

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.6469/Del/2018
Assessment Year:2015-16

Shri Manik Singh, S/o Dr. Meharban Singh, A-47, Sector 31, NOIDA. PAN:AHJPS 6020 L (Appellant)	Vs.	Dy.C.I.T., Circle-2, Noida. (Respondent)
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Appellant by	Shri Ankur Goel, Advocate
Respondent by	Ms. Pramita M. Biswas, CIT (DR)
Date of hearing	18/04/2019
Date of pronouncement	18/04/2019

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of Learned CIT(A) dated 31/05/2018. In this appeal the assessee has raised the following grounds:

"1. The learned DCIT erred in law and on facts while passing the assessment order on 20/11/2017 u/s 143(3) of the Act and has not justified in rejecting the computation made by the appellant and in estimating the income by applying assumptions and presumptions and wrongly disallowed the interest paid on secure loan on the wrong assumption as investment in house property, "self-residential purpose".

2. The learned AO erred in law and on facts in passing the assessment order u/s 143(3) of the Act as erroneous based on assumption and presumption as interest paid on secured loan taken from bank for the purpose of business and invested in giving loan, has to be allowed as expenditure against the

income from interest. The LD AO has erred on facts and in law in treating the loan for construction of residential house merely because it was secured against mortgage of residential house.

3. Assuming while denying that the income from interest on loans advanced which to be taxed under section 56 as “income from other sources”, the corresponding interest paid on secured loan raised from bank has to be allowed as deduction on matching principle.

4. The LD A.O has erred on facts and law in treating the secured loan taken from bank against property wrongly as housing loan for construction of house property when it was not so factually.

5. The LD AO has no jurisdiction under section 143(3) to change the character of interest earned and interest paid on the same amount.

6. Independent verification was not carried out by the LD AO when there was a doubt on the claim, if any, after considering the evidence submitted by the appellant which in this case was not considered necessary by the assessing officer after examination of the books of account and records of the relevant period.”

2. The brief facts, as noted in the assessment order, are that the assessee is an individual and it had taken a housing loan of Rs. Two crore and instead of utilizing the money for housing the assessee advanced the amount to M/s Proplarity Infraventure Ltd. wherein he was a director. The assessee earned interest from the company M/s Proplarity Infraventure Ltd. against which he claimed the deduction of interest paid to bank u/s 57 of the Act and offered the balance for taxation. The Assessing Officer held that the assessee had taken loan for self-residential purposes as mentioned in the sanction letter and as per the terms and conditions of such loan, the assessee was entitled to use this amount for which it was sanctioned. The Assessing Officer further held that the assessee had invested the amount taken as advance from bank in the company which was engaged in the business of sale and purchase of residential flats

therefore, the Assessing Officer further held that instead of deduction u/s 57 of the Act, the assessee could have claimed deduction only u/s 24(b) of the Act and therefore, he made the disallowance. The Learned CIT(A) though upheld the order of the Assessing Officer but he held that since it had not made purchase of any property therefore, deduction u/s 24(b) was also not available to the assessee. He further held that since the amount was not taken for any business purpose therefore, the assessee was also not entitled to deduction u/s 37 of the Act. Aggrieved, the assessee is in appeal before us.

3. Learned A.R. invited our attention to the bank statement, placed at page 28 of paper book, and submitted that assessee had taken housing loan on 27/09/2013 and on 28/09/2013 the exact amount was transferred to the company as unsecured loan on which the assessee had earned interest and in this respect our attention was invited to page 41 of the paper book where copy of computation of income was placed. Learned A.R. specifically invited our attention to the fact that interest from the company amounting to Rs.30,83,754/- was declared by the assessee against which the interest paid to bank was claimed as deduction u/s 57 of the Act. Therefore, it was prayed that it was not a case of claim u/s 24(b) or 37 and rather it was a claim of expenses u/s 57 of the Act and therefore, it should have been allowed by the authorities below.

4. Learned D.R., on the other hand, supported the orders of the authorities below.

5. We have heard the rival parties and have gone through the material placed on record. We find that it is a fact that the assessee had obtained housing loan from AXIS Bank but the proceeds of the housing loan were not utilized for purchasing any housing asset but it was advanced to a company in which the assessee was also a director. The assessee had declared interest income from the company which is apparent from page

41 of the paper book where a copy of computation of income is placed. Against the income of interest, the assessee had claimed interest expenditure which has been paid to the bank therefore, the assessee had claimed the interest expenditure as expenses under the head 'income from other sources' u/s 57 of the Act. The authorities below have ignored this aspect. The assessee before the Learned CIT(A) has specifically taken a ground for allowance of claim u/s 57(iii) on which Learned CIT(A) has not given any finding. Therefore, we deem it appropriate to remit the issue back to the office of Learned CIT(A) who should pass a speaking order on the specific ground taken by the assessee which is the claim u/s 57(iii) of the Act. Needless to say the assessee will be provided reasonable and sufficient opportunity of being heard.

6. In the result, the appeal of the assessee stands allowed for statistical purposes.

(Order pronounced in the open court on 18/04/2019)

Sd/.
(H. S. SIDHU)
Judicial Member

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:18/04/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T.,