

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6171/Mum/2018
(Assessment Year :2012-13)**

Roshan Sethia 601, Madhukunj, Sayani Road Prabhadevi Mumbai-400 025	Vs.	ACIT, Circle-18(2) Now 21(3) 2 nd Floor, I.T.Office Piramal Chambers Lalbaug Mumbai-400 012
PAN/GIR No.AHBPS1231K		
Appellant)	..	Respondent)

Revenue by	Smt. Jothilakshmi Nayak, Sr.AR (DR)
Assessee by	None
Date of Hearing	03/12/2019
Date of Pronouncement	03/12/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-48, Mumbai, dated 31/08/2018 and it pertains to Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT (A)- 48 (hereinafter referred to as 'the CIT (A) erred in law and on facts in confirming assessment of total income at Rs. 85,22,380/- as against Rs. 84,56,539/- returned by the Appellant.*
2. *The Order dt 31/08/18 passed by Ld. CIT(A) as well as order dt. 26/03/15 u/s 143(3) passed by Ld.ACIT are bad In law as the same are not based on facts and based on assumptions or surmises or erroneous findings and has not considered submissions made by appellant.*
3. *The Ld. CIT (A) erred in law and on facts in confirming disallowance of legal fees of Rs, 4,500/- paid to CA M/s R. Lodha & Associates vide para 7 of Ld. CIT (A) order (paragraph 5.2 of Assessment order) totally*

ignoring various authorities relied upon by the Appellant vide para 2 of Statement of Facts.

4.1 The Ld. CIT (A) erred in law and on facts in confirming disallowance of interest of Rs.61,343/- u/s 57 (iii) vide para 8.2 of Ld. CIT (A) order in spite of positive interest income of Rs. 14,96,197.20 offered to tax (paragraph 6.2 of Assessment order).

4.2 The Ld. CIT (A) erred in law and on facts in not following principle of Res-judicata i.e, consistency where identical facts and circumstances of the case Ld. CJT (A) has allowed interest paid u/s 57(iii) for A.Y. 2011-12, for A.Y. 2007-08 and for A.Y.2013-14 and Hon'ble ITAT allowed interest pa/d u/s 57(iii) for A.Y.2009-10 in Appellant own case.

5. The Ld. CIT (A) erred in law in not considering any authorities cited by the Appellant in support of his case.

3. The brief facts of the case are that the assessee is an individual, derives income from salary as director of a company, income from house property, income from other sources, income from business and income from capital gains. The assessee has failed his return of income for AY 2012-13 on 28/06/2012, declaring total income of Rs.84,56,539/-. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has claimed legal and professional fees expenditure of Rs.4,500/-. The Ld. AO further noted that the assessee has derived income from other sources being interest on loans advanced to M/s Sim Dia Pvt. Ltd, therefore, he called upon the assessee to furnish necessary evidences to justify payment of professional fees and details of interest income earned from loans and advances. In response, the assessee has filed details, in respect of legal fees of Rs.4,500/- and claimed that said amount has been paid to M/s. R.Lodha & Associates for filing income tax returns. Similarly, the assessee has filed details of loans and advances taken and loans and advances given to various parties and submitted that the difference amount of Rs. 5,11,910/- has been utilized in making investments in shares of closely held companies, which is capable of generating taxable income. The Ld. AO after considering relevant

submissions of the assessee and also by relied upon the decision of Hon'ble Rajasthan High Court in the case of Associated Stones Ltd. vs CIT reported in 2002 123 taxmann.co 643 disallowed legal fees of Rs.4,500/-, on the ground that legal fees paid for filing income tax return is in the nature of personal expenditure, which cannot be allowed as deduction. Similarly, the Ld. AO has estimated notional interest of 12% on loan taken amounting to Rs.5,11,910/-, on the ground that although, the assessee has paid interest of said loans, but diverted loans for non business purpose without charging interest.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his submissions made before the Ld. AO to argue that the Ld. AO was erred in disallowed legal fees of Rs. 4,500/- and interest disallowances of Rs.61,343/- u/s 57(iii) of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant submissions held that legal fees paid for filing income tax returns is personal expenditure, which cannot be allowed as deduction. Similarly, the Ld.CIT(A) further held that insofar as, interest disallowance, although assessee claims that it has invested balance amount in shares of closely held companies, which are capable of earning taxable income, but could not proved the explanation with necessary evidences and accordingly, confirmed additions made by the Ld.AO. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The first issue that came up for our consideration from ground No.3 of assessee appeal is disallowance of legal fees paid to M/s. R. Lodha & Associates, for consultation and filing income tax return.

The Ld. AO has disallowed said expenditure, on the ground that it is in the nature of personal expenses. It is claim of the assessee before the Ld.AO that legal fees paid to M/s. R. Lodha & Associates is not only filing income tax returns, but also for representation before the I.T. Authorities in scrutiny assessment proceedings.

6. Having considered arguments of the Ld. DR and also, materials available on record, we find that when, assessee is into the business, relevant professional charges paid in connection with preparation of financial statements and representation before the income tax authorities could be very well regarded as expenditure incurred in relation to said business activity, even though said professional services rendered by the consultant involves filing of income tax returns. Further, had it been a case of the Ld. AO that the assessee is not into business, but filing income tax returns for other incomes, then professional fees paid for filing income tax return cannot be allowed as deduction, because it is in the nature of personal expenses. But, when assessee is into business activity, then any professional charges paid in connection with preparation of financial statements and representation before the tax authorities in connection with scrutiny assessment proceedings is definitely incurred wholly and exclusively for the purpose of business. Therefore, we are of the considered view that the Ld. AO was erred in disallowed professional charges paid to M/s. R. Lodha & Associates and hence, we direct the AO to delete additions made towards legal fees.

7. The next issue that came up for our consideration from ground No. 4 of assessee appeal is additions towards proportionate interest

paid on loans for utilization funds to non business purpose. The Ld. AO has disallowed proportionate interest @12% on a sum of Rs. 5,11,910/-, on the ground that said amount has not been utilized for business purpose. It is the claim of the assessee before the Ld. AO is that said amount has been invested in shares of closely held companies, which is capable of generating taxable income. Therefore, interest cannot be disallowed.

8. Having heard arguments of the Ld. DR and perused the material available on record. we find that the Ld. AO has disallowed proportionate interest paid on loans, on the ground that the assessee has not utilized the funds to earn interest income, ignoring the fact that the assessee is also into the business of share trading and investments in shares, which is capable of earning taxable income. Further, unless otherwise the Ld. AO makes out a point that interest bearing funds has been utilized for non business purpose, then corresponding interest paid on loans cannot be disallowed merely for the reasons that said amount has not been used for earning interest income, more particularly, when assessee has utilized said funds in its business activity. Therefore, we are of the considered view that the Ld. AO was erred in making proportionate disallowances of interest on loans and hence, we direct the Ld.AO to delete additions made towards disallowances of interest.

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

Order pronounced in the open court on this : 03 /12/2019

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated :03/12/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai