

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

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

**ITA Nos. 504 to 506/VIZ/2018
(Asst. Year : 2010-11 to 2012-13)**

Vemulapalli Naveen Kishore, vs. ITO, Ward-2(2),
D.No. 38-1, 1st Floor, NTR Guntur.
Municipal Kreedha Pranganam,
Brindavan Gardens, Guntur.

PAN No. ABBPV 5381 P
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 24/06/2019.
Date of pronouncement : 03/07/2019.

ORDER

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-1, Guntur, all dated 29/06/2018 for the Assessment Years 2010-11 to 2012-13. Since facts and issues are common, clubbed and heard together and disposed of by way of this consolidated order.

2. All the appeals are barred by limitation by 34 days. The assessee has filed affidavits along with medical certificates and submitted that the assessee was suffering from viral hepatitis with jaundice and he was advised complete bed rest for two months, as

such, he could not attend his regular activities during the period 25/07/2018 to 24/09/2018 and submitted that delay may be condoned. I find that there is a sufficient cause to condone the delay. Accordingly, delay is condoned.

3. For the sake of convenience, facts are taken from ITA No. 504/VIZ/2018. The assessee is a partner in M/s. Vijaya Sai Constructions, filed his return of income by declaring total income of Rs. 4,95,280/-. The return filed by the assessee was processed u/sec. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Subsequently, case of the assessee was selected for scrutiny under CASS and after following due procedure, assessment was completed u/sec. 143(3) of the Act, dated 31/03/2013. In the assessment order, the Assessing Officer has noted that assessee claimed interest paid to Kotak Mahindra Bank of Rs. 8,18,559/- and M. Sunandini of Rs. 90,000/- as against the gross interest received of Rs. 7,78,391/- by restricting his claim of interest to the extent of gross interest. The assessee did not explain the nexus between the loans taken and utilized for earning of income therefore the claim of Rs. 7,78,391/- is added to the income returned.

4. On appeal before the Id. CIT(A), the assessee has submitted a detailed note, which is as under:-

"Please refer Page No. 6 of the Assessment Order vide Point No.5, wherein the Assessing Officer has disallowed interest expenditure amounting to Rs. 7,78,391/-. The details are furnished along with return of income under the head income from other sources are produced hereunder:-

Details of interest income

Interest received from:

Interest on capital received from Vijaya Sai Constructions	4,98,234.27	
Interest received from VSPPL Debentures	12,000.00	
Interest received from VSPPL Loan	1,71,168.00	
Interest received from Sundry Debtors	77,382.00	
Interest received on Kotak Mahindra Bank F.D.	16,900.00	
Interest received from Bank	2,706.75	
Divident received on shares	80.00	

	7,78,471.02	
Less: Exemption u/s. 10(34) Dividend Income	80.00	

	7,78,391.02	
Less: Interest paid to Kotak Mahindra Bank Loan	8,18,559.00	
M. Sunandini	90,000.00	

	9,08,559.00	

Restricted to	7,78,391.02	NIL

"Thus from various sources the appellant has received interest of Rs.7,78,391/- and paid interest to M/s. Kotak Mahindra Bank Rs.8,18,559/- and Smt. M.Sunaidini Rs. 90,000/- though the appellant paid interest to various parties besides the above payments but restricted interest expenditure to the extent of interest income only by considering the provisions contained in Sec.14A of I.T.Act disregarding provisions relating to set off of income under the head Inter-Head adjustment vide Sec.70 of Act.

The above disallowance is discussed vide Point No.5 in Page No.6 of the Assessment Order. It also bring to your kind notice that the return of income filed for the earlier assessment year was also subjected to scrutiny and while completing the said scrutiny assessment the Assessing Officer had made similar disallowances for the earlier Assessment Year on which the assessee went in appeal before the Hon'ble CIT(Appeals), Guntur vide Appeal

No.309/11-12 and copy of the said order is enclosed hereto for your ready reference and while finalizing the related issue in the said appeal the then Hon'ble Appellate Authority deleted the addition and granted relief. Accordingly we pray the Appellate Authority to delete the addition and grant relief in the present appeal also."

5. The Id. CIT(A) after considering the same confirmed the order of the Assessing Officer by observing that the assessee failed to explain the amounts utilized for the purpose of earning of income and it is the burden of the assessee to prove that the interest payment made was to earn the interest income. The assessee has failed to prove the nexus between the borrowed money and utilization of the same for earning income. With regard to deletion of similar addition in the A.Y. 2009-10, the Id.CIT(A) has observed that Sec. 57(iii) clearly says that any amount which was wholly and exclusively laid out or expended for the purpose of making or earning income then only deduction of such an amount is permitted.

6. On being aggrieved, assessee carried the matter in appeal before this Tribunal.

7. Ld. counsel for the assessee has relied on the decision of the Id. CIT(A) for the A.Y. 2009-10 wherein similar disallowance was allowed and submitted that same may be followed.

8. Ld. Departmental Representative strongly supported the orders of the authorities below.

9. I have heard both the sides, perused the material available on record and orders of the authorities below.

10. The case of the assessee is that assessee has borrowed certain amount from Kotak Mahindra Bank and M. Sunandini and paid interest of Rs.8,18,559/- and Rs.90,000/- respectively, whereas assessee has received interest income of Rs.7,78,391/- and his claim is restricted to the extent of gross interest. The assessee has not filed any details before the Assessing Officer that what are the amounts received from Kotak Mahindra Bank and M.Sunandini, what is the purpose of amounts received and how the received funds are utilized. Therefore, the Assessing Officer disallowed the interest claim made by the assessee. On appeal, Id. CIT(A) confirmed the order of the Assessing Officer by observing that the assessee has failed to explain the utilization of borrowed funds and interest paid thereon. According to the Id.CIT(A), the burden is lies on the assessee to explain the nexus between the utilization of the borrowed funds and earning interest thereon. In the Id. CIT(A)'s order for the A.Y. 2009-10, the assessee has explained the nexus between the utilization of borrowed funds and earning of interest u/sec. 57(iii) of the Act. I

have gone through the assessment order for the A.Y. 2009-10. The assessee has not explained in detailed in respect of what is the amount borrowed from Kotak Mahindra Bank and where he has invested; and what is the amount exactly received from the investment. Before the Id. CIT(A) it was submitted that part of the loan received from Kotak Mahindra Bank has been utilized to clear the loans of Rs. 6.00 lakhs and part of the loan near about Rs. 4.00 lakhs was deposited. The Id. CIT(A) without considering the details of the loan received and details of utilization, simply directed the Assessing Officer to delete the addition. I find no reason to interfere with the order passed by the Id. CIT(A) for the A.Y. 2010-11 for non-following the order of the Id. CIT(A) in the A.Y. 2009-10. The Id. CIT(A) after considering all the facts and also section 57(iii) confirmed the addition made by the Assessing Officer. The assessee even not filed any details before the Bench, hence, what is the loan received, how much amount received is utilized and what is the interest earned. Under these facts and circumstances of the case, I am of the opinion that the Assessing Officer rightly denied the claim made by the assessee in respect of payments made to Kotak Mahindra Bank & M. Sunandini and is confirmed by the Id.CIT(A). Thus, this appeal filed by the assessee is dismissed.

11. So far as ITA Nos. 505 & 506/VIZ/2018 are concerned, the facts involved in these appeals are similar to the facts of ITA No. 504/VIZ/2018. Therefore, my decision in ITA No. 504/VIZ/2018 shall apply *mutatis mutandis* to these appeals also.

12. In the result, all the appeals filed by the assessee are dismissed.

Order Pronounced in open Court on this 03rd day of July, 2019.

Sd/-
(V. DURGA RAO)
Judicial Member

Dated: 03rd July, 2019.

vr/-

Copy to:

1. *The Assessee – Vemulapalli Naveen Kishore, D.No. 38-1, 1st Floor, NTR Municipal Kreedha Pranganam, Brindavan Gardens, Guntur.*
2. *The Revenue – ITO, Ward-2(2), Guntur.*
3. *The Pr.CIT, Guntur.*
4. *The CIT(A)-1, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.