

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ramlal Negi (JM)
I.T.A. No. 6108/Mum/2016 (Assessment Year 2012-13)

Shri Bhanwarlal Rawatmal Singhi Shop No. 8, Jai Hind Building, Dr. Atmaram Merchant Road Bhuleshwar Mumbai-400002. PAN : AFZPS4076G (Appellant)	Vs.	CIT(A)-29 Mumbai. (Respondent)
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Assessee by	Shri Jayant Bhatt
Department by	Shri V. Vidhyadhar
Date of Hearing	18.7.2018
Date of Pronouncement	18.7.2018

ORDER

Per B.R. Baskaran (AM) :

The appeal filed by the assessee is directed against the order dated 23.8.2016 passed by the learned CIT(A)-29, Mumbai and it relates to A.Y. 2012-13. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the disallowance of interest expenditure of ₹ 6,83,771/-.

2. Facts relating to the issue are stated in brief. The assessee is a director in a company named M/s. Subhene Synthetics Private Limited, which is engaged in the business of trading in fabrics. During the year under consideration the assessee declared 'income from salary', 'income from house property' and 'income from capital gains'. The assessee declared loss under the head other sources to the tune of ₹ 4,96,079/-. The Assessing Officer noticed that the assessee has claimed interest expenditure of ₹ 6,83,771/- against income declared under the head 'income from other sources'. The AO questioned the eligibility of the assessee to claim interest expenditure. The assessee submitted that the proportionate interest relatable to exempt income is ₹ 2,98,924/- and agreed for disallowance of the same. With regard to

remaining interest expenditure of ₹ 3,84,847/-, the assessee submitted that interest bearing loans were mainly used for making investment in house properties and accordingly claimed that remaining amount of ₹ 3,84,847/- may be allowed against rental income. Since the assessee could not prove nexus between borrowings and investments made in house properties and further since the assessee did not furnish interest certificate as required under third Proviso to section 24 of the Act, the Assessing Officer rejected the said claim of the assessee. Further, the AO noticed that the assessee could not prove that interest of ₹ 3,84,847/- was incurred for earning income declared under 'income from other sources'. Accordingly the Assessing Officer disallowed the claim of interest expenditure of ₹ 6,83,771/-. The learned CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

3. The learned AR submitted that the assessee has used its borrowed funds for making investments in residential building, shares and also for making deposits and loans. Further the assessee was also having own funds of ₹ 88.12 lakhs at the beginning of the year. Since all funds were mixed up and used, assessee had bifurcated the interest expenditure against shares and other investments. Accordingly the assessee has sought deduction of interest expenditure of ₹ 3.84 lakhs against rental income. He submitted the fact that the assessee had incurred interest expenditure is not denied and assessee himself has stated that the interest amount of ₹ 2,89,924/- pertains to exempt income. Accordingly he submitted that the balance interest expenditure of 3.84 lakhs may kindly be allowed as deduction either against rental income or income from other sources.

4. On the contrary, learned DR submitted that the assessee has failed to prove the nexus between borrowings and investment and hence claim of the assessee was rightly rejected by the learned CIT(A).

5. We have heard the parties and perused the record. We noticed that opening balance of interest bearing unexplained loan stood at ₹ 36.55 lakhs and closing balance of the same stood at ₹ 75.25 lakhs, meaning thereby, there is increased of approximately ₹ 40 lakhs in the interest bearing unsecured loan account. We noticed that the value of investment in shares stand at ₹ 124.34 lakhs and ₹ 169.80 lakhs as at the beginning of the year, meaning thereby, incremental loan amount has been fully utilized in making investment in shares. In that case, we are required to examine the possible utilisation of opening balance of unsecured loan of ₹ 36.55 lakhs. Considering the fact the assessee has used its own capital as well as loan funds for making investment in properties, shares and other investments, we are of the view that a portion of interest expenditure pertaining to ₹ 36.55 lakhs may be allocated against house properties.

6. We noticed that the tax authorities have invoked the Third Proviso to section 24 of the Act to deny deduction of interest expenditure against rental income. However, the Third Proviso to section 24 of the Act, would apply only to self occupied property and not to other properties. In view of the foregoing discussions, we are of the view that 50% of the interest expenditure relating to opening balance loan of ₹ 36.55 lakhs may be allocated against rental income and deduction be allowed. Remaining amount of interest expenditure, in our view, has been rightly disallowed by the tax authorities, since the assessee could not prove the nexus between loans and investments. Accordingly, we modify the order passed by the learned CIT(A) and direct the Assessing Officer to allow deduction for interest expenditure against rental income in the manner stated above.

6. In the result, appeal filed by the assessee is partly allowed.

Order has been pronounced in the Court on 18.7.2018.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/7/2018

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

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