

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'SMC', NEW DELHI**

BEFORE SHRI NK SAINI, ACCOUNTANT MEMBER

ITA No. 1435/Del/2017

A.Y. 2012-13

Sneh Lata BJ 43, Shalimar bagh (West) Delhi 110 088 PAN: AABPL 8493 K	vs.	ITO, Ward 34(2) New Delhi
(Appellant)		(Respondent)

Appellant by	Shri Suresh K Gupta, FCA
Respondent by	Sh. Amrit Lal, Sr.DR
Date of Hearing	07 th November, 2017
Date of Pronouncement	10 th November, 2017

ORDER

This is an appeal filed by the assessee against the Order dt. 03.02.2017 of Ld.CIT(Appeals)-12, New Delhi. Following grounds have been raised in this appeal.

“1. The Ld.CIT(A) has erred both in law and on facts in confirming the addition of Rs.5,29,018/- and making enhancement of Rs.10,36,782/- disallowing the claim of the appellant that expenditure of interest paid, based on the facts of the case, be allowed as cost of improvement of the capital asset while computing the short term capital gain on sale thereof, provided the deduction of interest paid is not available u/s 57 to the appellant.

2. The Ld.CIT(A) erred in holding and giving a finding of fact that the interest claimed to be paid on the capital is not deployed for acquisition of the capital asset on which the short term capital gain is claimed/declared as per the return of income by the appellant assessee.

3. The Ld.CIT(A) has erred both in law and on facts and circumstances of the case and also in law in enhancing the income of the appellant by Rs.10,36,782/- without providing opportunity to the appellant of being heard as per requirement of section 251(2) of the Act and the non compliance of the mandatory requirement of above section makes the resultant enhancement invalid being without jurisdiction.

4. The appellant craves leave to add, delete, modify, amend the above grounds of appeal with the permission of the Hon'ble appellate authority.

From the above grounds it is gathered that the only grievance of the assessee relates to the disallowance of Rs.15,65,800/- comprising of Rs.5,29,018/- made by the A.O. Rs.10,36,782/- enhanced by the Ld.CIT(A) on account of alleged deduction claimed by the assessee u/s 57 of the Income Tax Act, 1961 (the Act).

2. Facts of the case in brief are that the assessee e-filed the return of income on 29.8.2012 declaring income of Rs.8,35,580/-. Later on the case was selected for scrutiny. During the course of assessment proceedings the A.O. noticed that the assessee had sold some properties on which she had declared capital gain of Rs.23,88,807/- and also claimed interest of Rs.15,87,054/- u/s 57 of the Act. The A.O. also asked the assessee to furnish the details of interest and to explain as to why the interest had been paid @ 18% whereas as per the bank norms the prevailing rate was 12%. The A.O. disallowed interest @ 6% amounting to Rs.5,29,018/- and made addition to the income of the assessee. Being aggrieved the assessee carried the matter to the Ld.CIT(A) who enhanced the disallowance by observing that the A.O. ought to have disallowed the interest paid in full which was claimed as deduction of expenses u/s 57 of the Act. Now the assessee is in appeal.

3. The Ld.Counsel for the assessee submitted that the assessee had not claimed any deduction u/s 57 of the Act and there was no dispute regarding the allowability of interest of loan which was allowable as an expenditure. It

was also stated that the A.O. as well as the Ld.CIT(A) had given wrong finding that the assessee had claimed deduction u/s 57 of the Act. It was submitted that the loans were raised by the assessee to purchase the land against which gross profit (capital gain) of Rs.23,88,817/- was earned and the interest paid was to be adjusted against the positive income because there was loss under the head 'income from other sources'. In his rival submissions the Ld.DR strongly supported the orders of authorities below.

4. I have considered the submissions of both the parties and perused the material available on record. In the present case it appears that the contention of the assessee that no claim for deduction was made u/s 57 of the Act has not been appreciated by the A.O. and the Ld.CIT(A) in right perspective. Therefore, this issue requires fresh adjudication at the level of the A.O. after making the proper verification from the record. In that view of the matter I deem it appropriate to set aside this issue back to the file of the A.O. to adjudicate it afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

5. In the result the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 10th November, 2017.

Sd/-

(NK SAINI)
ACCOUNTANT MEMBER

Dated: 10th Nov.2017

***Mv**

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar
ITAT, Delhi Benches, New Delhi