

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1964-1965/Kol/2014
Assessment Years: 2011-12 &
2012-13

Income Tax Officer, Ward-34(1),110, Shanti Pally, Aayakar Poorva, 7 th Floor, Kolkata-107	बनाम / V/s.	M/s Borojalingh Tea Co. Jute House, 1 st Floor, 12, India Exchange Place, Kolkata-001 [PAN No.AACFB 7772 N]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri Raj Kumar Patadi, FCA
राजस्व की ओर से/By Revenue	Shri Arindam Bhattacherjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	05-10-2017
घोषणा की तारीख/Date of Pronouncement	06-12-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

These two appeals by the Revenue are directed against the different order of Commissioner of Income Tax (Appeals)-XX, Kolkata of even date 01.07.2014. Assessment was framed by ITO Ward-34(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his orders dated 17.12.2013 & 28.02.2014 for assessment years 2011-12 & 2012-13 respectively.

Shri Raj Kumar Patodi, Ld. Authorized Representative appeared on behalf of assessee and Shri Arindam Bhattacherjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. Both appeal are heard together and are being disposed off by way of this consolidated order for the sake of convenience. First we take up ITA No.1964/Kol/2014 for A.Y. 2011-12.

3. The ground raise by the Revenue reads as under:-

*“1. In the facts and circumstances of the assessee and in law, the CIT(A) has erred in restricting the interest expenditure to Rs.36,39,402/- in view of the submissions of the assessee that since the source of expenditure for business as well as income from other source was out of common fund accordingly the calculation of expenditure on account of interest attributable to lending activities should be ass per manner provided in Rule 8D in spite of failure on the part of the assessee to explain the nexus between the expenditure and interest income earned.
2. The appellatant craves leave to make any addition, alteration modification etc. of the grounds at the appeal stage.”*

4. Sole issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹36,39,402/- on account of interest expense claimed against the interest income.

5. Briefly stated facts are that the assessee in the present case is a partnership firm and engaged in the business of growing and manufacturing tea under the trade name “Borojalingah Tea Company.” Besides the income from tea business, the assessee is also deriving interest income from money lending activity. The interest income was classified under the head income from other sources.

6. The assessee declared its income from tea business for Rs. 49,69,948/- for which deduction of the same amount was claimed under section 80IE of the Act. The assessee declared gross total income of Rs.15,58,218/- only which is reflecting the income from interest. The assessee in its profit and loss account has claimed the interest expenses as detailed under:

1. Interest on Partners Capital	Rs.	68,57,703.00
2. Bank interest	Rs.	2577.00
3. Interest on the loan (others)	Rs.	<u>2,43,231.00</u>
	<u>Total</u>	<u>71,00,934.00</u>

The interest income was calculated by the assessee in the following manner.

Gross interest income	Rs.	51,97,621.00
Less Interest Expenses	Rs.	<u>36,39,403.00</u>
	Rs.	<u>15,58,218.00</u>

The assessee computed the amount of interest expenses in the manner as provided in Rule 8D of Income Tax Rule. 1962. In this regard, the assessee submitted that the surplus fund available to the assessee firm was advanced to various parties with a view to earn interest income on the surplus fund. In-fact, the surplus fund is representing the capital of the firm which belongs to the partners of the firm. The

partners of the firm are being paid interest on the amount of capital contributed by them. Therefore there was a direct nexus between the interest income viz a viz interest expenses paid to the partners.

However the AO observed certain defects in submission made by the assessee as detailed under :

1. The Partners capital was for the purpose of the tea business and therefore there was no connection between the interest income and interest expense to the partners/ others.
2. Interest income was offered to tax under the head income from other sources and therefore the expenses incurred in connection such interest income wholly and exclusively will be allowed as deduction under section 57(iii) of the Act.
3. The loan has been advanced only out of surplus fund which evidences no direct nexus between the interest income & expenses.
4. The basis adopted for the bifurcation/ computation of interest expenses as per rule 8D is not correct as it relates to dividend income.
5. The assessee did not borrow any money from its partners to lend it to others but it was contributed as capital in the firm for the tea business.

The AO during the proceedings also observed that the assessee was claiming the deduction under section 80IE of the Act in respect of its tea business. Therefore the expense in relation to interest income was claimed against interest income. As such it was a colorable device of the assessee to reduce the tax burden on its income. In view of the above the AO disallowed the interest expenses of Rs.36,39,403/- claimed against the interest income.

7. Aggrieved, assessee preferred an appeal to Ld CIT(A).The assessee before LD. CIT(A) submitted as under:-

- a) The assessee is engaged in tea business as well as for providing loan to the parties;
- b) The assessee has been providing loan to the parties on interest on regular basis. Therefore, the lending activity was not in the nature of investment of any temporary surplus fund;

- c) The fund available with the assessee was interest bearing funds which were used to provide the advance to the parties. Thus, it cannot be concluded that no cost was incurred by it on its interest income;
- d) As per the provision of Section 57(iii) of the Act the assessee is very much entitled to claim the deduction of the expenses incurred in relation to such interest income.

The assessee further submitted that in similar facts and circumstances the Co-ordinate Bench of this Tribunal in the case of Burnie Braes Tea Co.(*sister concern of assessee*) vs. ITO in **ITA No.1866-1867/Kol/2010** for Assessment Years 2005-06 & 2006-07 dated 31.10.2011, has decided the identical issue in favour of assessee. Ld. CIT(A) after considering the submissions of assessee and the order of Co-ordinate Bench has deleted the addition made by the AO by observing as under:-

“.... .. After going through the facts and circumstances of the case and also the submission of the appellant, I find merit in their argument, therefore, after considering the argument (supra) and also the case law relied upon, the AO is directed to take the figures of interest expenditure attributable to lending activities of Rs.36,39,402/- as when the common funds are used for different activities and the appellant gives scientific method for calculation of an expenditure attributable to the particular activity and no other material has been brought on record by the AO then the working given by the appellant can be said to be justifiable. Under these circumstances, the AO is directed to reduce the interest expenditure to Rs.36,39,402/- attributable to the income from other sources. Accordingly, the appeal is allowed.”

The Revenue, being aggrieved, is in appeal before us.

8. Before us Ld. DR vehemently relied on the order of AO whereas Ld. AR before us filed paper book which is running from pages 1 to 34 and he reiterated the submissions which were made before Ld. CIT(A) and he relied on the order of Ld. CIT(A).

9. We have heard the rival contentions and perused the material available on record. In the instant case, assessee has earned interest income which was offered to tax under the head “income from other source”. The main business of assessee was growing & manufacturing of tea.

The assessee against interest income claimed to have incurred cost in the form of interest expenses on the capital contributed by the partners. As per the assessee the surplus fund available with it was advanced for loan to the parties for the purpose of

earning interest income. The assessee accordingly claimed interest expense against the interest income.

9.1 However, AO was of the view that surplus fund has been utilized for the purpose of earning interest income and therefore there is no question of claiming any expenditure against such interest income. However, Ld. CIT(A) reversed the order of AO. Now, the question before us arises so as to whether the assessee is entitled for claiming the interest expense against the interest income in the given facts and circumstances. It is undisputed fact that the loan was provided to the parties on interest and accordingly interest income was earned. Now the question arises whether the fund used by the assessee in providing loan was interest bearing or not. On perusal of the balance-sheet we find that assessee has been paying interest on the capital contributed by the partners to the firm as well as money borrowed by the firm from the outside. As the interest bearing fund has been advanced by the assessee to the parties to earn interest then in our considered view the interest paid qua to the interest income was very much eligible for deduction u/s 57(iii) of the Act. In holding so, we also find support and guidance from the order of this Co-ordinate Bench, in the case of *Burnie Braess Tea Co.* (supra) where the Tribunal has held:-

“... .. In view of these facts we cannot accept the plea of assessee that this interest income is business income s declared by assessee, but this is interest income and lower authorities have rightly treated the same as income from other sources while assessing the income of assessee. However, the assessee is entitled for deduction u/s. 57 of the Act. The Assessing Officer will allow the claim of assessee of interest expenditure incurred by assessee qua the income of interest earned and declared as income from other sources. This issue of assessee’s appeal is partly allowed as indicated above.”

From the above precedent, we hold that assessee is very much entitled to claim the expense incurred in the form of interest against the impugned interest income.

9.2 Next question before us arises that how to compute interest expense qua to the interest income. In this regard, we find that the assessee has adopted the manner for making the disallowance of interest expense as provided under Rule 8D of I.T. Rules, 1962. Though prima facie we disagreed to the basis adopted by the assessee for claiming the interest expense qua the interest income. However, Ld DR before us has not brought any defect in the manner in which interest expense was worked out

against the interest income as adopted by assessee. Therefore, we are not inclined to adjudicate the same. In view of the above, we hold that is entitled to claim the interest expense against the interest income. We respectfully following the consistent view of the Tribunal decline to interfere with the order passed by the Ld. CIT(A) on this account and accordingly the ground taken by the Revenue is regretted.

10. Last issue is general and needs no adjudication.

11. In the result, Revenue's appeal is dismissed.

Coming to ITA No.1965/Kol/2014 for A.Y 12-13.

12. As stated earlier, the issue in this year is same as that of the last year. The only difference is the amount involved. Since the facts are exactly identical, both parties are agreed whatever view taken in the above appeal of the Revenue may be taken in this appeal of Revenue also. We hold accordingly.

13. In the result, Revenue's appeal is dismissed.

14. **In combine result, both the appeal of Revenue stand dismissed.**

Order pronounced in open court on 06/12/2017

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member
*Dkp, Sr.P.S

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

दिनांक:- 06/12/2017 कोलकाता / Kolkata

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s Borojalingah Tea Co. Jute House, 1st Floor, 12, India Exchange Place, Kolkata-001
2. राजस्व/Revenue-ITO Ward-34(1) 110, Shanti Pally, Ayakar Poorva, 7th Floor Kolkata-107
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता