilized for the purpose of business only, therefore, the Id CIT(A) confirmed the addition made by Assessing Officer.

3.4. Not being satisfied with the order of CIT(A), the assessee is in appeal before us. The Id. Counsel for the assessee has submitted before us that assessee had its own interest free fund which was higher than the loan given by the assessee. That

is, the assessee had interest free loan at Rs.3,01,17,619/- (vide pb.1) which is greater than Rs.2,20,85,815/- (vide pb.2). In other words, the assessee had not received the interest on Rs.2,20,85,815/- which was given by the assessee out of its interest free loan at Rs.3,01,17,619/-.The loans and advances are sufficiently covered. Broadly, interest-free loans & advances have been given out of interest free funds viz., capital of the assessee. Therefore, there has been no diversion of interest-bearing loans for investment in interest-free loans & advances.

3.5.On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

3.6 Having heard the rival submissions and perused the materials available on record, we notice that assessee has interest free fund at Rs.3,01,17,619/- which is greater than the loans and advances of Rs.2,20,85,815/-. Therefore, assessee had sufficient non-interest bearing funds to make the tax free loans and advances. The assessee-company had sufficient funds other than borrowed money for giving the interest free loans and advances. Therefore, the conditions of section 36(1)(iii) has been complied with.

We note that non charging of interest on loans given by an assessee cannot itself be a sufficient ground for disallowing interest paid by the assessee on loans taken by it in the absence of any nexus between borrowed capital and interest free advances or in the absence of any finding that borrowed funds are delivered for giving interest free loan, therefore, non charging of interest on loans given by an assessee cannot itself be a sufficient reason for disallowing interest paid by an assessee on loans taken by it in the absence of any finding that borrowed funds or part thereof was diverted towards interest free advance.

However, we note that the assessee has submitted before us the details of interest free funds for the assessment year 2006-07 and 2007-08, the same has neither been examined by CIT(A) not by Assessing Officer, therefore, we are of the view that the details of interest free funds needs to be examined by Assessing Officer, hence we remit the matter back to the file of the assessing officer and we direct the Assessing Officer to examine the details of interest free funds and adjudicate the issue as per the discussion (supra) and as per the provisions of law. Therefore, we allow this ground appeal for statistical purposes.

3.7. In the result, the appeal filed by the assessee (on Ground no1) is allowed for statistical purposes.

**4. Ground No.2 raised by the assessee relates to an error in returned income of the assessee. Returned income of the assessee was at Rs.1,74,260/- whereas the AO has considered it at Rs.1,84,260/-.**

4.1 After going through the assessment order, we observe that the Income Tax Officer had stated in the first para of the assessment order that the returned of income of the assessee was at Rs.174,260/- whereas on Page 2 of the assessment order, returned income for the purposes of computation of total income was taken by the AO at Rs.1,84,260/-. We observe that this is an arithmetical error committed by the AO and needs to be corrected. Therefore, we direct the AO to consider the returned income of the assessee at Rs.1,74,260/-.

4.2 In the result, the appeal filed by the assessee (Ground No.2), is allowed.

5. Now, we shall take assessee's appeal in ITA No.549/Kol/2014, wherein the grounds of appeal raised by the assessee are as follows:

*“1.The Id Commissioner of Income Tax(Appeals) and the Id Income Tax Officer have erred in disallowing Rs.48,258/- u/s 14A of the I. T. Act, 1961.*

*2.The Id Commissioner of Income Tax(Appeals) and the Id Income Tax Officer have erred in disallowing Rs.2,43,105/- from interest on loan.*

*3.The Id Commissioner of Income Tax(Appeals) and the Id Income Tax Officer has erred in charging interest u/s 234B of the I T. Act, 1961.*

*4.The assessee craves for the right, without prejudice, to add, delete, alter, modify or otherwise present any grounds of appeal either at or before hearing of the appeal.”*

**5.1.The first ground raised by the assessee relates to disallowance of Rs.48,258/- u/s 14A of the I. T. Act, 1961.**

5.2. At the outset, the Id. Counsel for the assessee has pointed out that this is an arithmetic mistake done by the AO. The AO disallowed u/s 14A at Rs.84,876/- which does not have any base. The assessee being an individual had not incurred any expenses directly for earning exempt income. The AO did not establish the nexus of the exempt income vs. the exempt expenditure. The AO merely made the ad hoc disallowance at Rs.84,876/- without assigning any reasons. Therefore, it is illegal and unjustified. The Id. Counsel for the assessee pointed out that nothing has been brought on record by the AO that interest bearing funds were available with the assessee is not utilized for the purpose of the business but has given as interest free loan or advances. Hence, the disallowance of interest on borrowed capital is unjustified. However, the Id. CIT(A) confirmed the addition made by the AO stating that assessee did not prove that interest bearing funds were fully utilized for the purpose of business only and, therefore, the Id CIT(A) held that AO was justified in making the disallowance of interest. However, the Id. DR for the revenue has fairly

agreed with the submissions of the Id. counsel of the assessee. We notice that assessee has earned exempt income u/s.10(34) at Rs.4,82,583/- whereas the AO made ad hoc disallowance u/s 14A at Rs.84,876/- without any base.

5.3. Having heard the rival submissions and perused the materials available on record, we are of the view that this issue is required a fresh examination at the end of the AO, as the AO made ad hoc disallowance of Rs.84,876/- u/s 14A which is not justified but the assessee had received exempt income during the assessment year at Rs.4,82,583/-. We direct the AO to examine whether investments have been made out of borrowed funds or not, if the investments were made out of the borrowed funds then proportionate interest would be disallowed under Rule 8D(2)(ii) read with section 14A. The AO is also directed to examine the disallowance under rule 8D(2) (i) and under rule 8D (2) (iii) of the I.T. Rules read with section 14A of the Act. We further direct the AO to compute disallowance as per the provisions of Rule 8D(2)(ii) and Rule 8D(2)(iii) read with rule 14A by following the judgment of REI Agro Ltd. in ITA No.1331/Kol/2011, dated 19.06.2013 wherein it was held that for the purpose of disallowance only those investments which are yielding the dividend income should be considered. Accordingly, we allow this Ground for statistical purposes.

5.4 In the result, the appeal filed by the assessee (in Ground No.1), is allowed for statistical purposes.

6. Ground No.2 raised by the assessee relates to disallowance of Rs.2,43,105/- on account of interest on loan.

6.1 At the outset we note that on similar ground, that is, interest on loan has been adjudicated by us in the immediately preceding assessment year 2006-07, vide

paras 3.6& 3.7 of this order. Therefore, we allow the ground No. 2 raised by the assessee in assessment year 2007-08 for statistical purposes.

7. Ground No.3 raised by the assessee relates to charging of interest u/s 234B of the I T. Act, 1961. Since the levy of interest U/s 234B is consequential in nature, therefore, this ground of appeal does not require any adjudication.

Order pronounced in the open court on this 18/10/2017.

**Sd/-**

**(S. S. VISWANETHRA RAVI)**

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated 18/10/2017

RS,SPS

**Sd/-**

**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Assessee– P. K. Rajgarhia
2. प्रत्यर्थी/ The Respondent-I.T.O, Ward – 35(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
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By Order

Senior Private Secretary,  
Head of Office/D.D.O,  
I.T.A.T, Kolkata Benches,  
Kolkata.