

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA (SMC) BENCH: AGRA**

**BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER**

**I.T.A No. 141/Agra/2017  
(ASSESSMENT YEAR-2012-13)**

Shri Puneet Bagla, G-13B/8, Anand Vrindavan, Agra. PAN No.AAZPB2364D <b>(Assessee)</b>	<b>Vs.</b>	ITO,-1(3), Agra.  <b>(Revenue)</b>
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Assessee by	Shri K. K. Jain, & Shri S.K. Jain, Advs.
Revenue by	Shri Waseem Arshad, Sr.DR.

Date of Hearing	23.05.2018
Date of Pronouncement	30.07.2018

**ORDER**

This is assessee's appeal for A.Y. 2012-13, taking the following concise grounds:

*“1. Because the appellant has placed cogent and relevant evidence to prove the nexus for the utilization of funds borrowed from bank in the income earning investments, the denial of deduction of interest by both the lower authorities is wrong and unwarranted.*

2. *Because the loan from India Bulls has been directly reimbursed to ICICI Bank for the repayment of old loan; the Ld.CIT(A) was wrong to observe that the loan was taken by several persons and not by appellant alone.*

3. *Because the names of other persons (being family members) were added as co-applicant in order to complete the formalities of the lender India Bulls, the entire loan was raised by the appellant himself against the security of his property and was utilized in the repayment of old loan taken from ICICI Bank.*

4. *Because, the loan amount remain invested in the partnership firm M/S Bagla Construction Co. and M/S Bagla & Co., as partner and investor to earn income respectively, the deduction of interest claimed at Rs.5,21,766/- ought to have been allowed both u/s 36(l)(iii) and 57(iii) cumulatively. The interest paid on loan has been allowed throughout in the past.*

5. *Because the Hon,ble Tribunal has inherent powers to consider the claim allowable u/s 36(l)(iii) and 57(iii) cumulatively though claimed in the return u/s 57(iii) in view the facts of the case.*

6. *Because the order of both the authorities below is bad in law and against the facts and evidence on record of the case.”*

2. As per the record, the assessee took loan of Rs.43,58,000/- from ICICI Bank on 28.12.2005. He invested this amount in three concerns, namely, Bagla Construction Company, Bagla & Company and Bagla Company Pvt. Ltd. In A.Y. 2007-08 these investments in the three concerns got pooled in Bagla Construction Company. The amount remained so invested with Bagla Construction Co. till A.Y. 2011-12. In A.Y. 2012-13, i.e., the year under consideration, out of the said investment of Rs.43,58,000/- an amount of Rs.31,17,398/- was transferred to Bagla & Co., whereas Rs.20,08,614/- remained with Bagla Construction Company. So, the total investment in A.Y. 2012-13 amounted to Rs.51,26,012/-.

3. The loan of Rs.43,58,000/- taken by the assessee from ICICI Bank got reduced to Rs.36,40,204/-, as on 24.01.2011, falling in A.Y. 2010-11. This reduced loan was taken over by India Bulls. The assessee paid interest of Rs.5,21,766/-. This amount of Rs.5,21,766/-, paid as interest to India Bulls, was claimed by the assessee as expenditure on income from other sources earned.

4. The AO disallowed the entire claim of Rs.5,21,766/-. It was observed that the investment of loan of Rs.36,40,204/- from India Bulls was not proved by the

assessee. While confirming the disallowance, the Id. CIT(A) has held, inter alia, that the assessee himself stated the loan from India Bulls had been taken to pay off the home loan from ICICI. It was also observed that the loan from India Bulls was taken in six names and not in the sole individual name of the assessee. Therefore, according to the Id. CIT(A), there was no nexus between the income from other sources and the expenditure incurred, i.e., the payment of interest for earning the interest had not been proved by the assessee. Aggrieved, the assessee is in appeal.

5. Challenging the order under appeal, it has been contended on behalf of the assessee that it is patent on record that he had initially taken loan of Rs.43,58,000/- from ICICI Bank against his property; that this loan was invested in the three concerns; that these investments remained invested with the three concerns till 31.03.2006; that during F.Y. 2006-07, these investments were pooled in with the firm M/s Bagla Construction Co., wherein, the assessee joined as a partner; that these investments remained so invested till A.Y. 2011-12; that the loan of Rs.43,58,000/- taken from ICICI Bank got reduced to Rs.36,40,204/-, as on 24.01.2011; that the reduced loan was taken over by India Bulls; that India Bulls made payment of the loan taken by the assessee from ICICI Bank to ICICI Bank directly; that as such, the investment originally made remained intact, though with M/s Bagla Construction Co., as against the initial investment made with the three

concerns; that during the year under consideration, no new loan was taken by the assessee; that other than the above investment, the assessee had made investment of his own capital in the three concerns; that the claim of interest has been allowed by the Department all through, till A.Y. 2011-12, i.e., the immediately preceding assessment year. It has been contended that in view of these facts, the Taxing Authorities have clearly erred in holding that the assessee had failed to prove the nexus between the loan taken from India Bulls and the interest bearing funds. It has further been contended that the Id. CIT(A) has erroneously observed that the loan initially taken was in the names of the assessee and five other persons; that in fact, the loan had been taken by the assessee only, against his own property and the names of the other persons had been added merely as guarantors. Still further, it has been submitted that it was not a home loan, as wrongly observed by the Id. CIT(A), rather it was an LAP, i.e., a loan against property.

6. Thus, according to the Id. Counsel for the assessee, the claim u/s 57(iii) of the IT Act needs be directed to be allowed.

7. On the other hand, the Id. DR has placed strong reliance on the impugned order. It has been vehemently contended that the well versed findings of the Authorities below have not been successfully rebutted by the assessee. The nexus

between the earning of the income from other sources and the expenditure incurred for such earning has not been proved by the assessee at any stage. The loan had been taken in six names, as held, investment of the loan of Rs.36,40,204/-, taken by the assessee from India Bulls does not stand proved on record. Accordingly, as per the Id. DR, the claim of the assessee u/s 57(iii) of the Act has rightly been concurrently disallowed by the AO as well as the Id. CIT(A).

8. Heard. A reading of the order under appeal, at first blush, does not evince this factual position, as contended by the assessee, to have been so shown before the Authorities below. However, we have been taken through the copies of the documents certified to have been furnished before the AO as well as the Id. CIT(A). These documents have been placed before me in the paper book filed by the assessee. First off, to meet the CIT(A)'s objection that the loan was in the name of six persons including the assessee and not in the name of the assessee alone, the Id. Counsel for the assessee has drawn my attention to APB 74-82, which is a copy of loan sanction letter from India Bulls, alongwith copy of statement of loan and copy of DD issued by India Bulls to ICICI Bank. The account statement (APB 75-81) for the period from 06.03.2000 to 06.03.2017 is in the name of the assessee, i.e., this is an account statement of the assessee himself. At APB 75, the amount financed has been shown at Rs.36,52,961/-, in the name of the assessee. Rupees

36,40,205/- has been shown as the amount paid vide cheque number 034834. This shows that the amount was sanctioned in favour of the assessee alone. APB-82 is a copy of DD issued by India Bulls in favour of ICICI Bank directly. It is in the amount of Rs.36,40,204/-. It thus stands placed on record that the amount of Rs.36,40,204/- sanctioned by India Bulls in the name of the assessee as a loan was repaid by India Bulls directly to ICICI Bank.

9. Apropos the issue as to whether indeed the loan was in the name of the assessee only or in the names of five other persons also, as observed by the Id. CIT(A), attention has again been drawn to APB-74, which is a copy of loan sanction letter issued by India Bulls on 22.01.2011. In this loan sanction letter, as against the name of the applicant, 'Mr. Puneet Bagla', has been mentioned, whereas against the name of co-applicant/guarantor, the following names have been mentioned: 'Bagla Construction Company, Jagdish Prasad Bagla, M/s Goverdhan Builders, Saroj Bagla, Ruchi Bagla'. Therefore, as evident from this loan sanction letter, the loan had been applied for by the assessee only and the other five names were those of guarantor against the loan so applied for.

10. Then, to counter the observation that the loan was a home loan, the assessee has referred to APB-71, which is a copy of loan disbursement letter issued from

ICICI Bank. The opening portion of this letter states ‘Thank you for chose ICICI Bank Home Loan. The type of loan has been shown as ‘Home Equity (HE)- Office premises’. It is probably this which has led the Id. CIT(A) to observe the loan in question to be a home loan. However, it is not so. It was a loan which was sanctioned against property. A complete reading of this document goes to show this. In the middle of the letter, the sanction of the loan is stated to be subject to the following:

- “1. Actual Loan amount advanced will depend on the term of the loan type of property/legal/technical/valuation report on the property received by ICICI Bank.*
- 2. The Loan amount must be utilized for the purpose as indicated by the applicant in the loan application and the End Use of Funds letter and cannot be used for any other purposes.*
- 3. The property described above must be self-occupied.*
- 4. The property described above shall not be rented out/alienated/or possession thereof parted with by the applicant in any manner whatsoever either partly or wholly during the said tenure.”*

11. The above conditions stipulated as pre-condition for the sanction of the loan goes to show unequivocally, that the loan was against the property pledged/hypothecated by the assessee. As per condition no.1, the actual loan amount would depend upon the type of property being pledged/hypothecated, as also, the valuation report thereon, as received by the bank. As per condition no.2, the loanee has been prohibited from utilizing the loan amount for any purpose other than the one indicated by him in the loan application. Condition no.3 stipulates that the property being pledged/hypothecated must be a self occupied property of the applicant/loanee. Lastly, the property so pledged/hypothecated, as required by condition no.4, shall not be rented out or alienated or parted with by way of possession in any manner, either partly, or wholly, during the tenure of the subsistence of the loan.

12. Thus, the Id. CIT(A) has clearly misread the aforesaid sanction letter issued by the ICICI Bank and it has thus, wrongly held that the loan in question was a Home Loan.

13. My observations are further buttressed by the fact that the loan statement issued by India Bulls the reduced loan taken over by India Bulls shows (APB-75) the 'Product' To Be 'Loan Against Property-IFSL'

14. Thus, there can be no two views about the fact that the loan under consideration was a loan which was sanctioned against property and it was not a home loan.

15. Besides, it is on record that the amount of Rs.36,40,204/-, as paid directly by India Bulls, vide DD to ICICI Bank, got ultimately debited to the account of the assessee only. This is evident from the account statement (supra), which, as noted above, shows the amount of Rs.36,40,204/- as paid to the assessee vide cheque no. 034834. In view of the above facts, the Authorities below have clearly erred in arriving at the conclusion that the nexus between the income from other sources earned and the expenditure incurred to earn this income does not stand proved. As deliberated upon in the foregoing paras, this nexus stands clearly established, thereby entitling the assessee to deduction u/s 57(iii) of the IT Act.

16. Now, the question is with regard to the quantum of this allowance u/s 57(iii) of the Act.

17. The assessee has claimed an amount of Rs.5,21,766/-, as interest paid, representing deduction available to the assessee u/s 57(iii) of the Act. However, an amount of Rs.1,58,220/- has been shown to have been earned by the assessee as interest from Bagla & Company. In view of my above observations, this amount is

directly allowable to the assessee as deduction u/s 57 (iii), since, the nexus between earning of such income from other sources and the expenditure incurred for the earning thereof has been proved.

18. This leaves us with the amount of Rs.3,19,242/- (Rs.5,21,766/- (-) Rs.1,58,220/-).

19. Apropos this amount of Rs.3,19,242/-, the contention on behalf of the assessee is that this amount represents interest earned from Bagla Construction Co. and that this amount is allowable under the provisions of section 36(1)(iii) of the IT Act, though it has not been so claimed.

20. Section 36(1)(iii) allows deduction of the amount of interest paid in respect of capital borrowed for the purposes of business or profession, for computing business income u/s 28 of the Act. Section 28 (v) treats, inter alia, any interest received by a partner of a firm from such firm, as 'profit and gains or business or profession'. In the present case, the assessee has shown himself to be a partner in Bagla Construction Company. He has stated to have earned interest of Rs.3,19,242/- and remuneration as such partner, amounting to Rs.5,74,500/- from Bagla Construction Company, total amounting to Rs.8,93,742/-. The assessee claims that the interest earned of Rs.3,19,242/- needs to be deducted from this

business income of Rs.8,93,742/-, under the provisions of section 36(1)(iii) of the Act.

21. It is true that the assessee has not made this claim u/s 36(1)(iii) of the Act before the Authorities below. It is, however, trite that if an assessee is entitled to a claim, even if such a claim has not been made, it needs to be allowed by the Taxing Authorities or, if not so done by them, in further appeal. As noted, the claim of the assessee is justified. The income earned is business income, being interest received by the assessee as partner of the firm M/s Bagla Construction Company. The amount of interest paid by the assessee in respect of capital borrowed for the purpose of business or profession is to be allowed as a deduction u/s 36(1)(iii).

22. In my observations made while dealing with the issue of deduction u/s 57(iii) of the Act, I have held as established, the nexus between the income earned from other sources and the expenditure incurred to earn such income. This nexus is equally valid and applicable for the issue of deduction u/s 36(1)(iii) of the Act too. Since the assessee has been able to establish on record by way of documentary evidence (supra) that the loan taken was utilized for investment, as above, this also amounts to saying that the interest paid in respect of loan taken (capital borrowed)

was for the purposes of business or profession within the meaning of section 36(1)(iii) of the Act.

23. Therefore, the assessee is entitled to this deduction as well. The same is also ordered to be allowed to the assessee.

24. Thus, an amount of Rs.1,58,220/- is hereby allowed as a deduction to the assessee under the provisions of section 57(iii) of the Act. The order under appeal in this regard is reversed. Further, an amount of Rs.3,19,242/- is directed to be allowed as a deduction u/s 36(1)(iii) of the act. Ordered accordingly.

25. In the result, the appeal is partly allowed.

**Order pronounced in the open court on 30/07/2018.**

**Sd/-  
(A.D. JAIN)  
JUDICIAL MEMBER**

*\*AKV\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR