

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'D', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 1640/Del/2015
Assessment Year: 2011-12**

Lala Bansi Dhar & Sons, Diamond Press Building, 8E, Rani Jhansi Road, Jhandewalan Extension, New Delhi PAN – AAAHL 0339P (Appellant)	vs.	ACIT, Circle 38(1), New Delhi. (Respondent)
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Assessee by	Sh. Pradeep Dinodia & Sh. R.K. Kapoor, C.A.
Revenue by	Sh. Amit Jain, Sr. DR

Date of Hearing	14.08.2018
Date of Pronouncement	04.09.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of the Id. CIT(A)-20, New Delhi dated 19.01.2015 for the assessment year 2011-12 on the following grounds :

1. *That the order passed by the Assessing Officer and sustained by Learned Commissioner of Income Tax (Appeals) is bad in law on all the points of additions and disallowances.*

2. *That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in upholding the action of the Assessing Officer deduction ? 20,71,233/-, out of interest paid on*

loan taken for payment of booking in a future project being developed by M/s. Ansals Properties & Infrastructure Ltd.(Ansals) against interest received by the appellant on cancellation of the booking.

3. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in not adjudicating on Ground No. 3 relating to action of the Ld. Assessing Officer adopting the figure of income under the head "Income from Other Sources" at ? 35,15,428/- as against the correct figure of? 33,95,425/- without assigning any reason.

4. That on the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in upholding the action of the Assessing Officer in initiating penalty proceedings under section 271(1)(c) of the Act.

5. That the aforesaid grounds of appeal are without prejudice to each other."

2. The brief facts of the case are that the assessee filed return on 22.07.2011 declaring total income of Rs.59,25,690/-. Subsequently, the return was revised on 15.12.2011 and the returned income was same. The assessee-HUF is not engaged in any business or profession. Its main source of income is income from house property and income from other sources. The case was selected for scrutiny and statutory notices were issued. During the course of scrutiny proceedings, the AO observed that the assessee had invested a sum of Rs.75,00,000/- in a future project being developed by M/s. Ansal Properties & Infrastructure Ltd. in October, 2008. The said investment was made out of the loan taken in the name of co-parcener Mr. Alok B. Sriram from ICICI Bank and the said loan EMI was paid through co-parcener Mr. Alok B. Sriram. On 31.03.2011, the assessee has reimbursed a sum of Rs.35,99,946/- to Mr. Alok B. Shriram towards EMI/processing fee in respect

of the said loan and the total interest was paid by HUF to co-parcener upto 31.03.2011 amounting to Rs.34,32,926/-, which is as under :

Financial Year Ending	Amount
31.03.2008	485,251
31.03.2009	10,25,375
31.03.2010	9,57,124
31.03.2011	9,65,176

	34,32,926

During the impugned year, the HUF cancelled the booking from M/s. Ansal Properties & Infrastructure Ltd., since no project was forthcoming and took back the amount paid to them. On the refund of booking amount of Rs.75,00,000/-, M/s. Ansal Properties & Infrastructure Ltd. gave interest of Rs.20,71,233/-. The HUF set off the interest received from the interest paid to ICICI Bank through Co-parcener u/s. 57 of the IT Act. The AO after considering the submissions of the assessee, did not allow the interest paid on the said loan taken by the Co-parcener of the HUF. He referred to section 57(iii) and also relied on the some case laws. The AO, therefore, concluded that the interest income earned is merely incidental to the cancellation of booking by the assessee and there is no nexus between the expenditure claimed to have been incurred and the income said to be earned by the assessee. Therefore, the reasons and reply submitted by the assessee was not accepted and the AO disallowed the interest paid to the co-parcener to the extent of Rs.20,71,233/- earned by the assessee and the added the same to the income of the assessee u/s. 56 of the IT Act. Feeling aggrieved from the order of the AO, the assessee appealed before the Id. CIT(A) and the Id.

CIT(A) also confirmed the action of the AO. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

3. The Id. AR of the assessee submitted a written synopsis before us, the relevant part of which reads as under :

The Ld. Assessing Officer during the assessment required the assessee to explain the deduction. The assessee explained that deduction has been claimed u/s 57(iii) of the Income Tax Act because the earning of interest from M/s. Ansal Properties & Infrastructure Ltd. has a direct nexus with the payment of interest to ICICI Bank and deduction of interest has been restricted to the extent of interest earned. The transaction of earning interest from Ansal's and payment of interest to ICICI Bank were directly and intrinsically linked, it was submitted.

However, Assessing Officer was not satisfied and he held that provision of section 57(iii) is not applicable to the facts of this case. Reasoning given by the Assessing Officer is contained at **Page 6** of Assessing Officer's Order. Amongst other, Assessing Officer relied upon two judgments as noted at **Page 4** of his Order. Both these judgments are in fact in favor of assessee as would be explained hereinafter.

At the CIT(A) stage, all the facts as well narrated to the Ld. AO were reiterated and it was claimed that the deduction u/s 57(iii) is required to be allowed because there was direct nexus of the funds borrowed on which interest was paid and it was the same funds on which interest has been earned by the assessee. The Ld. CIT(A) didn't agree with the contention of the assessee and upheld the disallowance by relying mainly on the same judgments as were relied by Assessing Officer. Other judgments referred to by the CIT(A) are also discussed in these two judgments.

Therefore, the only question that is required to be decided by the Hon'ble ITAT is as to whether the assessee is eligible to claim deduction against the income earned, offered to tax under the head 'income from other sources' upon these facts or not?

The first judgment relied upon by the Ld. Assessing Officer / CIT(A) is that of **Smt. Virmati Ramkrishna vs. CIT 131 ITR 659 (Gujarat High Court)**.

