

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘B’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.261/Chd/2015

निर्धारण वर्ष / Assessment Year : 2011-12

आयकर अपील सं./ ITA No.22/Chd/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Sh.Rajeev Singal C/o JVR Forgings Ltd., Indl. Area-C, Sua Road, Ludhiana.	बनाम	The A.C.I.T., Circle-V, Ludhiana.
स्थायी लेखा सं./PAN NO: ARSPS8301D		

आयकर अपील सं./ ITA No.262/Chd/2015

निर्धारण वर्ष / Assessment Year : 2011-12

&

आयकर अपील सं./ ITA No.23/Chd/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Sh.Vinay Singal C/o Eastment Impex, Indl. Area-C, Sua Road, Dhandari Kalan, Ludhiana.	बनाम	The A.C.I.T., Circle-V, Ludhiana.
स्थायी लेखा सं./PAN NO: ADVPS8356H		

निर्धारिती की ओर से/Assessee by: Shri Ashwani Kumar, CA

राजस्व की ओर से/ Revenue by : Shri Ram Mohan, CIT DR

सुनवाई की तारीख/Date of Hearing : 28.01.2019

उदघोषणा की तारीख/Date of Pronouncement: 29 .03.2019

**आदेश/ORDER**

**PER BENCH:**

The captioned appeals have been preferred by two different assesseees against separate orders dated 20.1.2015, 11.11,2016, 20.1.2015, and 11.11.2016 of the Commissioner

of Income Tax (Appeals)-2, Ludhiana [hereinafter referred to as CIT(A)], passed u/s 250(6) of the Income Tax Act,1961(hereinafter referred to as "Act") The assessment years involved in all the appeals are A.Y 2011-12 and A.Y 2012-13.

It was common ground between both the parties that the issue involved in all the appeals is identical. They were therefore heard together and are being disposed off by this consolidated common order.

For the sake of convenience we shall be dealing with the facts in the case of ITA No.262/Chd/2015 relating to assessment year 2011-12 and our decision rendered therein will apply mutatis mutandis to other appeals also.

**ITA No.262/Chd/2015(A.Y.2011-12):**

2. Ground No.1 raised by the assessee reads as under:

*"(1) That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana is against law and facts on the file in as much he was not justified to arbitrarily uphold the disallowance of Rs. 95.73.276/- out of total disallowance of Rs. 1,49,62,428/- made by the Ld. Assessing Officer u/s 57 out of interest account."*

3. Brief facts relating to the issue are that return declaring total income of Rs. 1,55,36,200/- was filed on 30.09.2011. The assessee derives income from capital gains and income from other sources. During the course of

assessment proceedings A.O. noted that the assessee had claimed interest expenses of Rs. 1,49,62,428/- against interest income of Rs. 1,52,77,082/-. The A.O. asked the assessee to explain how each of these expenses claimed had been incurred wholly and exclusively towards earning income. The assessee submitted that he had raised loans from various parties/banks as overdraft facilities in the past more than 4 to 5 years which was introduced by the assessee with his family concerns namely M/s Janpath Estates Pvt. Ltd. M/s Eastman Impex, M/s JVR Forgings Ltd. etc. That Over a period of time some of the loans were repaid and taken from some other parties. That after having number of entries in these 4 to 5 years, at present it was not possible for the assessee to establish any nexus of interest paid against earning of interest income. Keeping in view the submissions made by the assessee the A.O. asked the assessee to explain why interest expenses claimed may not be disallowed u/s 57 of the I.T. Act. The A.O. considered the reply of the assessee. Thereafter referring to the provisions of Section 57, which provide that deduction would be allowed only if expenditure is laid out or expended wholly and exclusively for the purpose of earning income, the A.O. pointed out that there had to be a direct and complete nexus between income and the expenditure so as to claim deduction u/s 57. In this regard the A.O. pointed out that

the assessee had himself admitted in the letter dated 16.12.2013 that it was not possible for the assessee to establish any nexus of interest paid against earning of interest income.

4. The A.O. further pointed out that on perusal of computation of income it was seen that out of the interest receipts of Rs. 1,52,77,083/-, Rs. 1,51,99,859/- had been received from M/s Janpath Estates Pvt. Ltd. The A.O. further pointed out that the ledger of the assessee in the books of M/s Janpath Estates also showed that significant amount of payment made to M/s Janpath Estate Ltd. was during the year under consideration. The A.O. further pointed out that during the year the assessee had withdrawn Rs. 18,51,55,5307- from M/s Eastman Impex. The A.O. observed that the payments made to M/s Janpath Estate Ltd., from whom most of the interest income had been received, was out of funds received from M/s Eastman Impex and not from borrowed funds. The A.O. therefore held that interest bearing loans had not been used for earning of interest income. The A.O. accordingly disallowed deduction claimed u/s 57 amounting to Rs.1,49,62,428/-.

5. Before the Ld.CIT(A) the assessee filed detailed submissions, reproduced at para 4.3 of the order. The Ld.CIT(A) analyzed the provisions of law in this regard culled

from various judicial decisions and held that as per the provisions of section 57(iii) of the Act, any expenditure is allowable as deduction against the income from other sources only if it is laid out or expended wholly or exclusively for the purpose of making or earning such income. Thereafter applying this provision to the facts of the case drawn from the statement of affairs of the assessee, at para 4.7 of the order, the Ld.CIT(A) held that at best, only funds amounting to Rs.11,55,30,660/- were deployed for earning interest and remaining amounts of funds out of the total borrowed funds of Rs.22,35,30,371/- i.e. Rs.10,80,26,711/- were used for other activities. Accordingly, he held that the interest on these funds be disallowed u/s 57 of the Act.

6. Before us, the Ld. counsel for assessee contended that the method employed by the Ld.CIT(A) for working out the disallowance of interest was incorrect. It was pointed out that the fact of the matter was that there were mixed funds available with the assessee and it was difficult, therefore, to work out the direct nexus between the borrowed funds utilized for making loans and advances. The Ld.Counsel for the assessee contended that identical issue had been dealt with by the ITAT Chandigarh Benches in the case of ACIT, Circle-VI, Ludhiana Vs. Pawan Kumar Goel in ITA

No.1438/Chd/2010 dated 31.10.2011 wherein the total amount of funds deployed for earning interest was viewed against the borrowed funds and after considering the same the disallowance of interest u/s 57(iii) of the Act was worked out. Our attention was drawn to para 4.5 of the order as under:

*“4. We have carefully perused the facts of the case, rival submissions and the case laws relied on by both the parties including the paper book. In this case the assessee submitted before the Id. CIT(A), as recorded at page 2 of the appellate order that own fund of the assessee exceeded borrowed funds, on which the interest was paid. It was, further, demonstrated in the form of submission filed before the Id. CIT(A) that through out the year borrowed fund is on the lower side as compared to fund given on interest. As such it was contended that no disallowance on this count is called for. The relevant data in the matter is extracted from the order of Id. CIT(A) and is reproduced hereunder:-*

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Loans	3855 8141	3334 1690	3467 9302	3780 7751 9	3958 8321	4036 5023	4277 0940	4306 6078	3141 8311	2529 8453	2525 2867	3643 3087
Intt fee fund s	7591 4896	7599 1489 6	7680 1991	7629 8737	7672 2115	7731 7117	7870 5903	7670 1032	7670 8532	7781 2646	7875 0669	7660 6773
Tota l	1144 7303 7	1092 5658 6	1114 8129 3	1143 7425 6	1163 1043 6	1176 8214 0	1214 7684 3	1197 6711 0	1081 2684 3	1031 1109 9	1040 0353 6	1130 3986 0
Yiel ding Ass ets	5625 1648	5291 6147	5373 8458	5058 2405	4899 6978	5138 8978	5488 8978	5038 8978	2889 8978	3312 1518	3423 9690	4161 1767
Non Yiel ding	5822 1389	5634 0439	5774 2835	6379 1851	6731 3458	6629 3162	6658 7865	6937 8132	7922 7865	6998 9581	6976 3846	7142 8093
Bal shee t tota l	1144 7303 7	1092 5658 6	1114 8129 3	1143 7425 6	1163 1043 6	1176 8214 0	1214 7684 3	1197 6711 0	1081 2684 3	1031 1109 9	1040 0353 6	1130 3986 0

4.1 The Id. CIT(A) in his findings clearly held that the assessee had given Rs. 4,25.86,325/~, on interest to different parties. The assessee has taken an amount of Rs. 3,48,27,666/-, on interest. In view of this, it was held by the Id. G1T(A) that the funds for earning interest is higher than the amount of borrowed funds. Therefore, in the entirety of the facts and circumstances of the case, it is evident that the borrowed funds had not been used for other purposes than earning interest. Reference made by the Id. 'AR', to the contents of table 3 and 4 has force. Deployed funds for interest is always higher than the borrowed funds except for the month of December, 2006. In views of this, the decision of Hon'ble Jurisdictional High Court in the case of Abhishek Industries relied upon by the Id. 'AR<sup>1</sup> is not applicable to facts of the case. Similarly, the decision in the case of Padmmavati Jaykrishna V. CIT, 131 ITR 653 (Guj) does not support the case of the revenue having regard to the facts of the case.

4.2 The findings of the Id. CIT(A) are given hereunder:

"I have carefully considered the contention of the Ld. counsel for the appellant and perused the relevant record. The assessee has given Rs. 4,25,86,325/- to different parties on interest. Similarly the assessee has taken Rs.3,48,27,666/- on interest. Since fund\_ deployed for earning interest is higher than the amount of borrowed fund hence in totality it seems that borrowed fund has not used for assessee has also point out that disallowance of interest expenditure at the ratio of 36.81 is against the fact of the case. The Id. counsel for the assessee has

*further submitted that as per Table 3 prepared by the AO deployed fund for interest is always higher than the borrowed fund except for the month of December, 2006. The ld. counsel in his submission has submitted that Table 4 as calculated by the AO has been taken as a basis for calculating the amount of interest not utilized wholly and exclusively for the purpose of earning of interest. Conclusion of fund deployment as per Table 4 does not in accordance with a conclusion of fund deployed as per balance sheet. The argument put forth by the Id. counsel has strong reason to believe that the ratio taken by the Dy. Commissioner for disallowing interest expenditure is not correct. In view of the above discussion the expenditure of Rs.17,32,8117- is directed to be considered as expenditure. This ground of appeal is therefore, allowed."*

*4.3 The decision relied upon by the Ld. 'AR' in the case of Appollo Trade Links v. ITO, B-Ward, 204 ITR (AT) 78 supports the case of the assessee.*

*5. In view of the above detailed legal and factual discussions, it is evident that borrowed funds were not used for advancing loans. However, the assessee used his surplus funds for earning the interest. Consequently, disallowance of interest by the AO under such fact-situation is not justified, therefore, we do not find any infirmity in the findings of the Id. CIT(A) and, hence, the same are upheld."*

7. It was pointed out that this decision of the I.T.A.T. was followed in the subsequent year in the case of Pawan Kumar Goel Vs. ACIT in ITA No.528/Chd/2013 dated 11.7.2014. Further the Ld. counsel for assessee pointed out that following these decisions the A.O. had worked out disallowance of interest u/s 57(3) of the Act in the case of the assessee itself in subsequent years .e. assessment year 2013-14 and assessment year 2014-15. Copies of all the above orders were placed before us. Our attention was drawn to pages 3 to 5 of the assessment order for A.Y 2013-14,

pointing out therefrom that following decision of the I.T.A.T. in the case of Pawan Kumar Goel in ITA No.1438/Chd/2010 on noting that the facts were identical in the said case with that of the assessee, the A.O. had worked out disallowance of interest by working out monthwise excess interest bearing funds available with the assessee as compared to the interest earning advances disallowing interest relating to the same as under:

	<i>Interest bearing funds</i>	<i>Interest earning advances</i>	<i>Interest bearing funds invested in Non-interest earning advances</i>	<i>Interest disallowance u/s 57(1)</i>
<i>April-2012</i>	238813515	226219957.14	12593557.86	125935.58
<i>May-2012</i>	236404560	282969957.14		
<i>June-2012</i>	238863723	290669957.14		
<i>July-2012</i>	238158189	289669957.14		
<i>August-2012</i>	243135079	290819957.14		
<i>Sep-2012</i>	252273184	300169957.14		
<i>Oct-2012</i>	268233343	303069957.14		
<i>Nov-2012</i>	272047764	310599957.14		
<i>Dec-2012</i>	241306970	307499957.14		
<i>Jan-2013</i>	235013297	311999957.14		
<i>Feb-2013</i>	242933362	315499957.14		
<i>March-2013</i>	279709033	313364589.14		
<b>Total</b>				1,25,935.58

*Thus, an amount of Rs.1,25,936/- is disallowed u/s 57 and added back to the income of the assessee.*

8. Our attention was drawn to the identical calculation of interest for assessment year 2014-15 placed at Paper Book page No.30 pointing therefrom that there were no surplus interest bearing funds in that year and accordingly, no disallowance of interest was made in the assessment framed

u/s 143(3) of the Act vide order dated 17.8.2016 which was placed at Paper Book page No.34. Our attention was also drawn to identical monthwise wise detail of interest bearing borrowings and interest bearing advances for assessment year 2015-16 placed at Paper Book page No.36 pointing out therefrom that the calculation of interest disallowance u/s 57(iii) amounted to Rs.1,92,766/- which was accordingly shown to have been disallowed by the assessee in its computation of income, placed at Paper Book page No.38 and which was accepted in assessment framed u/s 143(3) of the Act, copy of order of which was placed at Paper Book page No.40. Thus it was contended by the Ld. counsel for assessee that following the principle of consistency, the disallowance of interest in the impugned year ought to be worked out in an identical manner. Monthwise details of interest bearing borrowings and interest bearing advances for the impugned year were placed before us and it was pleaded that the matter be restored back to be allowed in the light of the decision of the I.T.A.T. in the case of Pawan Kumar Goel (supra) followed by the A.O. in the case of the assessee for subsequent years as detailed above.

9. The Ld. DR, on the other hand, relied upon the order of the CIT(A) pointing therefrom that it had made detailed exercise of working out the amount of borrowed funds

utilized for the purpose of making interest earning loans and advances and, therefore, the disallowance of interest worked out by him, it was contended, was rightly made.

10. We have heard the rival contentions and perused the orders of the authorities below. The issue in the present ground before us relates to disallowance of interest expenses as per the provisions of section 57(iii) of the Act. It is an undisputed fact that the funds available with the assessee were mixed funds and some of the interest bearing advances had been made in the preceding years and it was difficult to work out the exact nexus between the interest bearing funds and interest bearing advances. None of the authorities below we find, have been able to establish directly the absence of any such nexus while working out the amount disallowable u/s 57(iii) of the Act. The AO we find reasoned that majorly interest was earned by the assessee from one M/s Janpath Estates and scrutinizing the ledger account of the said party, worked out the advances made to it during the year on the basis of difference in the opening and closing balance. Thereafter he derived from the bank statement of the assessee that major amount was received by the assessee from M/s Eastman Impex which was non interest bearing. He therefore deduced that this non interest bearing fund had been advanced for earning major portion of interest during

the year and accordingly disallowed entire interest claimed by the assessee. The Ld.CIT(A), we find, adopted a totally different basis for calculating the disallowance extracting figures from the statement of affairs filed by the assessee and finding that total borrowings bearing interest during the year were Rs.22.35 crores while amount advanced for earning interest was only 11.55 crores, which he held could at best be treated as made from interest bearing funds. The rest of the interest paid was accordingly disallowed by the Ld.CIT(A). Thus the disallowance of interest u/s 57(iii) of the Act, made by the Revenue authorities, we find, was not on the basis of direct nexus between non interest bearing funds deployed for making investments earning interest.

11. Identical fact situation, we find, was dealt with by the I.T.A.T. in the case of Pawan Kumar Goel (supra) wherein quantum of disallowance u/s 57(iii) was worked out by calculating the monthly difference of interest bearing funds and interest earning advances and disallowing interest relating to the surplus of interest bearing funds raised, on the presumption that the interest bearing funds had been deployed for making these advances and the surplus if any was therefore deployed for purposes other than earning interest income. Moreover, we find, that in the case of the assessee in the subsequent years disallowance of interest

u/s 57(iii) was made on this basis following the decision of the ITAT in the case of Pawan Goel(supra) . Considering the same, we hold that the disallowance u/s 57(iii) of the Act in the present case also should be worked out accordingly as prescribed by the ITAT in the case of Pawan Goel(supra) and which was followed in the case of the assessee in subsequent years. The issue is accordingly restored back to the A.O. to work out disallowance of interest as above. This ground of appeal by the assessee is, therefore, allowed for statistical purposes

12. Ground of appeal No.2 raised by the assessee reads as under:

*“2. That he was not justified to arbitrarily uphold the disallowance of Rs.74,34,992/- made u/s 14A.”*

13. This ground relates to disallowance of expenses made u/s 14A of the Act relating to those incurred for the purpose of earning exempt income.

14. Brief facts relating to the issue are that the assessee had shown investment of Rs. 25,36,52,818/- and Rs.16,15,53,614/- as on 31.03.2011 and 31.03.2010 respectively in the balance sheet. The income from these investments does not form part of the total income. The A.O. further noted that the assessee had incurred interest expenditure of Rs.1,49,62,428/-. The A.O. asked the

assessee to explain why provisions of Section 14A may not be applied in the assessee's case. After considering the assessee's submissions on this issue, the A.O. held that provisions of Section 14 A were attracted in the case. The A.O. computed disallowance under Rule 8D(ii) at Rs. 74,34,992/- and under Rule 8D(iii) at Rs.10,38,016/-. The total disallowance of Rs.84,37,008/- was made. However, as the whole of interest expenditure of Rs.1,49,62,428/- was disallowed by the A.O. u/s 57 of the Act, no further disallowance on this account was made.

15. The Ld.CIT(A) on finding that out of the total interest expenditure of Rs.1,49,62,428/- claimed by the assessee an amount of Rs.95,73,276/- had been disallowed u/s 57 of the Act and the remaining had been held as incurred directly for the purpose of earning interest income and held that no further disallowance was to be made out of the expenditure held to have been incurred for the purpose of earning interest income. Accordingly, he telescoped the disallowance made by the assessee of Rs.74,34,922/- u/s 14A in the total disallowance of interest of Rs.95,73,276/- made u/s 57 of the Act.

16. Before us, the Ld. counsel for assessee relied on the findings of the Ld.CIT(A) that once the total interest expenditure is bifurcated for the purpose of section 57 as

incurred for the purpose of earning interest income and otherwise and the later portion is disallowed, no further disallowance u/s 14A can be made since the balance clearly related for the purpose of earning taxable interest income.

17. We find merit in the contention of the Ld. counsel for assessee. The disallowance, if any, u/s 14A is to be made out of the balance amount remaining after making disallowance of interest u/s 57 of the Act. This balance amount which is allowed u/s 57 of the Act is on the ground that it has been incurred for earning taxable interest income. Therefore, this interest expenses cannot now be held to have been incurred for earning exempt income for the purpose of section 14A of the Act and hence, we agree with the Ld. counsel for assessee that after the exercise of disallowance of interest u/s 57 of the Act is completed vis-à-vis entire interest expenditure incurred by the assessee, no further disallowance of interest is warranted u/s 14A of the Act. This ground of appeal, is, therefore, allowed.

The appeal of the assessee is allowed for statistical purposes.

**ITA No.23/Chd/2017(A.Y. 2012-13):**

18. Ground Nos.1 and 2 raised by the assessee read as under:

- “1. *That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-2, Ludhiana is against law and facts on the file in as much as she was not justified to arbitrarily uphold disallowance of a sum of Rs. 84,28,993/- out of interest account made by the Ld. Assessing treating the same as not allowable u/s 57 of the Income Tax Act, 1961.*
2. *That she was further not justified to uphold disallowance of Rs. 93,88,780/- u/s 14A as worked out by the Ld. Assessing Officer.”*

19. It was common ground that the issues in ground Nos.1 & 2 raised by the assessee in this appeal were similar to ground Nos.1 & 2 raised by the assessee in ITA No.262/Chd/2015 adjudicated above .Our decision rendered therein at paras 10 -11 and 16 respectively and will therefore apply mutatis mutandis to these grounds also following which Ground Nos. 1 raised by the assessee is allowed for statistical purposes while ground no.2 is allowed.

