



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2670/Mum./2018
(Assessment Year :2012-13)

Dilip Kumar Murarka HUF
Flat no.42, Falcon's Crest
Patel Tank Road
Parel Mumbai 400 012
PAN – AABHD9425R

..... Appellant

v/s

Income Tax Officer
Ward-20(1)(4), Mumbai

..... Respondent

Assessee by : Shri Lalchand Choudhary
Revenue by : Shri S.K. Bepari

Date of Hearing – 06.12.2018

Date of Order – 30.01.2019

ORDER

The aforesaid appeal has been filed by the assessee challenging the order dated 23rd February 2018, passed by the learned Commissioner (Appeals)-32, Mumbai, pertaining to assessment year 2012-13.

2. The dispute in the present appeal is confined to disallowance of interest expenditure amounting to ₹ 5,04,833.

3. Brief facts are, the assessee HUF filed its return of income on 30th July 2012, declaring total income of ₹ 17,713. During the assessment proceedings, the Assessing Officer while examining the return of income and computation of total income filed by the assessee noticed that the assessee has availed loan of ₹ 96,87,533, in the relevant previous year including interest out of which the assessee has advanced loan to the individual account amounting to ₹ 78,49,297. He also noticed that on the loan advanced to the individual account, the assessee has earned interest income and has claimed TDS against such income. Whereas, the assessee has paid interest on borrowed loan without deducting TDS at source under section 194A of the Income-tax Act, 1961 (for short "*the Act*"). Therefore, he called upon the assessee to explain why the transfer of loan fund to individual account should not be treated to be capital in nature and the interest expenditure claimed as deduction under section 57(iii) of the Act should not be disallowed. Though, the assessee justified the deduction claimed through reply dated 25th February 2015, however, rejecting the explanation of the assessee, the Assessing Officer disallowed the interest expenditure claimed by the assessee amounting to ₹ 5,04,833.
4. Though, the assessee challenged the aforesaid disallowance before the first appellate authority, however, the learned

Commissioner (Appeals) rejected assessee's claim by observing that the basic condition of section 57(iii) of the Act is not satisfied.

5. The learned Authorised Representative submitted, the assessee has advanced loan to the individual account out of the borrowed funds and has earned interest income. Whereas, it has paid interest on the unsecured loan borrowed from others. Thus, he submitted, there is a direct nexus between the interest income and interest expenditure. That being the case, the interest expenditure claimed by the assessee should be disallowed.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals) and the Assessing Officer.

7. We have considered rival submissions and perused material on record. As could be seen from the facts discussed by the Assessing Officer in the assessment order, there is no dispute that out of the unsecured loan availed by the assessee, some amount was transferred to the individual account as loan. It is also a fact that the interest income on the loan advanced to the individual account has been offered as income. Therefore, there is a direct nexus between the unsecured loan availed by the assessee and loan advanced to the individual account. That being the case, there is also a direct nexus

between the interest paid on the unsecured loan availed and the interest income earned on the loan advanced to the individual account. Therefore, it cannot be said that the interest expenditure is not wholly and exclusively for the purpose of earning the interest income as per section 57(iii) of the Act. That being the case, the disallowance made by the Assessing Officer and sustained by the learned Commissioner (Appeals) is hereby deleted. Ground raised is allowed.

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

Order pronounced in the open Court on 30.01.2019

SD/-
N.K. PRADHAN
ACCOUNTANT MEMBER

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