There were two issues involved. The first issue was the proportionate amount of interest on the loan which was admittedly taken for meeting the obligations of

personal nature was disallowed. In other words, the interest paid on the funds borrowed for the purpose of making investments was held allowable u/s 57(iii) of the Income Tax Act. The other issue involved was the payment of fee by the assessee to the income tax practitioner which was claimed as deduction u/s 57(iii). The Hon'ble Court was on the view that such amount was also not deductible u/s 57(iii). What Assessing Officer disallowed u/s 57(iii) was proportionate interest on funds borrowed for personal utilization.

The second judgment relied upon by the Ld. Assessing Officer/CIT(A) is that of Hon'ble Supreme Court in the case of **Smt. Padmavati Jaikrishna vs. ACIT 166 ITR 176 (SC)**. The Hon'ble Supreme Court at **Page 178** of the said judgment in this case has by relying upon its own judgment in **CIT vs. Rajendra Prasad Moody [1978] 115 ITR 519 (SC)** has observed as under:-

“This being an investment company, if it borrowed money and utilized the same for its investments on which it earned income, the interest paid by it on the loan will clearly be a permissible deduction under section 12(2) of the Income-tax Act.”

In *CIT v. Rajendra Prasad Moody [1978] 115 ITR 519*, this court observed (page 521):

“The determination of the question before us turns on the true interpretation of section 57(iii) and it would, therefore, be convenient to refer to that section, but before we do so, we may point out that section 57(iii) occurs in a fasciculus of sections under the heading, ‘F- Income from other sources’. Section 56, which is the first in this group of sections, enacts in sub-section (1) that income of every kind which is not chargeable to tax under any of the heads specified in section 14, items A to E, shall be chargeable to tax under the head ‘Income from other sources’ and sub-section (2) includes in such income various items, one of which is ‘dividends’. Dividend on shares is thus income chargeable under the head ‘Income from other sources’. Section 57 provides for certain deductions to be made in computing the income chargeable under the head ‘Income from other sources’ and one of such deductions is that set out in clause (iii), which reads as follows:

The expenditure to be deductible under section 57(iii) must be laid out or expended wholly and exclusively for the purpose of making earning such income ”

In the said decision, this court clearly indicated that (page522):

“It is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income”.

In this case also before Hon'ble Supreme Court, it was found by the Income Tax Officer that out of the loans real investment of the assessee was Rs. 1,250 and disallowance was only for the interest on the borrowed funds which were utilized for the payment of income tax, wealth tax and annuity deposit by the assessee, which was his personal obligations.

Therefore, both the judgments relied upon by the Assessing Officer clearly laid down the proposition that if the borrowed funds were realized for the personal purposes, then possibly the deduction u/s 57(iii) cannot be claimed. However, when the borrowed funds have been utilized for the purpose of making investment on which income earned is taxable, then the deduction for the interest on the borrowed funds is required to be allowed.

As already clarified there is no dispute about the fact that assessee has earned interest from M/s. Ansal on the funds borrowed for the purpose of making investment in a flat. Therefore, there is a direct nexus and interest paid is wholly and exclusively incurred for the purpose of earning interest income for the same, is prayed to be allowed.

4. On the other hand, the ld. DR relied on the order of the ld. Authorities below and submitted that the lower authorities have done good reasoned order and it does not call for any interference. The assessee has received interest and paid interest and there is no direct nexus for payment of interest.

5. After hearing both the sides and perusing the entire materials available on record, we observe that the assessee has taken loan through co-parcener of the HUF of Rs.78,00,000/-. On going through the loan sanction documents, we find that the nature of loan sanction by ICICI Bank is home

equity (residential), which is on paper book page 36 to 38 and credited in the bank account of Alok B. Shriram in October, 2003. Further on 10.10.2007, a cheque bearing No. 70550 has been paid to the M/s. Ansal Properties & Infrastructure Ltd. of Rs.75,00,000/- which has been duly acknowledged by M/s. Ansal Properties & Infrastructure Ltd. on 31.12.2007 bearing the cheque No. of Standard Chartered Bank, Karolbagh, New Delhi, which is at page 14 of the paper book. An affidavit has also been placed on record on behalf of the HUF by the Karta that the booking of the property has been made by HUF and the co-parcener Mr. Alok B. Shriram has paid the said amount of Rs.75,00,000/- which is at paper book page 15-16. The EMI/processing charges are also paid by HUF co-parcener. The total interest has been received from the booking to the date of cancellation by the HUF of Rs.20,71,233/- which is eligible for deduction for the payment of interest of Rs.34,32,926/- as per section 57 of the Act because this interest has been received out of the said loan taken from ICICI Bank, which was paid by HUF to M/s. Ansal Properties & Infrastructure Ltd. through co-parcener. It is not the case of the Revenue that any such expenditure of interest incurred by the assessee was claimed by him in the preceding assessment years. Thus, there is direct nexus between earning of interest and expenditure of interest as per section 57 of the Act. Therefore, the assessee is entitled for netting of interest from the expenditure incurred. This principle is settled down in the case of ACG Associates Capsules (P) Ltd. vs. CIT (2012) 18 taxmann.com 137 (SC) that the net interest income should be included in the income of the assessee. Reliance is also placed on the decision in the case of Smt. Virmati Ram Krishna vs. CIT (1981) 131 ITR 659 (Guj). In view of both the above

decisions, the assessee is eligible for netting the interest received from the interest expenditure incurred by the assessee. As a result, the appeal of the assessee deserves to be allowed.

6. In the result, the appeal is allowed.

Order pronounced in the open court on 4th September, 2018.

Sd/-

(Amit Shukla)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 4th September, 2018

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Copy of order forwarded to:

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| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>CIT(A)</i> |
| (5) <i>Departmental Representative</i> | (6) <i>Guard File</i> |

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi