

आयकर अपीलीय अधिकरण , ' डी (SMC) ' न्यायपीठ,चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D(SMC)" BENCH, CHENNAI**

श्री एन. आर. एस .गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्यके समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

**आयकरअपीलसं/.I.T.A. No. 408/Chny/2018**

**निर्धारणवर्ष/Assessment Year : 2005-06**

M/s. GRNVS Builders,  
A-1-14, (Basement),  
Nelson Chambers,  
115, Nelson Manickam Road,  
Chennai – 600 029.

Income Tax Officer,  
Vs. Non Corporate Ward -1(2),  
No. 121, Nungambakkam High Road,  
Chennai – 600 034.

**[PAN: AAAFG 0406E]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

Assessee by  
Revenue by

: Mrs.Sushma Harini, Advocate  
: Shri. B. Sagadevan, JCIT

सुनवाईकीतारीख/Date of Hearing

: 26.09.2018

घोषणाकीतारीख/Date of Pronouncement

: 30.10.2018

**आदेश/ ORDER**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-2, Chennai in ITA No 290/CIT(A)-2/2013-14/AY 2005-06 dated 12.12.2017 for assessment year 2005-06

2. M/s. GRNVS Builders, a firm, claimed interest receipts from the deposits held in various banks as business income and adjusted the interest expenditure incurred towards partners capital account, consequently admitted a nil income. During the assessment, the AO held that the interest received from bank deposits has to be assessed as an income from "other sources" only and hence the assessee's claim of interest expenditure towards partners capital account was denied. Aggrieved, the assessee filed an appeal before the Id. CIT(A) and the Ld. CIT(A) dismissed the appeal.

3. Aggrieved against the order of the Ld. CIT(A), the assessee filed this appeal pleading that the interest paid is deductible against the income of the firm irrespective of whether the income is assessable under the head "business" or "other sources". The Ld. CIT(A) erred in stating that interest received would not form part of "book profits" of the partnership firm. The Ld. CIT(A) failed to appreciate the fact that the interest from the deposits arose out of funds contributed by the partners and hence, the interest paid to the partners in accordance with partnership deed is an allowable expenditure etc.

4. At the time of hearing, the Ld. AR relied on the ITAT decision reported in CIT vs J.J. Industries (2013) 35 taxmann.com 103 (Guj) and pleaded that the tribunal held that for the purpose of ascertaining such ceiling on the basis of book profit, the profit shall be in the profit and loss account and is not to be classified in the different heads of income u/s. 40 of the Act. The interest income, therefore, cannot be excluded for the purposes of determining the allowable

deduction the partners u/s. 40(b) of the Act. Per contra, the Ld. DR supported the orders of the lower authorities.

5. We heard the rival submissions and gone through the relevant material. It is seen from the paper book furnished by the assessee that the sources of funds are at Rs. 37,51,791/-, comprising partners capital at Rs. 2 lakhs, partners current account at Rs. 30,19,424/- and unsecured loan of Rs. 5,32,367/-. Out of which, the deposits and advances lying with various banks are at Rs. 35,56,837/-. Thus, it is clear from the books of account that the entire interest from the impugned deposits arose out of partners funds. The facts being so, when the assessee paid interest on the capital contributed by the partners in accordance with partnership deed, it is an allowable deduction. Further, we are of the view that the decision relied on by the assessee, supra, is also applicable to the facts of this case and hence the assessee is entitled to claim the interest expenditure. The AO shall allow accordingly.

6. In the result, the assessee's appeal is allowed.

Order pronounced on Tuesday, the 30<sup>th</sup> day of October, 2018 at Chennai.

**Sd/-**

**(एन.आर.एस .गणेशन)**

**(N.R.S. GANESAN)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

**(एसजयरामन)**

**(S. JAYARAMAN)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 30<sup>th</sup> October , 2018

**JPV**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)
6. गार्डफाईल/GF