



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.1323/Mum./2018  
(Assessment Year :2012-13)

Narayan S. Gupta  
C-1/1, Sunder Nagar  
S.V. Road, Malad (W)  
Mumbai 400 064  
PAN – AABPG9336J

..... Appellant

v/s

Income Tax Officer  
Ward-30(2)(4), Mumbai

..... Respondent

Assessee by : Shri Rajesh S. Shah  
Revenue by : Shri S.K. Mitra

Date of Hearing – 11.12.2018

Date of Order – 30.01.2019

**ORDER**

Aforesaid appeal has been filed by the assessee challenging the order dated 11<sup>th</sup> January 2018, passed by the learned Commissioner (Appeals)-41, Mumbai, for the assessment year 2012-13.

2. The dispute in the present appeal is confined to the disallowance of interest expenditure amounting to ₹ 14,18,310.

3. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 31<sup>st</sup>

November 2012, declaring nil income. During the assessment proceedings, the Assessing Officer while examining the computation of income, Capital Account and Balance Sheet noticed that the assessee has availed unsecured loan of ₹ 2,87,60,000, and has claimed deduction on account of interest payment on such loan amounting to ₹ 29,21,440. Therefore, he called upon the assessee to furnish the partywise details of interest paid and interest received on loan availed and advances given. In response, it was submitted by the assessee that the loan availed was invested in a partnership firm, namely, Shri Jagannath Steel Company, wherein, the assessee is a partner. It was submitted, while the assessee has received interest of ₹ 23,96,558, on the advance given to the partnership firm, he has paid interest amounting to ₹ 29,21,440, on the loan availed. The Assessing Officer after considering the submissions of the assessee observed that out of the loan availed of ₹ 2,87,60,000, he has invested an amount of ₹ 1,39,62,492, in the partnership firm on which he has received interest of ₹ 23,96,558. Therefore, the Assessing Officer held that the interest payment of ₹ 29,21,440, claimed over the entire loan availed cannot be allowed keeping in view the provisions of section 57(iii) of the Income Tax Act, 1961 (for short "*the Act*"). Accordingly, he worked out the interest on the balance unsecured loan of ₹ 1,47,97,508, at ₹ 14,18,310, and added back to the income of the assessee. Being

aggrieved of such disallowance, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals), however, confirmed the disallowance made by the Assessing Officer.

5. The learned Authorised Representative submitted, the Assessing Officer has incorrectly worked out the disallowance on the basis of loan outstanding as on 31<sup>st</sup> March 2012, instead of working out on daily basis. He submitted, since the loan availed was utilized for advancing to the partnership firm, deduction on account of interest payment should be allowed to the extent of interest received from the partnership firm. Thus, he submitted, the disallowance can be restricted to ₹ 5,24,883.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer.

7. I have considered rival submissions and perused material on record. It is evident, the assessee has availed unsecured loan from various sources and advanced to a partnership firm, wherein, he is a partner. While the assessee has paid interest of ₹ 29,19,141, on the loan availed, it has received interest of ₹ 23,96,558 on the advance given to the partnership firm. The Assessing Officer has disallowed a part of the interest expenditure on the ground that the entire loan

amount was not advanced to the partnership firm. However, there is neither any discussion by the Assessing Officer about the rate of interest on which loan was availed and the rate at which the assessee has advance money to the partnership firm. Further, on what basis part disallowance of interest expenditure was computed has not been provide by the Assessing Officer. Further, it is the contention of the learned Authorised Representative that the Assessing Officer has worked out the disallowance on the basis of loan outstanding as on 31<sup>st</sup> March 2012, instead of working out on daily basis. In any case of the matter, the Assessing Officer has not disputed the fact that the assessee has utilized the unsecured loan for advancing to the firm on which it has earned interest income. Therefore, there is a nexus between the interest expenditure and interest income. Even, the Assessing Officer has also accepted these facts while allowing part of the interest expenditure. However, the disallowance of interest expenditure made by him at ₹ 14,18,310, is without any basis. In my considered opinion, disallowance of interest expenditure can be restricted to the amount of interest paid over and above the amount of interest received. Accordingly, I direct the Assessing Officer to restrict the disallowance of interest expenditure to ₹ 5,24,883. Grounds raised are partly allowed.

8. In the result, appeal is partly allowed.

Order pronounced in the open Court on 31.01.2019

**SD/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 30.01.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai