

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

सर्वश्री वसीम अहमद, लेखा सदस्य एवं मधुमिता रॉय, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And SMT MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 764/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2013-14)

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| Ashokkumar Khimraj (HUF), 217, 1 st Floor, New Cloth Market, Sarangpur, Ahmedabad. | बनाम/ Vs. | ITO, Ward – 2(2)(1), Ahmedabad. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACHA 6987 N | | |
| (अपीलार्थी/Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से/ Appellant by : | Shri Vijay Ranjan & Smt. Ira Kapoor, A.R. |
| प्रत्यर्थी की ओर से/Respondent by: | Shri Virendra Singh, Sr. D.R. |

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| सुनवाई की तारीख/ Date of Hearing | 23/10/2018 |
| घोषणा की तारीख/Date of Pronouncement | 07/12/2018 |

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)–10, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-10/ITO Ward-2(2)(1)/417/15-16 dated 16.02.2017 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961(here-in-after referred to as "the Act") dated 19.02.2016 relevant to Assessment Year (AY) 2013-14.

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2. The grounds of appeal raised by the assessee are as under:-
 1. *In law and in the facts and circumstances of the appellant's case, the order passed by CIT (A) is bad in law and deserves to be cancelled as he has passed an order without considering and appreciating the facts of case of appellant.*
 2. *In law and in the facts and circumstances of the appellant's ease, the learned CIT(A) has grossly erred in upholding the disallowance of interest paid of Rs 5,85,383/- u/s 57(iii) which by the appellant's own admission had been wrongly claimed under that the said section and he had further erred in also not allowing the claim of the appellant for deduction of the said interest paid under section 36(1)(iii) of the Act. even though the appellant, by the documents filed, had established the nexus between the loan taken and the utilization thereof for the purpose of the appellant's business.*
 3. *The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*
3. The solitary issue raised by the assessee is that Id. CIT(A) erred in not allowing the deduction of Interest Expenses amounting to Rs.5,85,383/- u/s 36(1)(iii) of the Act.
4. Briefly stated facts are that the assessee in the present case is a HUF and engaged in the wholesale business of cloth under the name and style of M/s. Ridhi Sidhi Traders. The assessee is also dealing in shares. The assessee for both the business is maintaining a separate set of books of account.

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4.1 The assessee in the year under consideration has shown losses under the head income from other sources amounting to Rs.5,54,685/- only. As such, the assessee has shown interest expenses paid to M/s. Rishabh Enterprises for Rs.5,85,383/- against the Bank Interest income of Rs.1,510/-. The interest expense was claimed by the assessee u/s 57(iii) of the Act. Accordingly, the assessee has declared losses under the head income from other sources.

4.2 On a question by the AO, the assessee vide letter dated 29.12.2015 submitted that it had claimed interest expenses under the head income from other sources inadvertently. As such, the assessee has taken a loan from Rishabh Enterprises in its personal capacity, but the same was transferred to its proprietary concern namely Ridhi Sidhi Traders. Therefore, the assessee is entitled to a deduction of interest expenses u/s 36(1)(iii) of the Act. The assessee in support of his claim filed the details of the amount received by it from Rishabh Enterprises and transferred to its proprietary concern namely Ridhi Sidhi Traders which is placed on page 3 of the AO order.

However, the AO disagreed with the contention of the assessee by observing that there was no claim made by it for the interest paid to Rishabh Enterprises in the profit and loss account of Ridhi Sidhi Traders.

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4.3 The AO also observed that the proprietary concern of the assessee, i.e. Ridhi Sidhi Traders has in fact received interest income from M/s. Rishabh Enterprises.

4.4 The AO also observed that there is a mismatch between the dates on which the money was received by the assessee and the date on which it was transferred to M/s Ridhi siddhi Traders.

4.5 The AO further observed that the interest expense is eligible for deduction u/s 57(iii) of the Act only when such expense has been incurred in connection with the interest income. As such, there was no nexus between the interest expenses claimed by the assessee and interest income shown by it.

In view of the above, the AO disallowed the interest expenses of Rs. 5,85,383/- and added to the total income of the assessee.

5. Aggrieved, assessee preferred an appeal to Id. CIT(A). The assessee before the Id. CIT(A) submitted that the loan was taken by it from Rishabh Enterprises in the A.Y. 2012-13 and accordingly, interest expense was also incurred in the A.Y. 2012-13. There was no disallowance of interest expenses claimed by it in the intimation issued under Section 143(1) of the Act.

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5.1 The assessee further claimed that the amount received by it from Rishabh Enterprises was transferred to Ridhi Sidhi Traders a proprietor concern of the Assessee. As such, there was a separate set of the Financial Statement prepared by the assessee for its share trading activity as well as its proprietary concern. The assessee also contended that it never prepared any consolidated financial statement for both the concern. Therefore, the assessee has not shown any interest income from its proprietary concern, but the interest expenses paid to Rishabh Enterprises was claimed as expenditure in its personal financial statement.

5.2 The loan taken by the assessee was transferred to M/s Ridhi Sidhi Traders, and the AO did not dispute this fact during the assessment proceedings.

5.3 The assessee also claimed that the expenses were claimed u/s 57(iii) of the Act wrongly, but it should have been claimed under the provision of Section 36(1)(iii) of the Act. However, if the wrong claim made by the assessee, it does not disentitle it for claiming the deduction under the correct head of income.

However, the Id CIT(A) disregarded the contention of the assessee and confirmed the order of AO by observing as under:

“The written submissions made by the appellant have been perused and placed on record. The assessment order passed by the AO has also been gone through. During the course of appeal proceedings, the appellant

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has filed the balance sheet and profit & loss account of the appellant in his seasonal capacity. On going through the balance sheet which is placed on Page No. 20 of the paper book filed, it is seen that there is no loan in the liability side of this balance sheet as on 31/03/2013. The balance sheet submitted by the appellant is reproduced.

The appellant has also filed the profit and loss account in which he has claimed an amount of Rs.5,61,276/-as interest expenses. However, there are no details whatsoever as to whom this interest has been paid on what amount at what rate of interest and for what purpose.

Even the nexus as has been claimed by the appellant during the course of assessment proceedings is relating to the Financial Year 2011-12 which is relevant for the Assessment Year 2012-'13. The assessment in question is Assessment Year 2013-'14 and as per the balance sheet submitted by the appellant, there is no loan outstanding in the personal balance sheet of the appellant or corresponding investment in the proprietorship firm in this year as has been claimed by the appellant. In the absence of these details which are very factual and basic for allowing any deduction for interest expense, the submissions of the appellant cannot be accepted and therefore rejected. Accordingly, the grounds of appeal filed by the appellant are dismissed.

Since the appellant could not file any evidences/documents to prove that interest paid by the appellant have been invested in the proprietorship firm during the assessment year in question i.e. Assessment year 2013-14 (Financial Year starting 01/04/2012 to 31/03/2017), the claim of the appellant that it should be allowed. u/s 36(1)(iii) under the head Profit and Gain and the business would also cannot be considered in the absence of any money/amount being invested in the proprietorship firm as evident from the balance sheet placed on Page No.20 of the Paper Book by the appellant.

*Therefore, there is no force even in the alternative argument of the appellant ground also dismissed. In the result, the appeal is **dismissed.**"*

Being aggrieved by the order of Id. CIT(A) assessee is in appeal before us.

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6. The Id AR before us filed a paper book running from pages 1-49 and submitted that the fund received from Rishabh Enterprises were utilized for the purpose of the business. Therefore, it is very much eligible for deduction u/s 36(1)(iii) of the Act. The Id. AR in support of his claim drew our attention on page 24 of the paper book which is the bank statement of the assessee reflecting the loan received and paid to Ridhi Sidhi Enterprises.

6.1 The Id. AR also submitted that the finding of the AO that there was a mismatch between the dates of received of loan vis-à-vis loan transfer to M/s. Ridhi Sidhi Enterprises is incorrect. As such, the loan was transferred by the assessee to M/s. Ridhi Sidhi Enterprises on the very same date when it was received.

6.2 The Id. AR also submitted that the proprietor of Rishabh Enterprises has already shown the amount of interest income received from the assessee. The Id. AR in support of his claim drew our attention on page 42 of the paper book where a copy of Income Tax return of the proprietor of M/s Risabh Enterprises is placed.

6.3 The Id. AR in support of his claim also drew our attention on the balance sheet of the HUF as well as the balance sheet of Ridhi Sidhi wherein the investment made by the assessee in Ridhi Sidhi traders was shown. The copy of the balance sheet was placed on record.

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7. On the other hand, the Id. DR submitted that there was no interest claimed in the profit and loss account of Ridhi Sidhi Enterprises.

7.1 There was no detail furnished by the assessee about the rate of interest at which the loan was taken from Rishabh Enterprises.

7.2 There is no provision u/s 57 of the Act for claiming the expenses without having any corresponding income. In view of the above, the Id. DR vehemently supported the order of lower authorities.

8. We have heard the rival contentions and perused the materials available on record. The facts of the case are not in dispute. Therefore we are inclined not to repeat the same for the sake of brevity and convenience.

8.1 There is no ambiguity that the assessee took the loan in the immediate preceding A.Y. i.e. 2012-13 and the interest claimed thereon was allowed to the assessee while processing the return under the provision of Section 143(1) of the Act.

8.2 The amount of loan taken by the assessee from Rishabh Enterprises was very much shown in its personal balance sheet as on 31.03.2013. The loan was shown at Rs.50,377/- only. In fact, there was a

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repayment of the loan amount of Rishabh Enterprises by the assessee as evident from the copy of the ledger placed on page 33 of the paper book.

The copy of the ledger is reproduced as under:

ASHOKKUMAR KHIMRAJ HUF (2012-13)
21, SHITALKUNJ SOCIETY, RAMBAUG ROAD, SABARMATI,
AHMEDABAD 380005

Period:- From 01.04.2012 TO 31.03.2013

PAGE: 1

| DOCUMENT DATE | DOCUMENT NUMBER | PARTICUALRS | DEBIT (Rs.) | CREDIT (Rs.) |
|---|------------------------|---------------------------------|---------------------|---------------------|
| LEDGER OF : RISHABH ENTERPRISE AHMEDABAD. (RE1) | | | | |
| 01/04/2012 | Opening | Opening Balance | | 63,03,532.00 |
| 09/08/2012 | BP-222251 | | 7,00,000.00 | |
| 09/10/2012 | BP-222253 | | 4,00,000.00 | |
| 16/10/2012 | BP-222255 | | 5,00,000.00 | |
| 01/11/2012 | BP-110101 | Chq/DD# : 82727 NNSB | | 50,000.00 |
| 26/11/2012 | BP-222258 | | 6,00,000.00 | |
| 27/11/2012 | BP-222259 | | 3,00,000.00 | |
| 28/11/2012 | BP-222260 | | 5,50,000.00 | |
| 30/11/2012 | BP-222261 | | 15,00,000.00 | |
| 03/12/2012 | BP-222262 | | 5,00,000.00 | |
| 14/12/2012 | BP-222266 | | 3,50,000.00 | |
| 18/12/2012 | BP-222267 | | 12,00,000.00 | |
| 03/01/2013 | BP-130301 | Chq/DD#: 82755 NNSB | | 50,000.00 |
| 11/02/2013 | BP-359883 | | 2,00,000.00 | |
| 22/03/2013 | BP-359889 | | 80,000.00 | |
| 31/03/2013 | BP-153103 | TDS ON INTEREST | 58,538.00 | |
| 31/03/2013 | BP-153103 | INTEREST CR. UPTO 31.03.2013 | | 5,85,383.00 |
| GRAND TOTAL: | | | 69,38,538.00 | 69,88,915.00 |
| CLOSING BALANCE: | | | 50,377.00Cr. | |

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8.3 We also note that M/s Ridhi Sidhi Traders made the payment to M/s Rishabh Enterprises. Therefore there was shown the amount withdrawn in the balance sheet of Ridhi Sidhi Traders. The relevant extract of the balance sheet is reproduced under:

Ridhi Sidhi Traders

Ashokkumar HUF

| SCHEDULE "1" OF OWNERS CAPITAL | 31.03.2013 | 31.03.2012 |
|--|----------------|----------------|
| Opening Balance | 8037699 | 1514206 |
| Add: Addition during the year | 1070000 | 6010000 |
| Add: Profit, remuneration etc. during the year | 1282529 | 747378 |
| | 10390228 | 8271584 |
| Less: Withdrawal during the year | 7639827 | 233885 |
| TOTAL | 2750401 | 8037699 |

8.4 On perusal of the financial statement of the assessee for its share trading business and wholesale cloth trade it was observed that the assessee transferred the fund to Ridhi Sidhi Traders, but the loan liability was classified in its personal balance sheet. As such, the assessee has shown investment in Ridhi Sidhi Traders in its personal balance sheet. This fact can be established from the capital account of Ridhi Sidhi Traders vis-à-vis personal balance sheet of the assessee. The copies of the balance sheet of the assessee are placed on pages no 18 to 20 of the

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paper book pertaining to the financial year ending as on 31.03.2012 and 31.03.2013.

8.5 Once, it is establish that the assessee has used the amount of loan for the purpose of business the same cannot be denied merely on the ground that it was not claimed in the financial statement of Ridhi Sidhi Traders. In fact, it was the duty of the AO to allow the correct claim which was made by the assessee under the wrong head due to oversight. In this regard, we find support and guidance from the CBDT Circular and various judgments as detailed below:

“In the above reference, we invite your kind attention to Central Board circular issued in June 1955 which inter alia reads as follows :

"Officers of the department must not lake advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should –

- a) Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other.*
- b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. (Circular No. 14(XL-35) of 1955 dated 11.04.1955)"*

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Further, we rely upon the decision of the Supreme Court in Navnit Lal C. Javeri v. K. K. Sen, Appellate Assistant Commissioner of Income tax [1965] 56 ITR 198 (SC). There the majority of the learned judges hearing the appeal held that circular issued by the Central Board of Revenue, of the kind of circular mentioned therein, would be binding on all.

Further in view of the decision of Hon'ble Ccutta High Court in the case of ICICI Bank Ex-Employees' Welfare Association (Supra), in our considered opinion, the claim of the assessee merits to be allowed. We find that the CBDT vide its circular no. 14(XI-35) of 1955 dated 11.04.1955 opined that the officer of the department must not take advantage of the ignorance of an assessee as to his rights and that although the responsibility for claiming refunds and reliefs rests with the assesses ON WHOM it is imposed by law, yet (a) the officers should draw the attention of the assessee to any refunds or reliefs to which they are entitled but which they have omitted to claim for some reason or other, and (b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. The Hon'bie Gujarat High Court in the case of S.R. Koshti vs CIT (2005) 276 ITR 165 (Guj.) has held under:

"The authorities under the Income tax Act, 1961 are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assesses, under a mistake, misconception or on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxed due are collected.

Once an assessee is in a position to show that he has been over assed under the provision of the Act, regardless of whether the over assessment is as a result of the assessee's own mistake or otherwise, the Commissioner has the power to correct such an assessment under section 264(1) of the Income tax At, 1961. If the commissioner refused to give relief to the assessee, he would be acting de hors the powers under the Act."

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In the light of the above judgements and the circular quoted above, the interest claimed under the wrong head 'Income from other sources' cannot be denied to be allowed particularly when the amount of interest paid on loans taken and used for the purpose of business. Hence, the disallowances are clearly wrong and against the law cited by the Hon'ble Gujarat High Court because the decision of the Jurisdicaonal Court is binding upon the Learned A.O.

Further, chart filed by the assessee and reproduced by the Learned A.O in the order is self explanatory.

Besides, the balance sheet of the proprietary concern itself proves that the amount taken by the assessee as loan and entered the same in his personal-set of books of accounts and later on invested the same in his business set itself proves the nexus between the loan taken and investment made. Thus the loan taken when utilized to earn taxable income leads to an inference that interest paid on such loan is an allowable deduction though inadvertently claimed under the head "Income from Other Sources".

The Judgement of Hon'ble Gujarat High Court referred to by Learned A.O. viz. "Kalandi Investment Pvt Ltd." reported as 260 ITR 261 is not applicable to the fact of the assessee case because the Learned Hon'ble Judges of the High Court remarked that if the borrowing had been utilized not for the purpose of making or earning taxable income the interest paid thereupon shall not be allowed as deduction but in the ease of the assessee such loans were utilized for the purpose of business and as such the above referred case, the purpose of which the borrowing have been made stood frustrated, hence the disallowance of this interest was confirmed.

In the case of the assessee, the facts are different because the borrowing were utilized for business. Hence the disallowance is not legal and the claim of interest cannot be denied simply because that inadvertently the assessee claimed such interest under the head Income from other sources.

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It may also be pointed out that the Supreme Court in Seth R. Dalmias case [1977] 1 10 ITR 644 (SC) has laid down the following condition (at p. 650) for the purpose of applying s. 57(iii) of the Income tax Act, 1961 :

- "(i) the expenditure must have been incurred solely and exclusively for the purpose of earning income or making profit;*
- (ii) the expenditure should not be in the nature of a Capital expenditure;*
- (iii) the amount in question should not be in the nature of personal expenses of the assessee;*
- (iv) that the expenditure should be incurred in the accounting year; and*
- (v) there must be a clear nexus between the expenditure incurred and the income sought to be earned."*

Thus, in a nut shell, when the amount borrowed was used wholly and exclusively for the purpose of business, the interest paid thereupon, it is prayed, be allowed and disallowance of Rs.585383/- be deleted."

In view of above, we are of the view that the assessee is eligible for a deduction of interest expenses incurred by it on the amount taken from Rishabh Enterprises which was utilized in the business of Ridhi Sidhi Traders.

8.6 We also note that the genuineness of the interest expense was not doubted by the authorities below. The only reason for making the disallowance was that there is no provision in Section 57(iii) of the Act for allowing such deduction of interest expense. After considering the facts in totality we are inclined to reverse the order of authorities below

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and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed.

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

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| This Order pronounced in Open Court on | 07/12/2018 |
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sd/-
(मधुमिता रॉय)
न्यायिक सदस्य
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated
Priti Yadav, Sr.PS

Sd/-
(वसीम अहमद)
लेखा सदस्य
(WASEEM AHMED)
ACCOUNTANT MEMBER

07/12/2018

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-10, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad.
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad