

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 701/JP/2018
निर्धारण वर्ष/Assessment Years: 2014-15.

Shri Subhash Agarwal, 47, Scheme No. 1, Arya Nagar, Alwar.	बनाम Vs.	The Principal CIT, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN No.: ABDPA 4322 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 02/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 03/08/2018

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the revision order of Id. Principal CIT, Alwar dated 22.03.2018 passed under section 263 of the I.T. Act for the assessment year 2014-15. The assessee has raised the following grounds :-

1. The order passed by the Id. PCIT u/s 263 is illegal and bad in law.
2. The Id. PCIT has erred on facts and in law in holding the order passed by AO as erroneous and prejudicial to the interest of revenue only on account of audit objection raised by the audit party ignoring that AO has not accepted the audit objection.

3. The Id. PCIT has erred on facts and in law in holding that order passed by AO u/s 143(3) dt. 29.03.2016 allowing the claim of interest payment against the interest receipt is without making proper enquiry or verification ignoring that the AO has examined the claim of interest payment and allowed the same after making complete enquiry/verification.
4. The assessee craves to amend, alter and modify any of the grounds of appeal.
5. Necessary cost be allowed to the assessee.

2. The original assessment was completed under section 143(3) of the IT Act on 29th March, 2016 accepting the returned income of the assessee. Subsequently, the Id. Pr. CIT on examination of the record found that the AO did not conduct any enquiry on account of allowability of the claim of interest expenditure under section 57(iii) as well as some other issues. Finally, the Id. Pr. CIT set aside the order passed by the AO with the direction to examine the issue properly and then pass the assessment order afresh.

3. We have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. The facts and circumstances as well as the issues are identical to the appeal in ITA Nos. 699 & 700/JP/2018 in the case of Shri Naresh Agarwal. The details of interest received and paid were given by the Id. Pr. CIT at pages 4 & 5 as under :-

Interest Received**(All amounts in Rupees)**

Name of person to whom money lent	Opening balance as on 01.04.2013	Amount lent/repaid during the year (+ -)	Balance	Interest received for the year	Rate of interest
Nangalwala Auto Mfg Pvt. Ltd. (Assessee is director)	1,69,52,300	(-)1,69,52,300	-	1,84,972	15%

Nangalwala Chemical Industries (Assessee is partner)	2,90,78,030	5,79,103	2,96,57,133	3,36,083	12%
Nangalwala Impex P. Ltd	28,46,839	(-) 59,03,647	(-) 30,56,808	33,96,453	15%
The Madhur Glass & Chem. Ind (Assessee is partner)	1,08,44,376	65,78,805	1,74,23,181	35,94,808	12%
Vijay Agarwal	-	9,00,000	9,00,000	1,500	15%
BOB Delhi				486	
BOB HC				12,361	
HDFC Bank				944	
IT Refund				12,610	
Total	5,97,21,545	(-)1,47,98,039	4,49,23,506	75,40,217	

Interest Paid

Name of person from whom money borrowed	Opening balance as on 01.04.2013	Amount borrowed/repaid during the year (+ -)	Balance	Interest paid for the year	Rate of interest
A-One Financial Service Pvt. Ltd.	-	10,00,000	10,00,000	1,50,000	15%
Anita Agarwal (Jaipur)	-	6,00,000	6,00,000	90,000	15%
Arihant Dharmarth Nyas	-	50,000	50,000	7,500	15%
Ashok Agarwal	-	35,00,000	35,00,000	4,20,000	12%
Ashok Agarwal HUF	-	10,00,000	10,00,000	1,03,750	15%
Ashok Ameria	-	3,50,000	3,50,000	50,896	15%
Bhagwan Das Gupta	-	1,00,000	1,00,000	15,000	15%
LIC Loan	1,15,000		1,15,000	10,350	
Govind Ram Narendra Kumar HUF	2,00,000	-	2,00,000	15,280	15%
HDFC Loan	4,89,17,265	(-) 82,93,334	4,06,23,931	61,98,420	
Jeetmal Jain	10,00,000	1,00,000	11,00,000	1,58,500	15%
Jeevanlata Gupta	2,00,000	-	2,00,000	30,000	15%
Kamla Jain	7,00,000	-	7,00,000	1,05,000	15%
Mitalee Gupta	-	4,00,000	4,00,000	29,699	10%
Naveen Agarwal	2,25,000	-	2,25,000	33,752	15%
Pawan Agarwal	1,29,236	-	1,29,236	19,385	15%
Rajkumar Agarwal	25,214	-	25,214	3,782	15%
Saurbh Jain		1,00,000		7,930	16%
Suresh Chand Agarwal	5,76,756	-	5,76,756	64,660	12%
Total	5,20,88,471	(-)10,93,334	4,16,92,137	75,13,904	

Thus identical transactions are involved in this case as in the case of Shri Naresh Agarwal. Both the parties have advanced identical arguments as raised in the case of Shri Naresh Agarwal.

4. Having considered the rival submissions as well as the relevant material on record, at the outset, we note that identical issues have been considered by us in the case of Shri Naresh Agarwal vs. Pr. CIT (supra) in para 4 vide even date order as under :-

"4. We have considered the rival submissions as well as the relevant material on record. The original assessment under section 143(3) was passed by the AO on 10th February, 2016 as under :-

" **Assessment Order**

The assessee has filed his return of income on 30.07.2013 declaring total income of Rs. 12,05,000/-. The return was processed u/s 143(1) of Income Tax Act, 1961 on 10.05.2013. The case was selected under scrutiny through CASS and notice u/s 143(2) was issued on 05.09.2014. The preliminary query letter was issued on 30.10.2014. In compliance to these notices, Sh. Ravindra Shah, CA and A/R of the assessee attended the hearing time to time and filed the details which are placed on record. The case is discussed with him.

The assessee is partner in M/s. Ajanta Plastic Industries and M/s. Vishal Agencies and has shown interest from these firms. The assessee is deriving salary from M/s. Nangalwala Impex Pvt. Ltd and M/s. Zibaa Builders Pvt. Ltd. Apart from these, the assessee has declared income from house property, capital gain and income from other sources.

During the year under consideration the assessee has earned income from above said sources as mentioned. After examining relevant details/documents and after discussion returned income of Rs. 12,05,000/- as declared by the assessee is hereby accepted.

Assessed u/s 143(3) of the Income Tax Act 1961. The Income Tax computation form generated from the software system of the department, giving therein the details of tax, interest, credit for prepaid taxes etc., forms part of this order, is attached herewith.

Sd/-

(Asmita Pathak)
Income-tax Officer,
Ward 1(1), Alwar. "

Place : Alwar
Dated :

Thus it is clear that the AO accepted the returned income in the summary proceedings whereas there are multiple transactions of loans taken by the assessee as well as given by the assessee. The Id. Pr. CIT has given the details at pages 4 & 5 of the impugned order as under :-

Interest Received**(All amounts in Rupees)**

Name of person to whom money lent	Opening balance as on 01.04.2012	Amount lent/ repaid during the year (+ -)	Balance	Interest received for the year	Rate of interest
Nangalwal Impex Pvt. Ltd. (Assessee is a director)	1,04,89,313	(-) 80,33,000	24,56,313	2,78,164	15%
Golden Vegpro Ltd.	21,86,007	1,33,721	23,19,728	3,43,222	15%
Zibra Builders Pvt. Ltd. (Assessee is a director)	1,93,06,838	24,00,000	2,7,06,838	37,24,864	18%
Ajanta Plastic Industries (Partner's capital)	49,15,426	(-) 60,41,698	(-) 11,26,272	3,95,400	12%
Vishal Agencies (Partner's Capital)	2,43,949	28,21,000	30,64,949	2,13,202	12%
BOB	24,313	-	24,313	7,950	
UBI	2,188	(-) 2,188	-	42	
BOB, Delhi	19,654	(-) 5,925	13,727	534	
BOB, HC	6,10,505	(-) 6,09,1001,	1,405		
HDFC Bank	27,956	(-) 27,956	-		
Total	3,78,26,149	(-) 93,65,146	2,84,61,100	49,63,444	

Interest Paid**(All amounts in Rupees)**

Name of person from whom money borrowed	Opening balance as on 01.04.2012	Amount borrowed/ repaid during the year (+ -)	Balance	Interest paid for the year	Rate of interest
Amit Jain	2,00,000	-	2,00,000	24,000	12%
Ashok Kumar Jain	20,00,000	-	20,00,000	2,40,000	12%
Bombay Electricals	5,00,000	5,00,000	-	58,500	12%
Ganpati Traders	10,00,000	-	10,00,000	1,20,000	12%
Kranti Chand Jain HUF	2,00,000	-	2,00,000	24,000	12%
Kranti Chand Jain	2,00,000	-	2,00,000	24,000	12%
Meenakshi Jain	2,00,000	-	2,00,000	24,000	12%
Preeti Tomer	4,00,000	-	4,00,000	60,000	15%
Ram Singh	5,00,000	2,00,000	7,00,000	92,500	15.6%
Sheetal Jain	2,00,000	-	2,00,000	24,000	12%
Shushila Agarwal	6,50,000	(-) 1,50,000	5,00,000	76,438	15%
Vishal Agencies (Partner' OD)	1,07,02,272	-	1,07,02,272	19,26,409	18%
LIC Loan	1,15,000	-	1,15,000	10,350	9%
LIC Loan	3,22,000		-		

HDFC Loan	2,03,95,832	(-) 11,96,891	1,91,98,941	22,28,677	12.75%
Total :	3,72,63,104	(-) 16,46,891	3,56,16,213	52,32,874	

As it is evident from the above details that there are various transactions of loans given by the assessee as well as capital introduced in the old partnership firms by using the borrowed funds from various parties as well as from the partnership firm. Thus the assessee has borrowed the fund from the partnership firm M/s. Vishal Agencies in the category of over-drawing and at the same time a capital of Rs. 28,21,000/- was also introduced in the same firm. This is not a newly formed firm but this is an old partnership firm and, therefore, it is not an initial introduction of capital by the partners. Further, we find that the AO while passing the assessment order has not raised even a query about the allowability of the interest under section 57(iii) of the Act. There is no such query raised either in the notice issued under section 142(1) or otherwise and, therefore, even if the details filed by the assessee were considered by the AO but if the same are not examined in the context of allowability of the claim under section 57(iii), then the case would certainly fall in the category of complete lack of enquiry on a particular issue of allowability of the claim of interest expenditure under section 57(iii) of the Act. Further, the details revealed that the assessee has received the interest @ 12% from M/s. Vishal Agencies, the partnership firm as against the interest charged by the same firm from the assessee @ 18%, hence there is a difference of 6% in the interest received and paid by the assessee. All these aspects were not even examined by the AO. Further, there is no bar for considering the audit objections by the Id. Pr. CIT if the audit objection reveals certain relevant and crucial facts about the allowability of the claim. Therefore, we do not find any substance or merit in the contention of the Id. A/R on this point as it is clear that it is a case of lack of enquiry particularly on the issue of allowability of the

claim under section 57(iii) of the Act. Thus the order of the AO suffers from error so far as it is prejudicial to the interest of the revenue. Hence the Id. Pr. CIT has rightly invoked the provisions of section 263 of the Act and directed the AO to conduct a proper enquiry on this issue. As regards the other issues raised by the Id. Pr. CIT in the show cause notice, those were not specifically discussed in the impugned order as the assessee explained some of the issues which were factually found to be correct. Accordingly, we restrict the fresh adjudication of the matter only on the issue of allowability of the claim under section 57(iii) of the Act, to that extent the impugned order of Id. Pr. CIT is upheld."

Following the order in the case of Shri Naresh Agarwal, we uphold the impugned order of the Id. Pr. CIT on the issue of allowability of the claim under section 57(iii) of the Act.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 03/08/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 03/08/2018.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Subhash Agarwal, Alwar.
2. The Respondent – The Principal CIT, Alwar.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 701/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar