

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE ANIL CHATURVEDI AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.103/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

The Income Tax Officer,  
Ward-7(1), Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Nagpal Landmarks.  
Flat No.31, 104 Parmar  
Chambers, Sadhu Vaswani  
Chowk, Pune-411 001  
PAN : AAFFN1476N

.....प्रत्यर्थी / Respondent

Assessee by : Shri P.D. Kudva

Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 08.01.2019

घोषणा की तारीख / Date of Pronouncement : 21.01.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the Revenue emanates from the order of the Ld.  
CIT(Appeals), Pune-5, Pune dated 30.09.2016 for the assessment year 2010-11  
as per following grounds of appeal:

*"1. On the facts and circumstances of the case and in law the learned CIT(A) erred in holding that interest derived by the assessee on surplus advanced to the parties has to be assessed as business income and not as income under the head "Income from other sources" as had been taken in the assessment.*

*2. On the facts and circumstances of the case and in law the learned CIT(A) was not justified in holding that the interest expenses against which the interest income adjusted were in the nature of expenses which was paid on the funds raised for business purposes.”*

2. The brief facts of the case are that the assessee is a firm and filed its return of income on 15.10.2010 declaring income at Rs. Nil. The case was selected for scrutiny and statutory notices duly issued and served on the assessee. The assessee is in the business of Developer and Builders. The Assessing Officer noted that the assessee had given details of other income of Rs.78,48,881/- which included interest received of Rs.77,12,931/-. The Assessing Officer noted that the assessee has borrowings funds from Banks the funds of which were advanced to related parties from whom interest had been received. This, the Assessing Officer held to be chargeable under income from other sources. It is this addition to the total income that the assessee has challenged.

3. Before the Ld. CIT(Appeals), the assessee had filed detailed written submissions on this issue which is as under:

*“1.0 Ground of Appeal No.1*

*The AO erred in separately charging interest income of Rs.77,12,931 under the head 'Income from Other Sources. The appellant pleads that its income was correctly computed and declared under the head Profits & Gains of Business and that the AO's action is not justified.*

*1.1 The assessee is engaged in property development at two sites viz. Meadows Habitat, Pashan and Dev Exotica, Kharadi which fall within the scope of Sec.80IB(10) of the Income Tax Act, 1961. The Meadows Habitat project work was in progress during the year. The Dev Exotica project was completed on 06.03.2010. The assessee filed return of income on 15.10.2010 declaring total income of Rs.Nil after claiming deduction u/s 80IB(10) of its income from business of Rs. 2,88,98,546 from Dev Exotica Project.*

*1.2 The assessee's Profit & Loss Account included interest expenses of Rs.117,43,813 (on borrowings of Rs.7.52 crores from three banks, used for purposes of business) and interest income of Rs.77,12,931 (on advances of Rs.6.14 crores to two related parties).*

1.3 In the computation of income enclosed with the return, the assessee disallowed out of its claim for interest expenses a sum of Rs.26,94,845 on account of diversion of borrowed funds to its related parties.

1.4 The assessee in assessment proceedings explained that it had incurred net interest expense of Rs.40,30,882 (i.e. interest expenses Rs.1,17,43,813 less interest income of Rs.77,12,931) for its business, and after adjusting the amount of Rs.26,94,845 in the IT return, the assessee had claimed net interest expenses of Rs.13,36,037 (i.e. Rs.40,38,881 less Rs. 26,94,845) in computing Profits and Gains of Business(PGBP in brief).

1.5 The AO completed assessment u/s. 143(3) vide order dt. 30.03.2013 determining Total Income at Rs. 77,12,931/- by charging interest income separately under the head "Income From Other Sources" (IFOS in brief).

1.6 In response to show-cause notice the assessee outlined the above facts and objected to the AO's proposal to charge interest income of Rs. 77,12,931 separately as "Income From Other Sources".

1.7 The AO in para 4 of the assessment order has accepted that borrowed funds have been used in business and that the claim of interest is admissible as a deduction as business expenditure. The AO however has held that interest income of Rs.77,12,931 is chargeable under the head IFOS relying on the decision of Tuticorin Alkali Chemicals and Fertilizers Ltd Vs. CIT(1997) 227 ITR 172(SC).

1.8 We submit that the facts of Tuticorin (Supra) are different. In the said case the assessee had not commenced business. During construction and establishment of its factory, the company invested in short term deposits funds borrowed for setting up its factory. The assessee claimed that interest income was to be netted off against pre production expenditure which was capitalized. No claim was made u/s 57(iii). The Court held that interest earned on investment of a portion of term loans which were lying idle for a certain interim period prior to commencement of business would not go to reduce the pre- production expenses but was taxable under the head 'Income From Other Sources'.

1.9 In the present case the assessee had commenced business and used borrowed funds for its revenue earning activities and incurred interest expenses. To the extent funds were diverted to related parties, interest was recovered, thereby maximizing PGBP and claiming interest on borrowings to the extent incurred wholly and exclusively for business purpose.

1.10 Section 56 of the IT Act, 1961 reads as follows: 56(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income tax under the head "Income from Other Sources", if it is not chargeable to income-tax under any of the heads specified in section 14, item A to E.

1.11 We submit that the language of Sec.56 is unambiguous and clear.

i) It is well settled that interest can be assessed under the head "Income From Other Sources" only if it cannot be brought within one or the other of the specific head of charge.(CIT vs .Govinda Choudhury & Sons 1993 203 ITR 881(SC)).

ii) Where an income can appropriately fall under section 28 as business income, or any other specific head of income, no resort can be made to section 56.[S.G. Mercantile Corporation P. Ltd. V CIT(1972) 83 ITR 700

(SC)].

1.12 In light of the above submissions we plead that income is correctly declared under the head Profits & Gains of Business and that interest income of Rs.77,12,931 is not separately chargeable as IFOS."

"2.0 Ground of Appeal No. 2

The AO erred in not allowing corresponding interest expenses of Rs.77,12,931 incurred against interest income in computation of income under the head income from other sources. The appellant pleads for directions allowing the corresponding interest expenses as per section 57(iii) of the IT Act, 1961.

2.1 This is an alternative ground to be decided only if Ground of Appeal No. 1 is decided against the appellant.

2.2. In Para 5 of the assessment order the AO has held that "The claim of deduction for interest paid and interest received is not tenable in view of provisions of section 57(iii) of the LT. Act. The legislature has deliberately used words of narrower import in granting deduction under the 'said provision like "Laid out or expended for the purpose of making or earning such income". The AO has supported his conclusion by relying on :

i) CIT Vs. Amalgamation Ltd. 214 ITR 399 ( Mad.)

ii) Consolidated Fibres and Chemicals Ltd. Vs. CIT 195 CTR 605.

iii) CIT Vs. Rajendra Prasad Moody 115 ITR 519 ( SC)

2.3 From the assessee's audited accounts it is evident that the assessee had made advances to related parties by diverting funds borrowed from banks. The assessee recovered interest thereon, consequently maintaining, if not maximizing, the profits & gains of its business.

2.4 In response to the show cause, the assessee made an alternative claim that if the AO was charging interest income of Rs.77,12,931 separately under the head IFOS, then the corresponding interest expense on borrowing Rs.77,12,931 logically ought to be considered and netted off in computing income.

2.5 The relevant portion of Section 57 of the IT Act 1961 reads as under:

57. The income chargeable under the head 'Income from other sources' shall be computed after making the following deductions namely:-

(i).....( not relevant).....

(ii) .....(not relevant).....

(iii) any other expenditure ( not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

The AO adverts to the narrower import of the words of the section to reach his conclusion without appreciating that the assessee had diverted borrowed funds in respect of which interest expense incurred falls clearly within the language of section 57(iii).

2.6 As regards the cited case law:-

(i) in the case of Amalgamation Ltd(Supra) the question before the Court was whether interest paid by the assessee company on borrowings for

*purpose of paying estate duty was admissible business expenditure The SC held that the assessee was carrying on business and its income was to be computed under the head Profits & Gains of business or profession. The SC approved the decision of Gujarat High Court in the case of CIT vs Indumati Ratanlal (1968 70 ITR 353 (Guj)) which held:*

*The question then arises: Does it make any difference if there was a charge on the shares for payment of estate duty and moneys were borrowed by the assessee for the purpose of clearing the charge? We cannot assent to the broad proposition canvassed on behalf of the assessee that whenever liability is charged on a property, and moneys are borrowed for clearing the charge, interest paid on the borrowed moneys would necessarily be an allowable expenditure in computing the assessable income from the property. Whether it constitutes an allowable expenditure or not would depend on the facts of each case. But one thing is clear that if property is received by an assessee subject to a charge for payment of a liability and moneys are borrowed for clearing the charge by discharging the liability, interest paid on the borrowed moneys would be an allowable expenditure.*

*If therefore, at the date when the estate duty was paid by the assessee, the shares were charged with payment of liability for estate duty, we must hold that interest paid on the borrowed moneys would be an admissible expenditure under section 57(iii).*

*The Supreme Court in Amalgamated's case further observed:*

*"There is in fact nothing in the language of section 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure .. "(p.522)*

*Since we have noticed that the language of section 37(1) is wider than that of section 57(iii) of the Income Tax Act, it is apt in such a situation to hold that interest paid on any borrowing for the purpose of discharging the estate duty liability will be expenditure laid out or expended for the purpose of the business of the assessee-company.*

*(ii) In the case of Consolidated Fibres(Supra)the issue before the Court was whether interest expenditure incurred by the appellant was allowable under section 57 of the I.T. Act, 1961 while computing interest income sought to be assessed as Income from Other Sources under Sec.56, as expenditure incurred for earning the income?*

*The Court in para 15 of the order held that the question is dependant on the fact whether the assessee had commenced its business. So long the business is not commenced, the interest paid cannot be treated as revenue expenditure, but (was) to be included in the actual cost for being capitalized as capital expenditure, and, therefore, it could not have been treated to be an expenditure incurred within the meaning of Sec.57(iii).*

*(iii) In the case of Moody (Supra) dealing with the language of Section 57(iii) the Supreme Court observed:*

*"It is true that the language of section 37(1) is a little wider than that of section 57(iii), but we do not see how that can make any difference in the true interpretation of section 57(iii). The language of section 57(iii) is clear and unambiguous and it has to be construed according to its plain natural*

*meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that section 57(iii) should be given a narrow and constricted meaning not warranted by the language of the section and, in fact, contrary to such language.*

*2.7 We submit that the above Court orders hold that depending on the facts of the case interest paid on borrowed moneys is an allowable expenditure against income from business or under section 57(iii) notwithstanding the narrower and constricted meaning of the language of section 57(iii). Where the assessee has not commenced business the interest paid cannot be treated as expenditure incurred within section 57(iii).*

*The AO in the asst. order has erred in relying on the said cases to hold that interest on borrowings is not allowable as a deduction under section 57(iii).*

*2.8. In the light of the above submissions, we submit that the AO is not justified in holding that the assessee's claim for deduction of interest paid u/s. 57(iii) is not tenable."*

4. The Ld. CIT(A) after considering the assessment order, facts of the case and submissions of the assessee held as follows:

*"5.4 I have considered the material on record and submissions of the Appellant carefully. I tend to agree with the Appellant contentions. The Appellant in its written submission has stated that, the net expenses of Rs.13,36,037/- on the interest paid and interest received has been claimed as interest expenses in computing Profits and Gains of Business and Profession. The AO has not controverted the figures of the interest expenses in the Assessment Order. The AO has only generally expressed that, the total interest expenses was admissible as a deduction against the business income which had been claimed as exempt income by taking recourse to Section 80IB (10). It is also not the case of the AO, that the funds were not used for business as in the Assessment Order Para 4 it is explicitly stated that, the funds were used for business. The interest received cannot fall under the head income from Other Sources. Therefore, the action of the AO is not sustained. The AO is directed to delete the addition made under the head income from Other Sources and accept the computation which showed the interest income under the head Profits and Gains of Business & Profession. The Appellant succeeds in Ground No.1. As Ground No.1 is decided in favour of the Appellant, the alternate plea raised in the form of Ground No.2 is therefore infructuous and hence dismissed."*

5. We have perused the case record and heard rival contentions. On perusal of the order passed by the Ld. CIT(Appeals), we find that it is observed therein that the Assessing Officer has not controverted the figures of the interest expenses in the assessment order. The Assessing Officer has only generally expressed that the total interest expenses was admissible as a

deduction against the business income which has been claimed as exempt income by taking recourse to section 80IB (10) of the Act. It is also not the case of the Assessing Officer that the funds were not used for business as in the assessment order para 4, it is explicitly stated that the funds were used for business and therefore, the interest received cannot fall under the head income from Other Sources. On this premise, the Ld. CIT(A) has provided relief to the assessee. We do not find any infirmity in the findings of the Ld. CIT(Appeals) which is thereby upheld. Hence, grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 21<sup>st</sup> day of January, 2019.

Sd/  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 21<sup>st</sup> January, 2019.

SB

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

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

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आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	08.01.2019	Sr.PS/PS
2	Draft placed before author	10.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		