

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "एक-सदस्य" मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं./ ITA No. 1309/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Bharat Mitthalal Nagori,
603, San Mahu Complex,
Opp. Poona Club,
5, Bund Garden Road,
Pune-411 001
PAN : ACQPN2497Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Central Circle-1(1), Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Kishore Phadke

Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 08.10.2018	घोषणा की तारीख / Date of Pronouncement : 24.10.2018
--	---

आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 27.02.2017 relating to assessment year 2010-11 passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:-

“1. The learned CIT(A) erred in law and on facts, in sustaining the disallowance of interest expenditure amounting to Rs.32,05,320/- made by the learned AO, u/s. 14A of the ITA, 1961 r.w.r. 8D of the IT Rules,1962. The learned IT authorities ought to have appreciated that there is no nexus between interest expenditure and exempt income earned i.e. share of profit from partnership firms, and the investments in partnership firms are made out of own capital.

2. The learned CIT(A) erred in law and on facts in sustaining the ad-hoc disallowance of interest expenditure of Rs.2 lacs made u/s. 57 of the ITA, 1961 made by the learned AD on the analogy that the interest charged on loans given is less than the interest paid on loans taken. The IT authorities ought to have appreciated the realities of the situation.

3.The appellant craves leave to add, alter, amend and delete all or any of the grounds of appeal.”

3. The first issue raised in the present appeal is against disallowance made u/s.14A of the Act at Rs.32,05,320/- and the second issue is with respect to ad-hoc disallowance of interest expenditure of Rs.2,00,000/- made u/s.57 of the Act.

4. Briefly in the facts of the case, assessee was an individual and had furnished return of income declaring total income at Rs.10,75,400/-. The assessee was engaged in proprietary business and was also partner in various constructions, firms and was also director in various firms. During assessment proceedings, Assessing Officer on verification of return of income and computation of income noted that the assessee had earned share of profit from firms at Rs.5,75,24,397/- which was claimed as exempt u/s.10(2A) of the Act. The details are listed in Para 4 of the assessment order. The assessee also received dividend income of Rs.39,75,031/- and claimed as exempt income. The Assessing Officer noted that the assessee had not made any disallowance u/s.14A of the Act. However, he had debited financial expenses of Rs.45,79,657/- and interest earned on capital of Rs.32,05,320/- and claimed the same as business expenditure. The assessee was show caused as to why interest paid to firms against share of profit, which was exempt, be not disallowed in view of the provisions of section 14A of the Act. The assessee filed submission vide letter dated 18.12.2012. However, the Assessing Officer held that under section 14A of the Act, it is provided not to allow deduction in respect of any expenditure exclusively incurred by

the assessee in relation to exempt income. The plea of the assessee that there was no nexus between interest paid and the share of profit from the firms as it was not incurred towards earning exempt income from the partnership firms, was not accepted. The Assessing Officer also computed interest free funds available excluding investment in fixed assets, current assets of the assessee and noted that assessee had made investment in firms at Rs.5.47 Crores, investment in equity shares at Rs.2.16 Crores which was much higher than the interest free funds at Rs.1.07 Crores. The Assessing Officer, thus, observed that loan bearing funds to the extent of Rs.6.31 Crores were utilized for making investment. Hence, contention of the assessee that it had surplus funds to make investment of Rs.7.63 Crores was not accepted.

5. The second plea of the assessee was that expenditure incurred as interest expenses was not towards earning exempt income but towards earning the taxable income in the form of interest received from others which was offered to tax under the head income from other sources. This plea of the assessee was not accepted by the Assessing Officer as the assessee had shown income from other sources at nil after debiting interest expense incurred on borrowed funds given as advance. The Assessing Officer held that the provisions of section 14A of the Act were applicable and total interest expenditure of Rs.32,05,320/- claimed as business expenditure, was disallowed and added back in the income of the assessee.

6. With regard to disallowance u/s.57 of the Act, the Assessing Officer observed that the assessee had earned interest income at Rs.38,56,312/- shown under head income from other sources against which it had claimed expenditure of the same amount and the balance income was shown as nil. The Assessing Officer noted that assessee had taken loan at higher rate of interest up to 22.8% and had charged interest on advance given @18% only. Further, in more cases, 10 out of 17 cases of borrowed loan, assessee had paid interest; however, assessee had charged interest on advances given in 4 cases out of 18 cases only. Thus, in the present case, excess

claim of interest of Rs. 2,00,000/- out of total interest of Rs.38,56,312/- claimed u/s.57 of the Act was disallowed and added back in the income of the assessee.

