



IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.3194/Mum./2018
(Assessment Year : 2013-14)

Arun Premchand Mehra
508, Doctor House
Pedder Road, Mumbai 400 026
PAN – AAIPM2404J

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-16(2), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Satish Chandra Rajore

Date of Hearing – 26.08.2019

Date of Order – 30.08.2019

ORDER

PER SAKTIJIT DEY, J.M.

Captioned appeal by the assessee is against the order dated 7th December 2017, passed by the learned Commissioner of Income Tax (Appeals)-5, Mumbai, for the assessment year 2013-14.

2. The dispute in the present appeal is confined to the disallowance of interest expenditure amounting to ₹ 25,11,010.

3. Brief facts are, the assessee, an individual, is a doctor by profession. For the assessment year under dispute, the assessee filed his return of income on 30th September 2019 declaring total income of ₹ 24,20,290. In the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed interest expenditure of ₹ 34,36,560. He, therefore, called upon the assessee to furnish the details of interest payment and justify the deduction claimed. In response, it was submitted by the assessee that a part of interest was on office loan, car loan and wind mill loan and the balance amount of ₹ 25,11,010, was on bank overdraft and other loans. It was submitted that overdraft and other loans were used both for business as well as investment purposes. In this context, the assessee filed a fund flow chart as per which the funds were mainly used for acquiring equity shares and investment in Lokhandwala construction on which the assessee would be getting interest which could be offered for taxation in the year of receipt. After considering the submissions of the assessee, the Assessing Officer was of the view that interest expenditure of ₹ 25,11,010, was used for the purpose other than business. Accordingly, he disallowed the said amount under section 36(1)(iii) of the Act. The assessee challenged the aforesaid disallowance before the first appellate authority with partial success.

4. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Accordingly, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material on record.

5. Heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, out of the total interest expenditure, the assessee has disallowed an amount of ₹ 25,11,010, since such expenditure was not in respect of loan availed and utilized for the purpose of business. At it appears, before the Departmental Authorities, the assessee had furnished fund flow statement as per which major part of the fund was utilized for investment in equity shares and in Lokhandwala Construction. It further appears that against the exempt income earned from equity shares, the assessee itself has disallowed an amount of ₹ 5,15,632 [as observed by the learned Commissioner (Appeals)] under section 14A of the Act towards interest expenditure. It also appears from the observation of learned Commissioner (Appeals), the assessee has also earned interest income on the investment made in Lokhandwala Construction. Therefore, whether the interest expenditure can be allowed under section 57(iii) of the Act requires examination.

Moreover, the nature of investment in Lokhandwala Construction, whether for the purpose of business or otherwise, is not clear from the facts and material on record. However, fact remains that the assessee himself has disallowed an amount of ₹ 5,15,632, out of the amount of ₹ 25,11,010, under section 14A of the Act. Therefore, the Assessing Officer was not justified in including the said amount in the disallowance made by him. In view of the aforesaid, we are inclined to restore the issue to the Assessing Officer for factual verification and for deciding the issue keeping in view our observations herein above. Needles to mention, the Assessing Officer must afford reasonable opportunity of being heard to the assessee before deciding the issue. Ground raised is allowed for statistical purposes.

6. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 30.08.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.08.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai