

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA Nos.2112, 3315 & 1220/M/2018  
Assessment Years: 2011-12, 2012-13 & 2013-14**

Shri Rustom Pesu Kerawalla, 4 <sup>th</sup> Floor, Kerawalla Chambers, 25, P.J. Ramchandani Marg, Appollow Bunder, Colaba, Mumbai – 400 039 <b>PAN: AJPPK1919K</b>	Vs.	ACIT-17(3), 1 <sup>ST</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Satish R. Mody, A.R.  
Revenue by : Shri D.G. Pansari, D.R.

Date of Hearing : 03.06.2019  
Date of Pronouncement : 13.08.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The above titled appeals have been preferred by the assessee against the orders dated 19.01.2018, 09.03.2018 & 18.12.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2011-12, 2012-13 & 2013-14 respectively.

**ITA No.2112/M/2012**

2. The various grounds raised by the assessee are as under:

"1. The Learned Commissioner of Income-tax (A)-28, Mumbai, has erred in not allowing interest of Rs. 10,06,000/- which was paid for the borrowings made and used for providing finance to Kare Edumin Pvt. Ltd., Hotel Karl Residency and others on which interest of Rs. 11,10,096/- was earned and set off against the said borrowings.

2) The Learned Commissioner of Income-tax (A)-28, Mumbai, has erred in enhancing the interest of Rs. 10,60,242/- on the ground that the interest paid and interest received from the Kare Edumin Pvt. Ltd. and Hotel Karl Residency is a separate and independent transactions.

3) The Learned Commissioner of Income-tax (A)-28, Mumbai, has erred in not allowing expenditure of Rs.49,8547- incurred in earning income against the income earned.

4) The Appellant reserves right to add, amend or alter any grounds of appeal.”

3. The facts in brief are that assessee filed the return of income on 23.09.2011 declaring a total income of Rs.39,40,990/-. The case of the assessee was selected under CASS for scrutiny and the notices under section 143(2) and 142(1) were duly issued and served upon the assessee. During the year, the assessee derived income by way of salary, remuneration, profit from partnership, interest from banks, car rental income and also by way of rent from various mobile companies for tower installed on his premises. During the year assessee received income from other sources of Rs.20,34,043/- comprising interest from banks and other deposits of Rs.11,80,043/-, car rental charges of Rs.1,44,000/- and tower rent of Rs.7,10,000/-. Against the said receipt, the assessee claimed expenses of Rs.22,87,858/- as per details below:

Accounting Charges	Rs. 12,000/-
Depreciation on Car	Rs. 64,700/-
Bank Charges	Rs. 2,305/-
Professional Charges	Rs. 37,854/-
Interest paid	Rs.21,70,999/-
<b>Total</b>	<b>Rs.22,87,858/-</b>

The AO ,after observing the same ,called upon the assessee to justify the claim of the said expenditure which was replied by the assessee vide letter dated 30.10.2012 submitting therein that interest has been paid on borrowings which was

used and utilised in lending finance to Kare Edumin Pvt. Ltd. and Hotel Karl Residency and other companies. It was also stated that interest receipts from these companies has been offered to tax under the head "Income from other sources". The assessee also filed the break up of movement of funds before the AO. The assessee submitted that the funds were provided to these companies to promote educational activities in which the assessee was having substantial interest. The assessee also submitted that though the interest was offered to tax under the head "Income from other sources", it is a business of the assessee to promote education and therefore interest paid is deductible even from the income from other sources. The assessee submitted before the AO that if the said expense is not allowed under section 57(iii), the same may kindly be treated as business of the assessee and expenses may be allowed under section 37 of the Act. Similarly, other expenses incurred by the assessee were also against the income from business, capital gain and other sources. The AO, however, not satisfied with the contentions of the assessee, came to the conclusion that these expenses were not wholly and exclusively incurred for the purpose of earning the said income and therefore not admissible under section 57(iii) and thus disallowed a sum of Rs.11,10,757/- which was calculated by subtracting the interest paid of Rs.21,70,999/-, professional charges of Rs.37,854/- and accounting charges of Rs.12,000/-. Similarly, the AO also disallowed Rs.4,344/- as expenses claimed from salary and interest received from partnership firm.

4. In the appellate proceedings, the Ld. CIT(A) besides dismissing the appeal of the assessee enhanced the income of the assessee by Rs.11,10,096/- which represented the interest

allowed by the AO to the extent of Rs.11,10,096/- out of the interest received on the ground that claim is not admissible under section 57(iii) of the Act and thus justified the enhancement. Now the assessee is before us challenging the order of Ld. CIT(A).

5. The Ld. A.R. submitted before the Bench that during the year the assessee was deriving income from various sources as stated hereinabove. The primary business of the assessee was taking and advancing of loans. The Ld. A.R. filed before the Bench at the time of hearing a statement showing the details of loans received from various parties to the extent of Rs.2,60,00,000/- on which an interest of Rs.21,70,999/- was paid. The assessee has also filed details of loans given to three parties to the tune of Rs.2,44,80,000/- on which it earned interest on Rs.11,80,042/-. The Ld. A.R. submitted that the AO has allowed interest only to the extent of interest received and disallowed the remaining amount of interest paid on the ground that the said interest was not wholly and exclusively expended for the purpose of earning the said income and therefore concluded that the same to be not allowable and admissible under section 57(iii) of the Act. The Ld. A.R. tried to justify and prove the nexus between the funds borrowed and advanced by the assessee from the comparative statement produced before us. The Ld. A.R. therefore submitted that the said interest is fully admissible as expense under section 57(iii) of the Act. The Ld. A.R. also argued that the said loans were advanced to Kare Edumin Pvt. Ltd., Hotel Karl Residency and Hotel Park View in which the assessee has substantial business interest. Alternatively the ld AR argued that it can be treated as business

of the assessee also and the expenditure may be allowed under section 37 of the Act. Further, the Ld. A.R. submitted that the action of the Ld. CIT(A) is fallacious and against the provisions of the Act as the interest incurred which has direct nexus with the interest income earned though the interest receipt was lesser than the interest paid on these loans. Therefore, the Ld. CIT(A) has grossly erred in enhancing the income of the assessee which may kindly be set aside. As regards, the remaining expenses, the Ld. A.R. submitted that the same were incurred for the purpose of earning income and therefore may be allowed as being incurred wholly and exclusively for earning the said income. Finally, the Ld. A.R. prayed before the Bench that the order of Ld. CIT(A) may be reversed and AO may be directed to allow these expenses as claimed.

6. The Ld. D.R., on the other hand, relied on the order of Ld. CIT(A) heavily and requested the Bench to affirm the same.

7. After hearing both the parties and perusing the material on record, we observe that the assessee has claimed expenses to the tune of Rs.22,87,878/- out of which the major amount is on account of interest paid of Rs.21,70,999/-. The remaining expenses were in the nature of accounting charges, depreciation on car, bank charges, professional charges etc. The said expenses have been claimed from other income sources of Rs.20,34,043/- which comprised of interest from banks and other deposits of Rs.11,80,043/-, car rental charges of Rs.1,44,000/- and tower rent of Rs.7,10,000/- aggregating to Rs.20,34,043/-. We are quite convinced with the arguments of the Ld. A.R. that there is a nexus between the income and

expenditure incurred by the assessee. We have also examined the comparative statement produced of various loans taken and given along with details of interest paid and received and are of the view that there existed a direct nexus between the two. Similarly, the other expenses claimed by the assessee were also incurred for the purpose of earning the said income as assessee was receiving income in the nature of car rental charges and tower rents etc. Alternatively, the said can be considered as business of the assessee and against which all the expenses could be allowed under section 37 of the Act also. We are therefore not in agreement with the conclusion drawn by the Ld. CIT(A) on the issue that the expenses were not allowable under section 57(iii) of the Act and accordingly by setting aside the order of Ld. CIT(A), we direct the AO to delete the addition.

**ITA Nos.3315 & 1220/M/2018 A.Ys. 2012-13 & 2013-14**

8. The issue involved in these two appeals is identical to the one as decided by us in ITA No.2112/M/2018 for A.Y. 2011-12 above. Therefore, our finding in ITA No.2112/M/2018 for A.Y. 2011-12 would , mutatis mutandis, apply to these appeals as well. Accordingly the appeals of the Revenue are dismissed.

9. In the result, all the three appeals of the Revenue are dismissed.

**Order pronounced in the open court on 13.08.2019.**

**Sd/-  
(Ram Lal Negi)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 13.08.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.