

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.190/Del./2017
(ASSESSMENT YEAR : 2013-14)**

Shri Sameer Suneja, vs. ACIT, Circle 31 (1),
C/o Dr. R.K. Suneja, New Delhi.
48, North West Avenue,
Club Road, Punjabi Bagh Extension,
New Delhi – 110 026.

(PAN : AATPS1322E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K.V.S. Gupta, Advocate
Shri Pankaj Khanna, CA
REVENUE BY : Shri Surender Pal, Senior DR

Date of Hearing : 13.06.2019

Date of Order : 14.06.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Sameer Suneja (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 29.11.2016 passed by the Commissioner of Income-tax (Appeals)-11, New Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

“1) The action of Ld CIT(A) in upholding the action of Ld AO in disallowing a sum of Rs5,34,191/- u/s 36(1)(iii) is illegal,

arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.

2) *The action of Ld CIT(A) in upholding the action of Ld AO in disallowing a sum of Rs 5,34,191/- u/s 36(1)(iii) inspite of fact that the assessee had sufficient amount of Interest free fund in the form of own capital which far exceeds amount of investment in assets is illegal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

3) *The action of Ld CIT(A) in adopting a method for computing amount of disallowance of Interest amounted to Rs.5,34,191/- is not prescribed under the Income Tax Act, 1961 or rules made there under is illegal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

4) *The action of Ld CIT(A) in upholding action of Ld AO that the assets in the form of advances against office space have not been put to use attracting section 36(1)(iii) is illegal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

5) *That without prejudice to above grounds of appeal, disallowance of interest amounted to Rs.5,34,191/- may in the alternative be allowed u/s 37 of the Income Tax Act, 1961.*

6) *That the above grounds of appeal are without prejudice to each other.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee declared income of Rs.79,79,720/- during the year under assessment on the basis of income derived from salary, business or profession, house property and income from other sources and assessee is also engaged in providing financial and management consultancy during the year under assessment. From the profit & loss account, Assessing Officer noticed that the assessee has claimed interest expenditure of Rs.7,84,867/- on account of interest paid to bank on loan taken from Citi Bank, which was utilized for booking of several office

spaces shown in his investment details. However, declining the contentions raised by the assessee, AO invoked the proviso to section 36(1)(iii) of the Income-tax Act, 1961 (for short 'the Act') and disallowed the interest and thereby made an addition of Rs.7,84,867/- by way of disallowance made u/s 36(1)(iii) of the Act.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has restricted the addition made by the AO to Rs.5,34,191/- by partly allowing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Before proceeding further, we would like to extract the provisions contained u/s 36(1)(iii) and proviso for ready perusal as under :-

Section 36(1) in The Income- Tax Act, 1995

(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession.

[Provided that any amount of the interest paid in respect of capital borrowed for acquisition of an asset (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.]

Explanation.- Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause.”

6. Undisputedly, assessee has availed of a loan from Citi Bank on which he has paid the interest of Rs.7,84,867/- which has been claimed as expenditure. It is also not in dispute that that even during the course of argument, the ld. AR for the assessee was not clear enough as to for which purpose the loan was availed of. AO proceeded to disallow the interest on the premise that the borrowed money has been used by the assessee for investment and as such under proviso to section 36(1)(iii), the same is not allowable expenditure. It is also not in dispute that that proviso for extension of existing business inserted w.e.f. 1.4.2004 to section 36(1)(iii) is applicable to the facts and circumstances of the case.

7. The ld. AR for the assessee contended inter alia that the detail of investment shows that a total of Rs.2,63,87,111/- was invested out of which a sum of Rs.31,04,845/- was invested during the year under assessment and balance sum of Rs.2,32,82,266/- was invested prior to the assessment; that advance for a property given is an asset/capital asset; that in the earlier years also,

investment was made but no disallowance was made by the Revenue; that investment has been made by the assessee with intention for extension of his business; that the assessee has not got the possession of the property got booked but has all the ownership right and the interest is paid in respect of capital borrowed; that investment was made with the mixed pool of funds as the assessee was having sufficient interest bearing and interest free funds at its disposal which are far more than investment made and relied upon the decisions of *CIT v. Abhishek Industries (2006) 286 ITR 1 (P&H)*; *Sheetal Drape (India) Ltd. I.T.A No. 1323/Mum/2012*; *CIT Vs. Reliance Utilities & Power Ltd 313 ITR 340 (Bom)*; *ITO Vs. Atul Anand AY 2009-10 ITA No 446/De1/2013 Dt 19.02.2014 (Delhi Tribunal)*; *CIT VS. Abhishek Industries Ltd. (2016) 380 ITR 652 (P&H)*; *CIT Vs. Micro Labs Ltd. (2016) 383 ITR 490 (Kar)*; *HDFC Bank Ltd Vs. DCIT & Others (2016) 383 ITR 529 (Bom)*; *CIT VS. Modi Rubber Ltd (2015) 378 ITR 128 (Delhi)*; *CIT Vs. SRF Ltd. (2015) 372 ITR 425 (Delhi)*; *Siemens Nixdorf Information Systems GmbH Vs. DDIT (Int'l Taxation) 2(1)(Mum) [2016] 158 ITD 480 (Mumbai-Trib.)*; *Godrej & Boyce Manufacturing Co. Ltd (2017) 394 ITR 117 and CIT Vs. Max India Ltd. (2016) 388 ITR 81 (P&H).*

8. However, on the other hand, ld. DR for the Revenue contended inter alia that proviso to section 36(1)(iii) is absolute one which starts with the word “shall”; that the assessee has never put to use the asset alleged to have been booked and relied upon the order passed by the ld. CIT (A).

9. When we examine the proviso to section 36(1)(iii), its opening lines are “any amount of interest paid in respect of capital borrowed for acquisition of asset shall not be allowed as deduction”. In this case, first of all, assessee has failed to explain the purpose for availing the loan from the Citi Bank. Secondly, though the assessee has booked various spaces for office use but he has never taken possession thereof and as such proviso to section 36(1)(iii) is attracted. Moreover, when it is undisputed fact that the assessee has invested borrowed money along with his own funds in various office properties in order to extend its business but the same was never put to use during the year under assessment, no deduction is allowable.

10. The contention of the ld. AR for the assessee that section 36(1)(iii) does not speak about immovable properties rather speaks of assets only is also not sustainable because assessee cannot be allowed to blow hot and cold in the same breath as the assessee has tried to prove on record that he has invested the borrowed money

for extension of the office i.e. office space which are certainly an immovable property/asset but the same has never been put to use for business purpose. In these circumstances, case laws relied upon by the assessee are not applicable to the facts and circumstances of the case.

11. So far as question of having interest bearing and interest free funds available at the disposal of the assessee which are far more than amount of loan availed of is concerned, we are of the considered view that the Id. CIT (A) has validly and legally dealt with this issue in para 5.2.2 by extending the part relief to the assessee by way of disallowance of interest on pro-rata basis and has reached the conclusion that the remaining amount of Rs.5,34,191/- is required to be disallowed under the proviso to section 36(1)(iii) of the Act.

12. In view of what has been discussed above, finding no illegality or perversity in the impugned order passed by the Id. CIT (A), appeal filed by the assessee is hereby dismissed.

Order pronounced in open court on this 14th day of June, 2019.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 14th day of June, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-11, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.