

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD ÷SMCö BENCH

**Before: Shri Amarjit Singh, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 865/Ahd/2018  
Assessment Year 2013-14**

Ashok Bhurmal Kothari, 403/404, Florence, Opp. Ashram Road Post Office, Ashram Road, Ahmedabad-380009 PAN: ACFPK3374E (Appellant)	Vs	The ITO, Ward-3(1)(4), Ahmedabad (Respondent)
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**Revenue by: Shri N.K. Goyal, Sr. D.R.  
Assessee by: Shri Hardik Vora, A.R.**

Date of hearing : 21-11-2019  
Date of pronouncement : 20-01-2020

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2013-14, arises from order of the CIT(A)-9, Ahmedabad dated 08-06-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short öthe Actö.

2. The solitary ground of appeal of the assessee is against the decision of Id. CIT(A) in confirming the disallowance made by assessing officer out of interest expenses amounting to 12,16,223/- .

3. There was a delay in filing the instant appeal by the assessee by 205 days. In this regard, the assessee has submitted affidavit stating that he was suffering from hyper tension and depression and could not furnish filing of appeal in time and he has resumed his office w.e.f. May, 2018. He has also enclosed medical certificate from the doctor of Sanghvi Hospital, Ahmedabad citing the above circumstances. The assessee has requested for condoning the delay in filing this appeal. In the light of above facts and reason cited in the affidavit as briefly stated above, we are of the view that there appeared to be a reasonable cause for delay in filing the instant appeal, therefore, we condone the delay in filing the appeal.

4. The fact in brief is that return of income declaring income of Rs. 11,33,105/- was filed on 31<sup>st</sup> December, 2013. The case was subject to scrutiny assessment and notice u/s. 143(2) of the act was issued on 4<sup>th</sup> Sep, 2014. At the time of assessment, the assessing officer noticed that assessee has shown total interest receipt of Rs. 26,09,572/- against which assessee has claimed interest expenses of Rs. 22,98,658/-. The assessing officer observed that most of the funds on which the interest expenses claimed had no nexus with the deposit/investment from which the interest income was earned. The assessing officer stated that assessee has received interest income from following parties:-

<i>Sr. No.</i>	<i>Name of the party</i>	<i>Amount of interest shown as income</i>
1	Oscar Chemicals Pvt. Ltd.	10,153/-
2	Akshar Developers	60,793/-
3	Advance Organisers Pvt. Ltd.	14,47,527/-
4	Siddharth Kothari	6,54,610/-
5	Siddharth S. Kothari HUF	4,36,489/-
<i>Total</i>		26,09,572/-

The assessing officer has further stated that out of the above, the assessee has claimed interest expenses of Rs.22,98,658/- which includes interest expenses of Rs. 13,92,498/- claimed under the head of  $\text{As per interest account}$  by the Kunal Construction. It was stated that Kunal Construction was the proprietary concern of the assessee and assessee has taken unsecured loan of Rs. 1,91,91,641/- on which interest expenses of Rs. 13,92,498/- was claimed. The assessing officer has stated that unsecured loan has been used for making investment in shares of companies, advancing deposit and also to meet accumulated losses of the proprietary concern. The assessing officer has further stated that assessee has claimed deduction of interest expenses of Rs. 13,92,498/- under the head income from other sources and the assessee has not submitted any direct nexus that the aforesaid expenses was incurred to earn the interest income within the clause (iii) of section 57 of the act. The assessing officer has further stated that from the balance sheet of Kunal Construction, it is established that the entire interest expenses of Rs. 13,92,498/- claimed as interest account of Kunal Construction in the statement of total income cannot be allowed. He was of the view that application of fund to the extent of Rs. 1,79,41,896/- has no nexus with the

interest income earned by the assessee. Therefore after considering Rs. 30 lacs as interest free fund, the assessing officer has disallowed interest expenses @ 9% of Rs. 1,35,89,288/- to the amount of Rs. 12,16,223/- and added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed.

6. We have heard both the sides and perused the material on record. The assessee has shown interest receipt from the five parties as referred in this order. Out of the aforesaid interest receipt, the assessee has claimed interest expenditure of Rs. 22,98,658/-. The assessing officer was of the view that the interest expenses claimed by the assessee also includes interest expenses of Rs. 13,92,498/- pertained to the proprietary concern of the assessee namely Kunal Construction. Because of not establishing the direct nexus of the aforesaid interest expenses pertaining to the proprietary concern with the interest income shown by the assessee under the head income from other sources, the assessing officer has disallowed an interest expenditure of Rs. 12,16,223/- u/s. 57(iii) of the act. On perusal of the material on record, it is observed that the assessee and his proprietary concern both were assessed under the single PAN and for the administrative convenience, the assessee has bifurcated his accounts under the name of proprietary concern and under his individual name. On perusal of the balance sheet of the proprietary concern of the assessee reported at page no. 6 of the assessment order, the assessee has shown unsecured loan of R. 1,91,91,641/- which was mostly invested in the current asset and loan and advances etc. In the P & L account of the proprietary concern M/s. Kunal Construction, the assessee has

debited the interest expenses to the P & L A/c as indirect expenses and shown net losses of Rs. 13,52,498/- from the proprietary concern. The assessee has submitted before the lower authorities that in case interest expenses of Rs. 13,92,498/- will not be allowed u/s. 57 of the act, the same will result in business loss to be allowed as set off against income from other sources for the same year. The assessing officer has rejected the contention of the assessee that no business activity was conducted by the assessee. In this regard, it is observed that assessing officer has not made specific finding for allowability of interest expenses according to provision of section 36(i)(iii), if the expenses was not allowable u/s. 57(iii) of the act. Section 36(i)(iii) of the act provides for deduction of the amount of interest paid in respect of capital borrowed for the purpose of business or profession while computing the profit, gain and w.e.f. 01-04-2004 a new proviso to section 36(i)(iii) has been added so as to provide that no deduction shall be allowed in respect of any interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession. After perusal of the material on record, it is observed that neither the assessing officer has given specific finding that whether the interest expenses pertaining to the proprietary concern of the assessee was for period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such an asset was first put to use neither the assessee has demonstrated before us with any material that the interest expenditure were allowable as per the provision of section 36(i)(iii) of the act. Therefore, we are of the view that this issue has to be decided on merit and cannot be rejected on assumption basis, therefore, to that extent, the matter is remitted

to the assessing officer for examination of the assessee's claim for deduction afresh in the light of section 36(i)(iii) of the act.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 20-01-2020

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 20/01/2020**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपील अ० अधकरण,  
अहमदाबाद