20. Ground No.3 raised by the assessee reads as under:

- “3. *That she further gravely erred in upholding an addition of Rs. 23,92,500/- to the long term capital gain made by the Ld. Assessing Officer by invoking the provisions of Section 50C.”*

21. Brief facts relating to the issue are that an information was received from ITO, Ward 20(1)(5), Mumbai vide letter dated 18.02.2015 that the assessee had sold a flat at Matunga, Mumbai for Rs. 85,00,000/-, the fair market value of which was Rs.1,08,92,500/-, The valuation report attested by the Joint Su-Registrar, Department of Stamp and Registration, Mumbai-1 was also provided in which the

market value or the Stamp Duty/ Value had been mentioned as Rs. 1,08,92,500/-. The assessee was asked to explain why the balance amount should not be added back. The A.O. was not satisfied with the assessee's submission since the competent authority in the matter had certified that the property was sold at less than the value adopted for Stamp Duty purposes. Therefore, the A.O. made disallowance of Rs.23,92,500/- as difference and added to the total income of the assessee as Long Term Capital Gain of the assessee. The A.O. placed reliance on the decision of the I.T.A.T., Mumbai Bench in the case of Rallis India Ltd. Vs. Addl. CIT in ITA No.2464(Mum.) of 2010.

22. Before the Ld.CIT(A) the assessee contended that before the A.O. the assessee had claimed that the fair market value of the property was less than the stamp duty value and the A.O., therefore, as per the provisions section 50C of the Act should have referred the matter for valuation to a Valuation Officer. Reliance was placed on the decision of the I.T.A.T. Pune Bench in the case of Subhash Vinayak Supnekar Vs. ACIT. The Ld.CIT(A) thereafter upheld the order of the A.O. holding that since the competent authority i.e. Joint Sub Registrar, Department of Stamp & Registration, Mumbai-I had certified that the property was sold at less than the

value adopted for the stamp duty purposes, therefore, no interference was required in the order of the A.O.

23. Before us the Ld. counsel for assessee reiterated the contentions made before the Ld.CIT(A) that in view of his assertion before the A.O. that the fair market value of the property was less than the stamp duty value, the valuation of the property should have been referred to the Valuation Officer as per section 50C(2) of the Act. Our attention was drawn to the provisions of section 50C(2) of the Act, which reads as under:

*"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed 86[or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed 86[or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

*(2) Without prejudice to the provisions of sub-section (1), where—*

*(a) the assessee claims before any Assessing Officer that the value adopted or assessed 86[or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*

*(b) the value so adopted or assessed 86[or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the*

*capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.*

*[Explanation 1].—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).*

*[Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]*

*(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed [or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed [or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]*

And also to the submission made before the A.O., reproduced at page 15 of the A.O's order as under:

"Sir,

*Reference discussion on the last hearing.*

*Regarding Your Honours show cause dated 26.02.2015 with respect to the market value of the property/flat sold during the year under consideration be not taken at Rs.1,08,92,500/- as against sale consideration shown in the return of income at Rs.85,00,000/- based on the information*

*received from Your Honour from ITO, wArd/20(1)(5), Mumbai. In reply, it is respectfully submitted that whatever was the market price, the assessee has transacted on that whereaxs there weas no mention of stamp duty value on the registration deed which requires for application of provision of Section 50C of the Act. In view of the submission, it is submitted that basis on which the market value as reviewed by the Ld.ITO, Ward-20(1)(5), Mumbai has never been shown/made available to the assessee and no addition is called for on the balance amount as desired by Your Honour vide order sheet entry dated 26.02.2015.*

*Hope Your Honour will find the above information in order and shall proceed to finalize the proceedings accordingly.*

*Thanking you,*

*Yours faithfully,*

*Sd/-*

*(Vinay Singal)*

*Encl: As above.*

*Dated-----*

24. The Ld. counsel for assessee, therefore, pleaded that in the light of the same, the matter be restored back to the A.O. for reference of the valuation of the property to the DVO in accordance with the provisions of section 50C(2) of the Act.

25. The Ld. DR, on the other hand, relied upon the order of the CIT(A).

26. We have heard the contentions of both the parties. The issue before us relates to the substitution of the actual value of consideration received from the sale of a property by stamp duty value for the purpose of calculating capital gains

earned thereon as per the provisions of section 50C of the Act. The facts which are not disputed are that the assessee had sold a flat at Matunga, Mumbai for Rs.85 lacs. The Valuation Report attested by the Joint Sub Registrar, Department of Stamp & Registration, Mumbai-I showed the stamp duty value of the property at Rs.1,08,92,500/-. The provisions of section 50C(2) of the Act which have been referred to by the Ld. counsel for assessee and which have been reproduced above clearly state that the substitution of the actual consideration received with the stamp duty value is not automatic and where the assessee contends that the fair value of the property did not exceed the stamp duty value, it is incumbent upon the A.O. to verify this fact by referring for valuation. In the present case, we find that the assessee did contend that the fair market value of the property did not exceed the stamp duty value. In such facts and circumstances we agree with the Ld. counsel for assessee that the A.O. should have referred the matter to the DVO for valuation purposes. The act of the A.O. and CIT(A) in ignoring this contention of the assessee, we hold, is in violation of provisions of section 50C(2) of the Act. We, therefore, set aside the order of the CIT(A) in this regard and restore the issue back to the A.O. directing him to refer the value of the property to the Valuation Officer in accordance with the provisions of section 50(2) of the Act and thereafter

decide the issue in accordance with law. This ground of appeal raised by the assessee is allowed for statistical purposes.

The appeal is allowed for statistical purposes.

**ITA No.261/Chd/2015(A.Y. 2011-12):**

27. The assessee has raised following grounds:

*“(1) That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana is against law and facts on the file in as much he was not justified to arbitrarily uphold the disallowance of Rs.24,24,858/- out of total disallowance of Rs.60,95,957/- made by the Ld. Assessing Officer u/s 57 out of interest account.”*

*2. That he was not justified to arbitrarily uphold the disallowance of Rs.25,78,108/- made u/s 14A.”*

28. It was common ground that the issues in ground Nos.1 & 2 raised by the assessee in this appeal were similar to ground Nos.1 & 2 raised by the assessee in ITA No.262/Chd/2015 adjudicated above .Our decision rendered therein at paras 10 -11 and 16 respectively will therefore apply mutatis mutandis to these grounds also following which Ground Nos. 1 raised by the assessee is allowed for statistical purposes while ground no.2 is allowed.

The appeal of the assessee is allowed for statistical purposes.

**ITA No.22/Chd/2017(A.Y. 2012-13):**

29. The assessee has raised following grounds:

*“(1) That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-II, Ludhiana is against law and facts on the file in as much as she was not justified to arbitrarily uphold the disallowance of a sum of Rs.43,32,058/- out of interest account made by the Ld. Assessing treating the same as not allowable u/s 57 of the Income Tax Act, 1961.”*

*2. That she was further not justified to uphold disallowance of Rs.237,62,254/- u/s 14A as worked out by the Ld. Assessing Officer.”*

30. It was common ground that the issues in ground Nos.1 & 2 raised by the assessee in this appeal were similar to ground Nos.1 & 2 raised by the assessee in ITA No.262/Chd/2015 adjudicated above .Our decision rendered therein at paras 10 -11 and 16 respectively and will therefore apply mutatis mutandis to these grounds also following which Ground Nos. 1 raised by the assessee is allowed for statistical purposes while ground no.2 is allowed.

31. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court.

Sd/-

**संजय गर्ग**  
**(SANJAY GARG)**  
 न्यायकि सदस्य/Judicial Member

Sd/-

**अन्नपूर्णा गुप्ता**  
**(ANNAPURNA GUPTA)**  
 लेखा सदस्य/Accountant Member

दिनांक /Dated: 29<sup>th</sup> March, 2019

\*रती\*

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar