

**In the Income-Tax Appellate Tribunal,
Agra (SMC) Bench, Agra**

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

ITA No.152/Agr/2016
A.Y.: 2010-11

Shri Ramji Das Gupta, 247, Madhav Nagar, Gwalior PAN ACOPG5414C (Appellant)	vs.	ACIT, Circle-2, Gwalior. (Respondent)
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Appellant by	Shri K.C. Agarwal And Shri Ravi Agarwal, Advocates
Respondent by	Shri Waseem Arshad, Sr. D.R.

Date of Hearing	04.09.2018
Date of Pronouncement	09.10.2018

ORDER

This is assessee's appeal for Assessment Year 2010-11 against confirmation of disallowance of an amount of Rs.11,69,841/-, on account of interest paid to banks. The following sole amended ground has been taken:

“That the Id. Assessing Officer erred and Id. Commissioner of Income tax (Appeals)-2, Agra confirming the disallowance of Rs.11,69,841/- on account of interest

paid to banks as the assessee utilized the borrowed funds to advance the interest free loans to sister concern for the business purposes whereas it is settled law that if any person advanced interest free loans to his sister concern due to commercial expediency than interest paid to banks cannot be disallowed. Hence the addition of Rs. 11,69,841/- may kindly be deleted or in the alternative deduction of interest payment to the bank was clearly allowable under law as section 57(III) of the Income tax Act and may allowed."

2. The facts are that addition of Rs.11,69,841/- was made by the AO out of interest paid on borrowed funds on the ground of diversion of funds to the assessee received interest income from State Bank of India, M/s GLR Real Estate P. Ltd and M/s Neotric Construction Ltd., totaling to Rs,20,93,133/-. As against the said interest income, the assessee made a claim of interest payments on account of interest paid to HDFC Bank and ICICI Bank totaling to Rs.25,15,947/-. This resulted in a negative figure of Rs.4,22,814/-, which was shown under the head income from other sources. The AO observed that in the statement of affairs for the F.Y. 2008-09 relevant to A.Y. 2009-10, there was loan outstanding at the end of the year from HDFC bank

and ICICI bank totaling to Rs.2,03,17,147/- as against which loans and advance made to the companies M/s Neotric Construction Ltd. & M/s GLR Real Estate P. Ltd aggregating to Rs.1,32,26,300/- have been reflected in the said statement of affairs. At the end of the year under consideration the loans & advances to these companies reduced to Rs.9,23,485/- as against outstanding bank loans of Rs.1,90,06,980/-. Thus, the AO held that interest bearing funds were not utilized for earning interest income. Accordingly, the AO worked out the interest on bank loans utilized for earning interest income from the two companies i.e. GLR Real Estate Pvt. Ltd & Neoteric Construction Ltd. at Rs.14,06,106/- and out of interest paid on loans of, Rs.25,15,947/- disallowed a sum of Rs.11,69,841/- on the basis of amounts being, diverted towards non-interest bearing funds utilized by the assessee.

3. The Id. CIT(A) has held as follows:

“As observed from the provisions of section 57(iii) of the Act, it is clearly envisaged that deduction may be allowed to an assessee wherein only when 'any expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income.' However in the facts of

the instant appeal, the aforesaid condition or requirement of section 57(iii) is not met with by the appellant as in its case no interest income has been earned on the deposits made with Neoteric Developers Pvt. Ltd. The appellant has not challenged the working of interest made by the AO on the loans utilized for the investment in two companies from where interest has been earned. At the same time it may also be mentioned here that the appellant could not prove the commercial expediency for making deposit with Neoteric Developers Pvt. Ltd., though it is not required for the deduction u/s 57(iii) of the Act. This term is best considered for the purpose of section 36(l)(iii) of the Act which is upheld by the decision of the Hon'ble Supreme Court in S.A. Builders (supra) as well. As observed, since the appellant has not earned any interest income from the deposits made with the Neoteric Developers Pvt. Ltd., therefore in view of express provisions of section 57(iii) of the Act the AO's action in making disallowance of Rs. 11,69,841/- is justified and upheld. Thus this ground of appeal is decided against the appellant.”

4. Thus, Id. CIT(A) has held that since the assessee has not earned any interest income on the deposits made with Neoteric

Developers Pvt. Ltd., the requirement of Section 57(iii) of the I.T. Act is not met.

5. Heard. As per Section 57(iii) of the Act, any expenditure other than the ones enumerated therein, not being in the nature of capital expenditure, laid out wholly and exclusively for the purpose of making or earning income chargeable as income from other sources, shall be deducted before computing such income.

6. In the present case, the only objection of the Id. CIT(A) is that the assessee has not earned any interest on the deposits made with Neoteric Developers Pvt. Ltd. In this regard, in 'CIT, West Bengal-III vs. Rajendra Prasad Moody', 115 ITR 519 (SC), it has been held that the plain natural construction of the language of section 57(iii) of the Income-tax Act, 1961 irresistibly leads to the conclusion that to bring a case within that section it is not necessary that any income should in fact have been earned as a result of the expenditure; what section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making earning income; that the section does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction; and that it does not say

that the expenditure shall be deductible only if any income is made or earned.

7. 'Rajendra Prasad Moody' (Supra) has been followed by the Hon'ble jurisdictional Allahabad High Court in 'CIT vs. Murli Manohar', 148 CTR (All) 116. No decision to the contrary has been cited. The case laws relied on by the Department do not controvert the above case position of law has made by the Hon'ble Supreme Court and followed by the Hon'ble jurisdictional High Court.

8. In view of the above, finding the grievance of the assessee to be justified, the same is accepted. The order under appeal is reversed. The disallowance of Rs.11,69,841/- is deleted.

9. In the result, the appeal is allowed.

(Order pronounced in the open court on 09/10/2018)

Sd/-
(A.D. Jain)
Judicial member

Dated: 09/10/2018
Aks - Doc

Copy of order forwarded to:

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|---------------------------------|--------------------|
| (1) The appellant | (2) The respondent |
| (3) Commissioner | (4) CIT(A) |
| (5) Departmental Representative | (6) Guard File |

By order

Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra

		Date		
1.	Draft dictated / (DNS)	08.10.2018		PS
2.	Draft placed before author	08.10.2018		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			