

आयकर अपीलिय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL-SURAT-BENCH-SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.441/AHD/2016

निर्धारण वर्ष/Assessment Year:2012-13

M/s. Neel Impex, Plot No. 152, 2nd Floor, Surat Special Economic Zone, Diamond Park, Sachin, Surat 394230 [PAN: AAHFN 0599 E]	Deputy Commissioner of Income-Tax, Circle - 1(2) Surat
अपीलार्थी Appellant	प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by	Shri Nitin Gheewala, CA
राजस्व की ओर से /Revenue by	Mrs. Anupama Singla, Sr.D.R.

सुनवाई की तारीख/ Date of hearing:	10.12.2019
उद्घोषणा की तारीख/Pronouncement on	12.12.2019

आदेश /O R D E R

PER O. P. MEENA, AM:

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-II, Surat (in short “the CIT (A)”) dated 08.12.2015 pertaining to Assessment Year 2012-13, which in turn has arisen from the assessment order passed under section 143 (3) dated 30.03.2015 of Income Tax Act, 1961 (in short ‘the Act’) by the Deputy Commissioner of Income-Tax, Circle-1(2) Surat (in short “the AO”).
2. The assessee has taken two grounds of appeal but in substance it is against confirmation of disallowance of Rs.18,83,194 made on account of notional disallowance of interest on debit balance on partners’ capital account.

3. Learned Counsel submitted that partnership deed does not authorized charge of interest on debit balance on partners' capital account. Without prejudice to above, even if interest is charged on debit balance, then same has to be allowed as deduction against interest charged from partners' capital. Then it would be revenue neutral. Further, even if interest on debit balance is to be charged it should be charged for intervening period of number of days on which there was debit balance and not on closing balance in partners' capital account. However, the AO has observed that there was no provision in partnership deed, which prohibited the charging of interest. Further, when the assessee is paying interest on capital to partners. Hence, disallowance of Rs. 18,83,194 was made.

4. Being dissatisfied, the assessee preferred an appeal before the CIT (A). However, Ld. CIT (A) held the appellant has been not able to prove the nexus between the funds withdrawn by the partners and its business expediency during the course of assessment proceedings as well as during the course of appellate proceedings. Hence, disallowance are rightly made.

5. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that partner's deed does not prove for charging of interest on debit balance in capital account. Further, the income of the assessee is exempt under section 10AA of the Act. Hence, if interest were charged then it would increase eligible profit

for deduction under section 10AA. Hence, it would be revenue neutral. The learned counsel relied in the case of ITO v. Keval Construction [Tax Appeal No. 443 of 2012 dated 10.12.2012 - Gujarat High Court]

6. We have heard the rival submissions and perused the relevant material on record. We find that partnership deed does not provide for charging of interest on debit balance in capital account. Further, the income of the assessee is exempt under section 10AA of the Act. Hence, if interest is charged then it would increase eligible profit for deduction under section 10AA. Hence, it would be revenue neutral. The learned counsel relied in the case of ITO Ward 5(1) Baroda v. Keval Construction [Tax Appeal No. 443 of 2012 dated 10.12.2012 - Gujarat High Court] wherein in para 5 the Hon'ble Gujarat High Court observed as follow : 5. *Having heard counsel on both the question to day in this appeal, we find no error in the Tribunal `s ultimate conclusion. Even if certain expenditure which was incurred by the assessee for the purpose of developing housing projects was not allowable by virtue of section 40(a)(ia) of the Act, since the assessee had not deducted the tax at source as required under the law , it cannot be denied that such disallowance would ultimately go to increase the assessee`s` profit from the business developing housing project. Whatever be the ultimate profit of assessee as computed even after making disallowance under section 40(a)(ia) of the Act, would qualify for deduction as provided under the law.*" In view of this, following the ratio

of this decision, the disallowance of interest would go to increase the ultimate profit, which would qualify for deduction under section 10AA of the Act. Hence, following same, we allow the appeal of the assessee.

7. In the result, the appeal of the assessee stands allowed.
8. The order pronounced in the open Court on 12.12.2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

Surat: Dated: 12th December, 2019/opm
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/ Guard
file of ITAT.

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By order
Assistant Registrar, Surat