

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM**

आयकर अपील सं./I.T.A. No.5793/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

Hemant B. Topiwala 11/12, Guru Krupa Bldg., N. S. Road No. 6, JVPD Scheme, Vile Parle (W), Mumbai-400 056	<b>बनाम/</b> Vs.	Dy. CIT, Circle 11(2)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABPT 5375 J		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri N. K. Bhuta
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Hemalatha N.
सुनवाई की तारीख / Date of Hearing	:	05.03.2018
घोषणा की तारीख / Date of Pronouncement	:	18.05.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against order of the Id. Commissioner of Income Tax (Appeals) dated 28.02.2017 and pertains to assessment year 2013-14.

2. The grounds of appeal read as under:

1. The Learned Assessing Officer erred in disallowing Rs. 17,80,635/- being Interest paid to partnership firm M/s. Jalaram Enterprises on the ground that the Interest has been capitalized and the Appellant maintains books on cash basis and also on the ground that the Appellant had failed to establish the nexus between the loan taken and loan advanced.

2. The Learned Commissioner of Income Tax erred in upholding the addition by invoking the provisions of section 14A pertaining to disallowance of expenses for earning exempt income, i.e., share of profit from partnership firm.
  3. Without prejudice, even if provision of section 14A are held to be applicable, the disallowance cannot exceed the exempt income, i.e., disallowance may be restricted to Rs. 4,200/- being the Share of Profit earned during the year instead of Rs.17,80,635/-
  4. Without prejudice, the Learned Assessing Officer erred in disallowing the entire Business Loss of Rs. 17,80,635/- as against the loss of Rs. 8,47,174/- which was set-off against Income from Other Sources. The Balance Loss of Rs. 9,33,461/- is not allowable to be carried forward as the return was filed by the Appellant on 19/09/2013, which is beyond the due date of filing of return of income.
3. The order of the Assessing Officer on this issue may be gainfully referred as under:

On perusal of the details, it is seen that the assessee has paid interest to M/s. Jalaram Enterprises on the debit capital of Rs.2.40 crores. The said payments has resulted into negative income from partnership firm to the tune of Rs.17,80,635/-. The exempt profit has been shown at Rs.4200/- from M/s. Jalaram Enterprises.

6.2 During the course of assessment proceedings, the assessee was asked as under:

- (a) Please explain as to why there is negative income from partnership firm.
- (b) What is the exigency to take loan from the partnership firm and how it is incidental to the business.

6.3 In reply to the above query, the assessee submitted as under:

I have filed the profit and loss account and balance sheet of M/s. Jalaram Enterprises. I have paid the interest of Rs.17,80,635/- to Jalaram Enterprises in which I am a partner for the debit balance in the firm. I have not withdrawn any amount from the firm during the year under assessment. The interest is paid on the opening balance. The interest is allowed as deduction in the proceeding years. Also, interest paid to Jalaram Enterprises is allowable as fund withdrawn from firm Rs.2.23 crores (opening balance) have been utilized for investing in NHAI Bonds worth Rs.1 crore, recurring deposits Rs.3.31 lacs, loan to Shingar Ltd Rs.1.09 crores and fixed deposits to Rs.11.65 lacs.

6.4 The contention of the assessee that the expenditure debited on account of interest paid to Jalaram Enterprises is not acceptable.

The assessee has debited the expenditure in the computation of income but the confirmation submitted by it suggests that the interest has been capitalized. As the assessee is maintaining its books of accounts on cash basis and the same is not allowable.

Without prejudice to the above, the assessee has failed to establish the nexus between the loan taken and loan advanced hence it is not ascertainable as to what fund has been utilized for above mentioned investments.

In view of the above, the interest amount of Rs.17,80,635/- is disallowed and added to the total income of the assessee

4. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the action of the assessing officer by holding as under:

Under this Ground of Appeal, the Appellant has disputed addition of Rs.17,80,635/- being interest paid to partnership firm M/s. Jalaram Enterprise on the ground that the interest has been capitalized even though the Appellant maintains Cash System of Accounting. I have considered the rival submissions and find that the Appellant paid interest of Rs.17,80,635/- on his debit balance in the Capital A/c with M/s. Jalaram Enterprise. The Appellant has earned exempt profit of Rs.4,200/- from M/s. Jalaram Enterprise. On the other hand, the Appellant has contended that the Appellant maintains books on Mercantile basis and interest was paid to M/s. Jalaram Enterprise as per terms of partnership deed. I have carefully considered these submissions of the Appellant but do not find tenable because share of profit from a partnership is exempt and no interest or salary is received from the firm. Therefore, it is clear that the Appellant has paid interest of Rs.17,80,635/- for which the only income is exempt income by way of share of profit. Therefore, the same does not amount to business loss. On the contrary, the said interest paid for exempt income is otherwise also not allowable alternatively u/s 14A as well. I, therefore, confirm the addition of Rs.17,80,635/- made by the A.O.

5. Against the above order, the assessee is in appeal before the ITAT.
6. I have heard both the counsel and perused the records. It is noted that in this case the assessee has paid interest on its debit balance in the firm, i.e., amount overdrawn from the firm. The interest has been paid as per the partnership deed. Here authorities below

have drawn inference that assessee has received income from the partnership firm which is exempt from tax. I find that by no stretch of imagination, it can be said that the said overdrawn amount was assessee's investment in the firm to earn exempt income. Hence invocation of section 14A is totally misplaced. Furthermore, I note that in the earlier years, the claim was allowed. There is no changing facts and circumstances of the case.

7. Accordingly, in my considered opinion there is no basis for the disallowance of interest paid on the amount overdrawn from the firm. It is not the case of the Revenue that the payment is not in accordance with the partnership deed. Accordingly, in the background of aforesaid discussion and precedent, I set aside the order's of authorities below, and decide the issue in favour of assessee.

8. The other grounds raised in the appeal are consequential.

9. In the result, the appeal by the assessee stands allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

*Order pronounced in the open court on 18.05.2018*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 18.05.2018

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**