

आयकर अपीलीय अधिकरण “डी” न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SHRI RAM LAL NEGI, JUDICIAL MEMBER

आयकर अपील सं./ITA No.5112/MUM/2017
(निर्धारण वर्ष / Assessment Year :2012-2013)

M/s M S Wellness N Solutions (India) Pvt. Ltd., 204-A, Kamanwala Chambers, New Udyog Mandir-2, Mogul Lane Mahim (W), Mumbai-400016	Vs.	DCIT-10(2)(2), Mumbai
स्थायी लेखा सं./PAN No. : AACCM 8193 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Vimal Punmiya, AR
राजस्व की ओर से /Revenue by : Shri Vikash Kr. Agarwal, CITDR
सुनवाई की तारीख / **Date of Hearing** : **03/01/2019**
घोषणा की तारीख/**Date of Pronouncement** **28/01/2019**

आदेश / O R D E R

Per Shri Rajesh Kumar, AM:

This appeal by assessee arises out of the order of the CIT(A) –17, Mumbai, dated 26.05.2017, which in turn has arisen out of the order passed by the Assessing Officer u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) relating to A.Y. 2012-2013.

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

1. *On the facts and circumstance of the case and law, the Ld CIT(A) erred in confirming the disallowance of Maintenance charges of Rs.59,630/-, registration charges Rs.15,000/- and stamp duty expenses Rs.2,64,000 incurred by the assessee.*
2. *On the facts and circumstance of the case and law, the Ld CIT(A) erred in confirming the addition of Rs.3,00,000/- on adhoc basis as interest under section 57(iii) of the Income Tax Act, 1961.*
3. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the interest charged u/s*

234B/234C/234D of the I. T. Act, 1961 by the Ld. Assessing Officer.

- 4. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the penalty initiated u/s 271(1)(c) of the Income Tax Act, 1961 by the Ld. Assessing Officer.*
- 5. The assessee craves leave to add, alter or amend the existing grounds of appeal on or before the date of hearing.*

3. Facts in brief are that the assessee is engaged in the business of trading in Ferrous and Non-Ferrous Metal, providing services of Fitness consultants and Business Centre facilities. The assessee filed its return of income electronically on 26.09.2012 for the year under consideration declaring total income of Rs.76.67.460/-, which was processed u/s.143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny and notices u/s.143(2) & 142(1) of the Act along with the questionnaire were issued and served on the assessee. Thereafter the AO framed the assessment u/s.143(3) of the Act making additions on account of lease property expenses of Rs.3,38,630/-, mobile and telephone expenses of Rs.71,222/-, vehicle expenses of Rs.76,423/-, Non-reconciliation of 26AS of Rs.10,586/- and disallowance u/s.57(iii) of the Act of Rs.3,00,000/-, respectively, vide order dated 27.02.2015.

4. In the appellate proceedings, the assessee reiterated the submissions as made before the AO. The CIT(A) after considering the submissions of the assessee and findings of AO, deleted the additions made on account of ad-hoc disallowance of 50% of mobile and telephone expenses and 50% of vehicle expenses, however, sustained the additions made on account of lease property expenses, Non-reconciliation of 26AS,

disallowance u/s.57(iii) of the Act. Against which the assessee is in appeal before the Tribunal.

5. Ld. AR before us submitted that the stamp duty and registration charges paid in connection with the registration of the lease agreement which was entered into by the assessee in order to register the lease agreement qua the rent income has to be allowed from the actual rent receipt by the assessee. Ld counsel for the assessee submitted that the said expenses should be allowed while calculating the annual letting value u/s 23(1)(b) of the Act. In defence of his arguments the Id AR relied upon a couple of decisions namely Varma Family Trust Vs ITO (1984) 7 ITD 392 (Bom) and CIT Vs Khandelwal Mining & Ores (P) Ltd (1981) 23 CTR 104 (Bom). Similarly, the maintenance charges paid by the assessee to the housing society are to be allowed while computing the annual letting value u/s.23 of the Act. In support of his contentions, Id. AR relied on the following decisions :-

- i) Sharmila Tagore Vs. JCIT 92006) 150 TAXMANN 4 (Mum);
- ii) Saif Ali Khan Vs. ACIT, ITA No.1653/Mum/2009;
- iii) ACIT Vs. Sunil Kumar Agarwal (2012) 20 taxmann.com 330(Lucknow);
- iv) Realty finance & Leasing (P) Ltd. Vs. ITO (2006) 5 SOT 348 (Mum);
- v) Neelam Cable Mfg. CO Vs. ACIT (1997) 63 ITD 1 (Delhi); and
- vi) CIT Vs. R.J. Wood Pvt. Ltd. (2012) 20 Taxmann.com 599 (Delhi).

Finally, Id. AR submitted that in view of the said decisions, in which it has clearly been laid down by the various judicial forums that all these expenses are allowed to be deducted while computing the annual letting value of the property.

6. On the other hand, Id. DR relied on the order of the CIT(A).

7. We have heard the rival submissions of both the parties and perused the material on record including impugned order. We find that the issue raised by the assessee is in respect of stamp duty and registration fees, paid in connection with the registration of lease agreement has to be reduced while calculating the ALV u/s 23(1)(b) of the Act and the rent received should be arrived net of stamp fee and registration expenses. The case of the assessee also finds from the decision relied upon by the AR namely Varma Family Trust Vs ITO (supra) and CIT Vs Khandelwal Mining & Ores (P) Ltd (supra). Similarly society maintenance charges paid by the assessee to the housing society has to be allowed while computing the annual letting value u/s.23 of the Act. The case of the assessee is supported by a series of decisions as referred to above by the Id. AR. We, therefore, direct the AO to allow the society maintenance charges, stamp fee and registration fee have to be allowed while calculating the annual letting value. Accordingly, this ground of appeal of the assessee is allowed.

8. Next ground raised by the assessee is against confirmation of disallowance u/s.57(iii) of the Act on adhoc basis as interest under section 57(iii) of the Act. Facts in brief are that during the assessment proceedings, the AO observed from the perusal of the profit and loss account that the assessee has debited by way of interest a sum of Rs.50,44,701/-. The assessee while computing the total income disallowed the said interest from the business income and claimed the same against the interest income under the head other sources.

According to the AO since the interest payments have been claimed as expenditure u/s.57(iii) of the Act, the same has to be seen in the light of fulfilment of various conditions as laid down u/s.57(iii) of the Act. As per the provisions of Section 57 of the Act, the deduction can only be allowed if the expenditure is incurred for the purpose of earning the same income and is neither a capital expenditure nor the personal expenditure of the assessee and a direct nexus of interest expenditure with interest income has to be established. Accordingly, the AO issued show cause notice on 17.12.2014 which was replied by the assessee by submitting that total loan given during the year was Rs.1,40,00,000/-. Besides furnishing the details of various transactions, the assessee submitted also filed evidences explaining the source of loan given during the year to the tune of Rs.1,40,00,000/- and also submitting that, Rs.1,00,00,000/- was advanced out of loan refunded during the year which was given in the earlier year and Rs.1 crore borrowed from Shri Ramashankar Rastogi. According to the AO the assessee has failed to establish the nexus between the loan as advanced and ultimately came to the conclusion that the assessee has diverted interest bearing funds for the purpose other than for giving interest bearing loans on which the assessee earned interest during the year and, therefore, interest to the expenditure has not been wholly and exclusively expended for the purpose of earning interest income as required u/s.57(iii) of the Act. Accordingly, disallowance u/s.57(iii) of the Act was calculated at 12% as given at page 5 of the assessment order and same was added to the income of the assessee.

9. In the appellate proceedings also the CIT(A) dismissed the appeal of the assessee upholding the order of AO by observing that the assessee has failed to establish the direct nexus between interest income and interest paid to the loan creditors.

10. We have heard the rival submissions of both the parties and perused the material on record. We observe from the facts before us that the AO has disallowed interest @12% on the interest bearing funds which according to the AO were not utilised for earning interest income and, thus, rejected the claim of the assessee u/s.57(iii) of the Act. From the facts before us, we observe that the assessee has made fully explained and furnished the details towards various sources of funds as well as utilisation thereof. We also observe that the assessee has sufficient interest free funds available and, therefore, we do not find any merit in the arguments of the Id. DR that interest bearing funds were utilised for non-business purpose. The assessee has submitted before the AO the details of unsecured loans, party-wise details of loans and advances given and squared off during the year, party-wise break-up of interest received, partywise details of interest paid, complete break of interest received and paid with proof of nexus thereof. We have heard the rival submissions of both the parties and perused the material on record and also the alternate prayer of the assessee that the said interest paid was wholly and exclusively incurred in connection with the business of the assessee which if not allowable u/s.57(iii) of the Act is entirely covered under the provisions of Section 37 of the Act as the assessee is engaged in the

business of borrowing and lending of money. The contentions of Id. AR of the assessee appear to be reasonable as the expenses are clearly incurred in connection with the business of lending money by the assessee. We, therefore, are not in agreement with the conclusion drawn by the CIT(A) and accordingly, we direct the AO to delete the disallowance of Rs.3,00,000/- and allow this ground of appeal of the assessee.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 28/01/2019.

Sd/-
(RAM LAL NEGI)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 28/01/2019

प्र.कु.मि/Prakash Kumar Mishra, Sr.PS.

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai