

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1383/Del/2018  
Assessment Year: 2013-14

Pratosh Kumar Sharma,  
225, Sector-9, Raj Nagar,  
Ghaziabad,  
Uttar Pradesh.

Vs. DCIT,  
Circle-2,  
Ghaziabad.

PAN: AEBPS5464B

(Appellant)

(Respondent)

Assessee by	:	Shri R.K. Mehra, CA
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	29.07.2019
Date of Pronouncement	:	25.09.2019

ORDER

This appeal by the assessee is directed against the order dated 22.11.2017 of the CIT(A), Ghaziabad, relating to Assessment Year 2013-14.

2. Ground of appeal No.1 reads as under:-

“That on the facts and in the circumstances of the petitioner’s case, the learned Commissioner of Income tax (Appeals), Ghaziabad, was wholly unjustified in law and on facts in disallowing interest paid amounting to Rs.1516666 claimed under section 57 of the Income tax Act, 1961 and also completely departing from the reasoning and view taken by the learned Assessing Officer on this issue in the impugned assessment order.”

3. Facts of the case, in brief, are that the assessee is an individual and derives income from salary and interest. He filed his return of income on 16<sup>th</sup> June, 2014

declaring total income of Rs.15,43,240/-. During the course of assessment proceedings, the Assessing Officer noted that the assessee has taken a loan of Rs.2.70 crores on interest @ 13.75% from M/s Cholamandalam Investment and Finance Company Ltd.. Later on out of this loan amount the assessee invested an amount of Rs.2.60 crores with M/s Subhakamna Buildwell Pvt. Ltd. on 31<sup>st</sup> May, 2012 for booking of flats in their project. On being questioned by the Assessing Officer, it was submitted that the purpose of investment was to earn profits from the increase in value of those flats by selling the bookings at a premium, thus, gaining income from other sources. It was further submitted that due to recession in real estate market the assessee could not derive any income from the investment, therefore, he withdrew the investment of Rs.1.50 crores on 13<sup>th</sup> December, 2012 and Rs.1.10 crores on 15<sup>th</sup> December, 2012. The Assessing Officer noted that the assessee did not charge any interest on the amount of Rs.2.60 crore which was invested with M/s Subhakamana Buildwell Pvt. Ltd. for the period 31<sup>st</sup> May, 2012 to 15<sup>th</sup> December, 2012. Since the assessee had borrowed an amount of Rs.2.70 crores from M/s Cholamandalam Investment and Finance Company Ltd. at an interest of 13.75% per annum and the assessee has paid interest to the tune of Rs.27,65,023/- on his borrowing, the Assessing Officer confronted the same to the assessee as to why no interest was charged from M/s Subhakamna Buildwell Pvt. Ltd. Rejecting the various explanations given by the assessee and considering that the investment was made with a builder, the Assessing Officer disallowed proportionate interest from 1<sup>st</sup> June, 2012 to 31<sup>st</sup> May,

2012 i.e., for seven months @ 10% which comes to Rs.15,16,666/-. He accordingly added the same to the total income of the assessee.

4. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer by observing as under:-

“5.1. Ground No.1: The appellant has challenged the addition of Rs.16,73,137/- on notional basis. During the course of appellate proceedings, it is noted that appellant took a secured loan of Rs.2.7 crores on 12.06.2012 and invested Rs2.6 crore with M/s Subhkamna Buildwell Pvt. Ltd. underwriting 2800 square feet of total area in an upcoming project. Examination of facts reveals that appellant had borrowed the funds at an interest rate of 13.75% per annum and had paid interest of Rs. 27,65,023/-. The AO noted that appellant has claimed interest expenses of Rs. 27,65,023/- u/s 57 whereas there was no corresponding income from other sources reflected by the appellant on the corresponding investment made with M/s Subhkamna Buildwell Pvt. Ltd. The AO estimated interest on investment made with M/s Subhkamna Buildwell Pvt. Ltd. at the rate of 10% on Rs. 2.6 crore for the specified period equal to Rs. 15,16,666/- on this account. Since there is no corresponding income from other sources against which appellant has claimed expenditure of Rs. 27,65,023/-, the amount estimated by the AO as notional income should be disallowed as interest paid on borrowed funds not added as a notional income. Thus, the addition made on account of notional interest is deleted but, the interest to the same extent claimed by the appellant u/s 57 is disallowed.”

5. Aggrieved with such order of the Id.CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. counsel for the assessee referred to clause 3 of section 57 and submitted that any expenditure not being in the nature of capital expenditure laid out or expended wholly or exclusively for the purpose of making or earning of an income, is an allowable deduction u/s 57 of the IT Act. He submitted that the purpose of taking loan was for earning income and, therefore, the disallowance of interest expenditure of Rs.15,16,666/- added by the Assessing Officer and sustained by the CIT(A) is not

justified. He submitted that when income is not being earned, the expenses cannot be disallowed. For the above proposition he relied on the decision in the case of *CIT vs. Sanghi Finance and Investment Ltd. (2005) 272 ITR 553 (MP)* and *CIT vs. M. Ethurajan (2005) 273 ITR 95 (Mad)*. Referring to computation of total income, copy of which is filed at page 2 of the paper book, the ld. counsel submitted that the assessee has earned interest income of Rs.11,48,507/-. Referring to page 27 of the paper book, he drew the attention of the Bench to the details of the interest income from NCR Infrahomes Pvt. Ltd. and NCR Fashion Pvt. Ltd. Referring to page 4 of the paper book, he submitted that the assessee before the Assessing Officer has categorically submitted that the amount invested with Subhakamana Buildwell Pvt. Ltd. was towards transaction of booking of flats with a motive to earn income to compensate the interest expenditure which is better known as underwriting in common parlance. It was categorically stated before the Assessing Officer that the amount invested by the assessee is not for any particular flat and also not for complete value of the flats, but, was for the booking of specified area in sq. feet terms without any specific demarcation or particular allotted flats. It was submitted that it was in nature of an advance being eligible to claim interest on that booking amount. Referring to page 19 to 26 of the paper book, he drew the attention of the Bench to the bank statements and submitted that an amount of Rs.2.60 crores was given on 31<sup>st</sup> May, 2012. Therefore, the order of the CIT(A) disallowing the interest expenditure u/s 57 is uncalled for.

7. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

8. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I find the Assessing Officer in the instant case made disallowance of Rs.15,16,666/- being notional interest expenditure on account of proportionate interest on the funds invested by the assessee towards booking of flats with M/s Subhakamna Buildwell Pvt. Ltd., which was subsequently returned by them to the assessee without paying any interest. I find, the ld.CIT(A) deleted the addition made on account of notional interest, but, he disallowed the interest to the extent claimed by the assessee u/s 57 of the IT Act and the order of CIT(A) on this issue has already been reproduced in para 4 above. It is the submission of the ld. counsel for the assessee that it has received interest income from NCR Infrahomes Pvt. Ltd. amounting to Rs.10,58,712/- and from M/s NCR Fashion Pvt. Ltd. amounting to Rs.89,795/-. Further, it is also his submission that merely because income has not been earned the expenditure cannot be disallowed. I find merit in the above submission of the ld. counsel for the assessee. The Hon'ble Madras High Court in the case of *CIT vs. M. Ethurajan (supra)* has held that what section 57(iii) of the Act requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. This section does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. Accordingly, it was held that interest on moneys borrowed for investment in shares

which had not yielded any dividend is admissible as deduction u/s 57(iii). Similarly, the Hon'ble Madhya Pradesh High Court in the case of *CIT vs. Sanghi Finance and Investment Ltd.* (supra) has held that the question whether interest should be charged or not and at what rate is a matter of contract between the parties and is not really governed by any law as such. Further, it depends upon several factors as to at what rate interest should be charged and the authorities cannot substitute their own rate for calculating the rate of interest. It is only when the taxing authorities find that the transaction of loan itself is bogus one and was entered into to avoid payment of tax that appropriate addition can be made in the hands of the assessee. It was accordingly held that since, in the instant case the Tribunal came to the conclusion that the transaction in question was a genuine one, the same had to be given effect to as it was. Accordingly, the order of the Tribunal deleting the addition was upheld and the appeal filed by the Revenue was dismissed. In view of the above decisions, I hold that the Id.CIT(A) was not justified in disallowing the expenditure claimed by the assessee u/s 57 of the IT Act. The order of the CIT(A) is accordingly set aside and the ground raised by the assessee is allowed.

9. Ground of appeal No.2 raised by the assessee reads as under:-

“That on the facts and in the circumstances of the petitioner’s case, the learned Commissioner of Income tax (Appeals), Ghaziabad, erred in law and on facts in disallowing interest of Rs.91666 claimed under section 57 of the Income tax Act, 1961.”

10. After hearing both the sides, I find the Assessing Officer made an addition of Rs.91,666/- by estimating the notional interest on a sum of Rs.10 lakhs which was upheld by the CIT(A). It is the submission of the ld. counsel for the assessee that income which has not been earned cannot be added on notional basis. In my opinion, the facts are not coming out clearly from the order of the Assessing Officer or the CIT(A). Under these circumstances, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh and in accordance with law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The ground of appeal No.2 raised by the assessee is allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 25.09.2019.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 25<sup>th</sup> September, 2019

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi