

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND.
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.2799/Del/2013
Assessment Year: 2007-08

M/s. Sahdev Jewellers C/o S. Kumar Jain & Associates 2481/9, Gurudwara Road, Karol Bagh, New Delhi-110005 PAN No.AALFS0015Q	Vs.	ACIT Circle – 33 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Rajeev Saxena, Advocate Ms. Sumangla Saxena, Advocate
Respondent by	Sh. N. K. Bansal, Sr. DR

Date of hearing:	12/09/2019
Date of Pronouncement:	30/10/2019

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 28.02.2013 of CIT(A)-26, New Delhi relating to A.Y. 2007-08.

2. Facts of the case, in brief, are that the assessee is a partnership firm and filed its return of income on 12.09.2007

declaring total income of Rs.12,75,420/- after claiming deduction of Rs.1,14,78,818/- u/s.10A @ 90% of the total business profit of Rs.1,27,54,242/-. The case was selected for scrutiny and the order u/s.143(3) was passed on 23.12.2009 determining the total income at Rs.47,30,830/-. While doing so the AO did not allow the benefit of exemption u/s.10A and the benefit of netting off the interest of Rs.38,39,642/- earned on the FDR. The assessee preferred an appeal before the CIT(A) who partly allowed the appeal of the assessee by allowing the benefit of netting. The revenue preferred appeal before the Tribunal and the Tribunal vide consolidated order number 2963, 2969, 2968 and 2967/Del/2010 order dated 27.08.2010 remanded the matter back to the file of the AO for fresh adjudication for the limited purpose of determining the allowable deduction strictly in the manner provided in section 57(iii) of the IT Act. Despite opportunity granted by the AO none appeared on behalf of the assessee for which the AO completed the assessment determining the total income at Rs.47,30,830/-.

3. In appeal the Ld. CIT(A) upheld the action of the AO by observing as under :-

6. *“I have considered the facts of the case and the submissions of the appellant. I find that although the Hon’ble ITAT had restored back the issue to the file of the Assessing Officer for a limited purpose of determining the allowable deduction strictly in the manner provided in section 57(iii) of the Act but owing to the non-compliance he restored to assessee the same income of Rs.47,30,830/- which was assessed in terms 23.12.2009. The Assessing Officer*

had thus not examined the issue on allowable deduction in the manner provided in section 57 (iii) of the Income- tax Act, 1961. On the other hand, the AR of the appellant in the course of appellate proceedings has also not made any submission with regard to allowability of interest expenditure u/s. 57 (iii) of the Income tax Act, 1961. Here, I would like to mention that the Hon'ble High Court of Delhi. In the Appeals filed by the department relating to assessment years 2002-03 and 2007-08 in the case of the appellant have observed as under :-

“ It is obvious that burden lies on the assessee to prove that it has incurred expenditure and if the assessee is not able to prove the same, the Assessing Officer may pass appropriate orders.”

The AR of the appellant has also not filed any submissions to prove that the interest earned by the appellant had any nexus with the expenditure incurred on account of interest paid. The AR of the appellant has also failed to prove that the amount of loan on which the interest was paid was converted in to the FDRs on which interest amounting to Rs.38,39,642/- was received. On perusal of material on record, find from the balance sheet that the appellant had shown an amount of Rs.9,40,70,000/- under EBRD scheme and an amount of Rs.55,12,500/- under PCFC scheme maintained with Central Bank of India. Besides, it had also shown secured loan of Rs.1,57,00,000/- which are in the nature of the demand loan. The EBRD scheme pertains to re-discount of export bills. PCFC means packing credit in foreign currency. Under scheme the loans are vital for exporters as they use this fund to procure raw-material and because these loans are relatively cheap and exporters save on cost and is thus competitive. PCFC loans are offered by the banks to the exporters of diamond jewellery. Further, there are two types of loans under PCFC provided by the banks to the exporters, one pre-shipment credit facility and the other post-shipment credit facility. Thus, these amounts had no inextricable link or intrinsic connection with the FDRs.

6.1 Section 57 (iii) is though similar to section 37 (1) but the scope of section 57 (iii) is narrower than that of 37 (1) because unless the expenditure has been incurred wholly and exclusively for the purpose of making or earning income from other sources it cannot be allowed as deduction i.e. there must be clear nexus between the expenditure incurred and the income sought to be earned.

6.2 The appellant in this case had failed to establish that the interest earned on FDRs had intrinsic and inseparable nexus with the facilities provided under the EBRD and PCFC schemes or for that matter with demand loan. For claiming deduction of expenses

u/s 57 (iii) against income from other sources, the expenditure must be laid out or expended wholly and exclusively for the purpose of earning of such income.

6.3 *Thus, in the instant case, since the appellant had failed to prove that the interest earned had nexus with the expenditure incurred on account of interest paid, I hold that the interest paid by the appellant cannot be allowed as deduction u/s. 57 (iii) of the Income-tax Act, 1961 from the interest income earned by it. Accordingly, no interference is made with the order of the Assessing Officer which is hereby confirmed.”*

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following revised grounds of appeal

:-

1. *That the Ld. Commissioner of Income Tax (Appeals) - 26, New Delhi has grossly erred in law and on facts in confirming the action of the AO in computing the total income of the assessee to the tune of Rs.47,30,830/- as against income returned by the assessee at Rs. 12,75,420/-.*

2. *That the Ld. Commissioner of Income Tax (Appeals) has grossly erred in law as well as on facts in confirming the action of the AO computing the Interest income to the tune of Rs.38,39,342/- without appreciating that assessee firm is 100% Exporter, whose income is therefore exempt u/s 10A of the I.T.Act and interest earned on the deposits which were pledged for business loan on which interest was paid to the bank, due to which it is essential to give benefit of netting off the interest before computing the taxable income under the head ‘Income From other Sources’.*

3. *That the order of the Ld. Commissioner of Income Tax (Appeals) is bad in law as well as on facts as the same is not in adherence with the specific direction of the Hon’ble Income Tax Appellate Tribunal wherein netting off the interest was allowed and specific directions regarding re-computation were given to the AO.*

4. *That both the lower authorities have failed to appreciate that income under the head ‘Income From Other Sources’ would be taxed only what is excess after netting off the same against interest paid, as both - loans received for the purpose of business as well as interest earned on the*

deposits/ for the business, are inextricably linked to each other.

5. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. The Ld. Counsel for the assessee at the time of hearing filed the following written synopsis that the same is self explanatory :-

Assessee is a 100% Exporter of Jewellery. It used to import gold bars and after making Jewellery, the same was exported. The details relating to the claim by exporter for deduction u/s 10A of the Income Tax Act is provided at page 15. There is no dispute on the claim of exemption u/s 10A as the assessee has been registered in FTZ/EPZ/SEZ on 15- 05-2000 ash the year in concern was the 8th year. The total turnover of the business was Rs.89,87,10,802/- and the total turnover of the export unit was the same as shown at in the concerned annexure. Similarly, export turnover was the same as shown at S.No.13. The profit derived by the business or by their undertaking was Rs. 1,27,54,242/- and AO has allowed deduction u/s 10A on this amount @ 90% (PB Pg 16). The assessee has claimed interest paid against the business of Rs.49,85,698/- (PB Pg 18) after netting off the same. It is submitted that close scrutiny of the balance sheet (PB Pg 17) would clearly show that assessee firm had secured loans of Rs. 1.57 crores and has obtained EBRD i.e. Export Bill ReDiscounting of Rs.9,40,70,000/- and PCFC i.e. Packing Credit Finance of Rs.55,12,500/-. Thus, more than Rs. 11.50 crores has been taken from banks. Copy of credit facilities letter issued by the Central Bank of India dated 28th Nov 2005 is enclosed at pages 47 - 51. It would be seen that bank has sanctioned the credit facilities to the assessee. It is necessary to state that in the balance sheet (PB17) your goodself would notice that FDRs has been shown

of Rs.3,99,76,865/- and interest receivable has been shown of Rs.21,10,098/-. The assessee however, has declared accrued interest of Rs.38,39,642/- as noticed by the AO in the assessment order and after adjusting against the interest paid of Rs.88,28,084/-, assessee has claimed interest of Rs.49,85,698/- after claiming certain bank charges of Rs.2,746/-. Detail of FDR, given as margin money has been filed at page 22.

It is submitted that all these FDRs are made after withdrawing from the bank as margin money As required by the bank for opening the LC and in order to safeguard firm's interest as a prudent businessman the same were kept in the FDR so that till the time LC is encashed the assessee could also earn interest on the margin money provided to them. The assessee firm did not have its own funds as clearly depicted in the balance sheet and so it has to withdraw from the bank limits to form the FDR and provide margin money as required by the bank on which it has earned interest. Thus, these FDRs were inextricably linked with the business of the assessee as noticed by the Hon'ble ITAT in AY 2003-04.

It is submitted that the Hon'ble Delhi High Court in the case of Vodafone South Ltd. v. CIT ITA No. 334/2014 (PB 85 to 98), have also examined this issue and held at Para 20 PB 95-96, with regard to deduction u/s 57(iii) of the Act and summarized their view briefly stated as under:

“(i) For the purpose of deduction in terms of section 57(iii), the test is not whether the transaction for which expenditure was laid out was a prudent one which resulted in ultimate gain to the assessee but whether it was properly entered into as a part of assessee's legitimate commercial undertaking, in order indirectly to facilitate the carrying on of its business.
(ii) The expenditure may not have been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. In other words, if it is such expenditure as a prudent businessman would incur for the purpose of business.

(iii) Once it is established that there was nexus between the expenditure and the purpose of the business not necessarily the business of the assessee

itself, the revenue cannot put itself in their arm chair of the business and decide how much of the expenditure of the business is reasonable having regard to the circumstances of the case.

(iv) where in the pre-operative state the surplus funds borrowed for the purpose of business are kept by an assessee in fixed deposits, the interest earned thereon would be income from other sources. The interest paid on the loan borrowed would not be permitted to be netted against such interest income in the pre-operative phase.”

It is submitted that assessee firm is not in the pre-operative phase but running its business for the last more than eight years, hence the condition stated at S.No.(iv) is not applicable on it and there was direct nexus between the expenditure incurred and the earnings made by the assessee for giving margin money after the drawing from the same bank account as explained above. Hence, the claim of the assessee for netting off against the income paid is required to be allowed as held in assessee's own case in Ay 2003-04. It is submitted that the assessing officer himself has allowed this claim in AY 2009-10 and 2010-11 copy of these orders are placed at pages 79 to 84.

It is therefore, humbly prayed that appeal of the assessee may kindly be allowed.

6. Relying on various decisions he submitted that when the assessee has proved the nexus of interest received and interest paid the netting off of such interest should be allowed. Further the AO in subsequent years has himself allowed the netting off of interest in A.Y.2009-10 and 2010-11. Therefore, there is no reason for deciding from his stand.

7. The Ld. DR on the other hand referring to the order of the Tribunal in assessee's own case for A.Y.2006-07 vide ITA No.3157/Del/2009 order dated 10.06.2011 submitted that the Tribunal has decided the issue against the assessee and in favour of the revenue. Further appeals for A.Y. 2002-03, 2004-05 and 2005-06 and 2007-08 have been set aside to the file of the AO by

the Tribunal vide order dated 26.08.2010. Therefore, he has no objection if the matter is restored to the file of the AO.

8. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also gone through the various decisions cited before us. We find the AO in absence of any response from the assessee repeated the original assessment order wherein the interest earned on FD amounting to Rs.38,39,642/- was treated as “income from other sources” and thereby the benefit of exemption u/s.10A and the benefit of netting was not allowed. We find the Ld. CIT(A) upheld the action of the AO the reasons of which have already been reproduced in the preceding paragraph. From the various details furnished by the assessee in the paper book we find the order for A.Y.2002-03, 2004-05 and 2005-06 were set aside to the file of the AO by the Tribunal. We further find the AO himself has allowed the benefit of netting off of interest and allowed the deduction u/s. 10A for A.Y.2009-10 and 2010-11, copies of which are placed at page 79 to 84 of the paper book. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to give one final opportunity to the assessee to substantiate that the FD’s are inextricably linked with the business of the assessee. The AO shall decide the issue afresh and as per law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the AO and not disregard the

statutory notices failing which the AO is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30.10.2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 30.10.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	14.10.2019
Date on which the typed draft is placed before the dictating Member	15.10.2019
Date on which the approved draft comes to the Sr.PS/PS	30.10.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	30.10.2019
Date on which the fair order comes back to the Sr. PS/ PS	30.10.2019
Date on which the final order is uploaded on the website of ITAT	30.10.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	