7. The CIT(A) upheld the order of Assessing Officer by confirming both the additions in the hands of assessee against which, the assessee is in appeal before the Tribunal.

8. In response to the disallowance made u/s.14A of the Act, Ld. AR for the assessee has drawn my attention to the computation of income for the year under consideration and pointed out that assessee's share of profits of the firms was already subjected to tax at the partnership level, was exempt in terms of section 10(2A) of the Act and there should have approximate cause for the disallowance u/s.14A of the Act which relates with the tax exempt income and the expenditure which must be incurred towards earning the said exempt income. In respect of income from other sources, he pointed out that assessee had paid sum of Rs.45,30,821/- as interest and had earned income of Rs.38,56,312/- and the claim was restricted u/s.57(iii) of the Act to the sum of Rs.38,56,312/- and not claimed the whole of interest paid of Rs.45,38,211/-. The Ld. AR further submitted that no disallowance is warranted u/s.57(iii) of the Act.

9. The Ld. DR for the Revenue has placed reliance on the orders of the Authorities below.

10. On perusal of the record and after hearing both the Authorized representatives, the first issue which is raised in the present appeal is against disallowance made under section 14A of the Act. The assessee was partner in various partnership firms and Assessing Officer invoked the provisions of section 14A of the Act and disallowed the interest expenditure of Rs.32,05,320/-. The said interest was paid by the assessee on debit balances of the partnership firms. The assessee had shown the same as business expenditure and had carried forward loss to be adjusted against income in

the succeeding years. The case of the Assessing Officer on the other hand was that the assessee had over drawn capital account and in turn made investment in the partnership firms, income from which was exempt from tax. Hence, provisions of section 14A of the Act were attracted and the Assessing Officer disallowed the total interest. The case of the assessee has two folds. The case of the assessee was that no disallowance was to be made on account of interest expenditure as the amount was invested in partnership firms, not for earning share of profits which in any case was earned irrespective of the investment made. He further pointed without prejudice basis, that the Assessing Officer has not applied the provisions of Rule 8D of the IT Rules correctly. He also stressed that on similar circumstances, no disallowance was made in A.Ys. 2009-10 and 2013-14 vide orders passed under section 143(3) of the Act. Though Rule of Consistency is not applicable to the Income Tax Proceedings, but consistent approach should be adopted if facts remain same. In any case factual aspects of the other years are not available except that no such disallowances u/s.14A of the Act had been made in the other years. However, in the year under consideration, the Assessing Officer applied provisions of section 14A of the Act and disallowed the total interest charged on the debit balance of the capital accounts. In this regard, another aspect is the total interest free funds available as per Balance Sheet were 11.62 Crore and tax free investments aggregating to Rs.7.78 Crore and plea of the assessee was that no disallowance is called for in view of the ratio laid down in the case of HDFC Bank Ltd. Vs. DCIT, 366 ITR 505(Bom.). Applying the said principle, no disallowance is to be made under section 14A of the Act. Accordingly, ground of appeal No.1 raised by the assessee is allowed.

11. Coming to the next issue raised vide ground of appeal No.2, wherein disallowance of Rs.2,00,000/- was made under section 57(iii) of the Act. The Assessing Officer vide Para 5 at page 12 observed two things i.e. rate of interest on which loan was taken, was higher i.e. @ 22.8% and on advance; interest was charged by assessee @18%. Further, in more cases, 10 out of 17 cases of borrowed loan

assessee had paid interest. However, assessee had charged interest on advances in 4 cases out of 18 cases. The Assessing Officer disallowed excess claim of Rs.2,00,000/- out of total interest of Rs.38,56,312/- claimed u/s.57(iii) of the Act. It was clarified by Ld. AR for the assessee that the interest paid by assessee was to the tune of Rs. Rs.45,30,821/- which was restricted to Rs.38,56,312/-; hence , there is no merit in the so-called disallowance of Rs.2,00,000/-. Since the actual claim of the assessee has been restricted, no other disallowance is, thus, warranted. Accordingly, addition of Rs.2,00,000/- is, thus, deleted. Thus, ground of appeal No. 2 raised is allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced on 24th day of October, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th October, 2018.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.