

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM

**आयकर अपील सं. / ITA No.2230/PUN/2016**  
**निर्धारण वर्ष / Assessment Year : 2010-11**

Shri Totaram Jangaldas Sukhwani,  
Khandelwal Jain & Associates,  
Alankar Cinema Building,  
1<sup>st</sup> Floor, Above United Bank,  
Pune – 411001

.... अपीलार्थी/Appellant

PAN: ACAPS3896E

Vs.

The Asst. Commissioner of Income Tax,  
Circle 8, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri R.G. Nahar  
प्रत्यर्थी की ओर से / Respondent by : Shri Vivek Aggarwal

सुनवाई की तारीख / <b>Date of Hearing : 16.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 20.04.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-9, Pune, dated 06.07.2016 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

1. *On facts and circumstances prevailing in the case and as per provisions & scheme of the Law it be held that the interest on borrowed capital amounting to Rs. 14,46,363/- should have been allowed while computing the income from house property. Just in proper relief be granted to the appellant.*

3. The issue raised in the present appeal is against disallowance of interest on borrowed capital at ₹ 14,46,363/-.

4. Briefly, in the facts of the case, the assessee had offered income from house property and income from other sources in the return of income, declaring total income of ₹ 33,11,450/-. The case of assessee was taken up for scrutiny. The Assessing Officer noted that the assessee had claimed interest expenses of ₹ 14,46,363/- out of rent income. The assessee explained that it had raised loan from Bajaj Finance Ltd. amounting to ₹ 78,72,347/-. The claim of assessee was that the said loan was utilized for construction of building, which in turn, was rented out. The interest paid to Bajaj Finance Ltd. was claimed as deduction against rental income. During the course of hearing, the assessee was asked to explain utilization of loan for the purpose of construction of building. The Assessing Officer noted from the sanction letter of Bajaj Finance Ltd. that the loan was sanctioned in joint names of Shri Suresh Sukhwani, Shri Totaram Sukhwani and Shri Mahesh Sukhwani. The loan amount of ₹ 78,72,347/- was issued in the name of Shri Mahesh Sukhwani on 16.02.2009, which in turn, was transferred to the assessee on 19.02.2009. Subsequently, on the same day, the assessee transferred the entire loan to the partnership firm M/s. Sukhwani Gruh Rachana. The assessee's capital in the books of account of partnership firm was suitably reduced. The Assessing

Officer thus, observed that the loan raised by Shri Mahesh Sukhwani was neither used for the purpose of construction of building nor used for repayment of interest bearing loans. The Assessing Officer also noted that building was constructed by withdrawing the amount from the firm M/s. Sukhwani Gruh Rachana and the entire fund was non-interest bearing fund. The Assessing Officer did not accept the nexus theory put up by the assessee between loan taken and its utilization for the construction of house property and observed that the entire withdrawal from M/s. Sukhwani Gruh Rachana was interest free and held that no interest expenses were incurred by the assessee for obtaining funds from the said firm. In view thereof, the claim of interest amounting to ₹ 14,46,363/- was disallowed.

5. The CIT(A) observed vide para 6.3 that the loan was disbursed on 16.02.2009 and was transferred to the firm on 19.02.2009. However, the assessee had already completed substantial construction of the building under question, for which loan was alleged to be taken. The construction was made out of withdrawals from the firm totaling ₹ 1.10 crores; loan on the other hand, was utilized by the firm since the bank account either had nominal credit balance or debit balance only. The assessee had further withdrawn certain amounts from the firm which was utilized for construction purpose. The CIT(A) rejected the plea of assessee on various grounds including the fact that the loan agreement did not mention the purpose specifically. He says that as per para 1.13, purpose was not specific for the construction of building. The CIT(A) further goes on to say that however, the assessee had not submitted any copy of loan application. The explanation of assessee that though the funds were borrowed by the assessee were not utilized immediately for the purpose of

construction of building but within due course of time, they have been utilized for the said construction, was not accepted, in view of the fact that the assessee had not furnished any document from Bajaj Finance Ltd. that the amount was utilized for construction of building. The repayment of loan was also made out of funds of firm and hence, the claim of assessee was rejected by the CIT(A).

6. The assessee is in appeal against the order of CIT(A).

7. The learned Authorized Representative for the assessee has filed short note on the facts of case and it was pointed out that since the funds were not required for construction, they were transferred to partnership firm, in which the assessee was partner. At the relevant point of time the assessee had debit balance in the accounts of firm. Further, he stressed that money received from Bajaj Finance Ltd. was utilized in the next three months after May, 2009 for the purpose of construction and in this regard, month-wise summary of investment is provided at pages 15 and 16 of Paper Book. The assessee also explained that payments to creditors and contractors were made by M/s. Sukhwani Gruh Rachana, but the same were debited to the capital account of assessee in partnership firm. While repaying the money to Bajaj Finance Ltd., the assessee explained that the same was paid from Shri Mahesh Sukhwani account and was debited to assessee's account.

8. The learned Departmental Representative for the Revenue on the other hand, strongly opposed the submissions of assessee and pointed out that there is no merit in the plea of assessee, where the amount was transferred to

partnership firm was utilized by the said firm and was repaid not by the assessee but by another partner of the said firm.

9. On perusal of record and after hearing both the learned Authorized Representatives, the issue which needs to be adjudicated in the present appeal is the claim of assessee of allowing interest expenditure against income from house property. The assessee had constructed house property which in turn, was let out. The assessee claims that it had borrowed funds from Bajaj Finance Ltd. for the purpose of investment in the said property and hence, the interest paid on the said loan merits to be allowed against the property income offered by the assessee. The assessee was a partner in M/s. Sukhwani Gruh Rachana, in which there were two other partners. The loan was sanctioned by Bajaj Finance Ltd. of ₹ 78.72 lakhs on 16.02.2009 in the name of assessee and his two sons Shri Suresh Sukhwani and Shri Mahesh Sukhwani and the same was deposited in account of Shri Mahesh Sukhwani. The loan was sanctioned on 16.02.2009. Thereafter, on 19.02.2009, Shri Mahesh Sukhwani transferred the loan account to the assessee before the Tribunal, who in turn, transferred the amount to partnership firm as his capital contribution and the same was credited to his capital account in M/s. Sukhwani Gruh Rachana. The assessee claims that it had started construction out of money withdrawn from the partnership firm and on the relevant date when the loan was received and transferred to the partnership firm, there was debit balance in the account of assessee. Thereafter, funds were further withdrawn from the capital account of assessee by way of direct payment to debtors and persons from whom the goods were purchased by the partnership firm. The assessee thus, claims that the said loan account was utilized for the purpose of construction of building

and hence, the interest paid thereon was to be allowed as deduction out of income from house property, assessed in the hands of assessee.

10. The perusal of summary of payments made for construction of property, placed at page 17 of Paper Book, the total amount paid in assessment year 2009-10 was ₹ 33,97,316/- and further in assessment year 2010-11 was ₹ 1,40,95,363/-, total being ₹ 1,80,24,663/-. The source of said funds was claimed by the assessee to be out of his withdrawals from capital account of partnership firm, in which the assessee was partner. The loan which was received by three persons was transferred in the account of assessee, who in turn, had invested the same as his capital contribution in the partnership firm M/s. Sukhwani Gruh Rachana. There is no dispute to the fact that the payment for construction has been met by the assessee out of withdrawals from his capital account with the partnership firm. There is also no dispute that before the loan was received, the assessee had overdrawn his capital account and had negative balance in the capital account. In such circumstances, when the loan was received by the assessee and was on the same day transferred to partnership firm, then in order to first clear his debit balance and then have credit balance in the partnership firm, wherein the firm had utilized the funds till the assessee used for construction. In the totality of the above said facts and circumstances, nexus between the loan borrowed and its utilization for the purpose of construction stands established, though by way of routing through capital account of assessee in the partnership firm. Accordingly, there is merit in the plea of assessee that interest paid on the said loan merits to be allowed as deduction out of income from house property declared by the assessee.

The Assessing Officer is directed to allow the same. The ground of appeal raised by the assessee is thus, allowed.

11. In the result, appeal of assessee is allowed.

Order pronounced on this 20<sup>th</sup> day of April, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 20<sup>th</sup> April, 2018.  
GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-9, Pune;
4. The Pr.CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune