

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE SMC BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.752/Ind/2019**  
**Assessment Year: 2009-10**

Smt. Abhadevi Agrawal 82, Chowk Bazar, Burhanpur Burhanpur (Appellant)	<u>बनाम/</u> Vs.	ACIT Khandwa (Revenue )
P.A. No.ADAPA0122A		
Appellant by	Shri S.N. Agrawal & Pankaj Mogra, ARs	
Respondent by	Shri R.P. Mourya, Sr. DR	
<b>Date of Hearing:</b>	<b>04.03.2020</b>	
<b>Date of Pronouncement:</b>	<b>06.03.2020</b>	

**आदेश / O R D E R**

This appeal by the assessee is directed against order of the CIT(A)-II, Indore dated 07.01.2019 pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

*“That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in maintaining the addition of Rs.553024/- made by the Ld.AO out of interest Expenses in the set aside proceedings without properly appreciating the facts of the case and submissions made before him. The addition so*

*made in wrong and uncalled for. The same requires to be deleted.*

*2. The assessee reserve its right to add alter and modify the ground of appeal”*

2. The only effective ground is against sustaining the addition of Rs.5,53,024/- made by the assessing officer out of interest expenses. This is second round of litigation, in the earlier round the matter travelled up to the stage of this Tribunal and the Tribunal was pleased to restore the issue to the file of assessing officer for deciding the same afresh after considering submissions of the assessee. However, the addition which was originally made on the basis that the assessee has filed only a written explanation but has not provided the evidences proving nexus between the expenditure incurred and the interest free fund available.

4. Aggrieved against this, the assessee preferred an appeal before Ld. CIT(A), who after considering

submissions sustained the addition. Now, the assessee is in further appeal before the Tribunal.

5. Ld. counsel for the assessee reiterated submission as made in the written submission. The submissions of the assessee are reproduced as under:

**The Brief Facts of Appeal as filed by the assessee are as under:-**

<b>S.No.</b>	<b>Particulars</b>	<b>Relevant Date /Amount</b>
<b>01.</b>	<i>Income Tax Return for the Asst. Year 2009-10 was filed by the Assessee on 29.09.2009 declaring Total income at</i>	<b>29.09.2010</b> <b>Rs. 35,45,190/-</b>
<b>02.</b>	<i>Assessment was framed by the Assessing Officer u/s 143(3)/254 on 22.12.2017 assessing Total Income at</i>	<b>22.12.2017</b> <b>Income Assessed</b> <b>Rs. 43,07,620/-</b>
<b>03.</b>	<i>The Assessee has preferred an appeal before the Ld. CIT(A) disputing the entire additions made by the A.O. in the order passed u/s 143(3) and appellate order was passed on</i>	<b>07.01.2019</b>

A] *That Assessee is an individual engaged in the business of Ginning and Pressing of Cotton, Trading of F.P. Cotton Bales, Cotton Seed and Cotton Seed Oil. That the assessee filed her Income Tax return for the A.Y. 2009-10 on 29.09.2009 declaring total income at Rs.35,45,190/-. Copy of the Income Tax return and Audited Balance Sheet of Assessee for the A.Y. 2009-10 is enclosed for your kind reference.*

B] *That while passing the original assessment order u/s 143(3) dt 21.12.2011 the Ld. A.O. has added following items to the income of the assessee:-*

<b>S.NO.</b>	<b>PARTICULARS</b>	<b>AMOUNT</b>
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01.	<i>Addition of Interest Charged on Interest Free Loans</i>	5,53,024
02.	<i>Disallowance out of Depreciation</i>	2,09,409
	<i>Total</i>	7,62,433

C] *That against the said additions made by the A.O. in the original Assessment order , the assessee had preferred an appeal before the Ld. CIT (A). The Ld. CIT(A) vide his order dt 20.09.2013 has dismissed the appeal as filed by the assessee maintained the entire amount of addition of Rs. 7,62,433 as made by the Ld. A.O.*

D]. *The Assessee had preferred an appeal before the Hon'ble ITAT against the said order passed by the Ld. CIT (A). That Hon'ble ITAT vide his order dt. 10.02.2016 has set aside the issue regarding disallowance of Interest paid of Rs. 5,53,024/- to the file of A.O. and has upheld the issue regarding disallowance of Depreciation of Rs 2,09,409/-. The direction as given by the Hon'ble ITAT in Para 7 on inner Page No 5 is reproduced here under:-*

E]. *That in pursuance to the directions of the Hon'ble ITAT, the Ld. A.O. has passed an order u/s 143(3)/254 dt. 22.12.2017 wherein he has maintained the disallowance of Interest paid of Rs. 5,53,024/- even when the assessee has sufficient amount of interest free funds towards purchase of Plant & Machinery. The Assessee has preferred an appeal before the Ld. CIT (A) against the said order passed by the Ld.A.O. u/s 143(3)/254. The Ld. CIT (A) vide his order dt. 07.01.2019 has dismissed the appeal filed by the assessee against the said order passed u/s 143(3)/254 dt. 22.12.2017 and maintained the disallowance as made by A.O. out of Interest paid of Rs. 5,53,024/-.*

F]. *The present appeal is filed by the assessee against the said order passed by the Ld. CIT(A) Maintaining the said disallowance as made by the A.O. out of Interest paid of Rs. 5,53,024/- vide order u/s 143(3)/254 of the Income Tax Act.*

**01]. GROUND No. 1**

1.1] *The assessee in this ground of appeal has challenged the disallowance of Interest of Rs 5,53,024/- out of Total Interest payment.*

- 1.2] That in the said ground of appeal the assessee has challenged the disallowance of interest of Rs.5,53,024/- on the value of Investment in Fixed Assets namely Oil Mill Machinery of Rs. 34,35,045/- and Oil Mill Building of Rs. 20,95,190/- totaling to Rs. 55,30,235/- made @ 10 % of Rs. 5,53,024/- out of Total Interest paid.
- 1.3] The assessing officer while passing the assessment order observed that the assessee has taken Secured and Unsecured Loan which have increased by more than 2.89 Crores and Rs. 2.75 Crores respectively from immediately preceding year and on which it has paid Interest thereon and the assessee has made Investment in Fixed Assets namely Oil Mill Machinery of Rs. 34,35,045/- and Oil Mill Building of Rs. 20,95,190/- totaling to Rs. 55,30,235/- during the year. The Assessee has submitted during the Assessment Proceedings that Funds which were invested in Fixed Assets were out of funds available in the capital Account however the same was not accepted by the A.O. and therefore he has calculated the notional interest @ 10 % on the same and disallowed an amount of Rs 5,53,024/- out of Interest paid.
- 1.4] That on perusal of the Balance sheet of proprietorship concern of the assessee M/s Narendra Cot-fibre Industries, your honour will find that the assessee has interest free funds in form of Capital and current liabilities to the tune of Rs 10,01,40,186/- and Rs. 13,86,25,960/- totaling to Rs.23,87,66,146/-.

S. No.	Particulars	Amount [Rs]
1	Capital	10,01,40,186
2	Current Liabilities	13,86,25,960
	<b>Total</b>	<b>23,87,66,146</b>

- 1.5.1] The loan as taken by the assessee in form of secured and unsecured is as under:

S. No.	Particulars	Amount [Rs]
1	Secured loan – Cash credit loan	14,31,17,185
2	Unsecured loan	6,90,40,485
		<b>21,21,57,670</b>

- 1.5.2] The loan as taken by the assessee utilized for the purpose of her business, detail of the same is as under:-

<b>S. No</b>	<b>Nature of</b>	<b>Amount [Rs]</b>
1	Inventory	15,75,13,127
2	Sundry Debtors	21,27,92,898
3	Cash and Bank	98,08,894
4	Loans & Advances Assets	5,60,78,387
	<b>Total</b>	<b>43,61,93,306</b>

1.6] That on perusal of the above, your honour will find that entire amount of loan of Rs. 21,21,57,670/- was utilized for the purpose of business of the assessee. Hence, the assessing officer was not justified in disallowing an amount of Rs 5,53,024/- out of Interest paid.

1.7.1] That when the assessee has justified the proper utilization of interest bearing funds and the department has failed to prove the contrary. In that case, no disallowance can be made U/s 36(1)(iii) of the Income Tax Act. For this preposition we rely on the following direct decisions:-

<b>S. No.</b>	<b>Name of Decision</b>	<b>Citation</b>
01.	Ram Kishan Oil Mills V/s CIT	56 ITR 186 (MP)
02.	Birla Gwalior P limited V/s CIT	44 ITR 847 (MP)
03.	D & H Secheron Electrodes Limited	142 ITR 529 (MP)
04.	Regal Theatre V/s CIT	225 ITR 205 ( Delhi)
05.	Sarvodaya Kela Group V/s ITO	25 ITC 409 (Indore Bench)

1.7.2] That **Hon'ble Bombay High Court in the case of CIT vs Reliance Utilities & Power Limited as reported in 313 ITR 340** has discussed the similar issue in detail and held that:-

**10.** *If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd. (supra) had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances*

*the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcomber's case (supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal. Considering the above, in our opinion, there is no merit in this appeal which is accordingly dismissed.*

**1.7.3] That Mumbai ITAT in the case of Bunge Agribusiness (India) (P) Ltd. v. Dy. CIT, 64 DTR 201 held that [ refer from preamble ]:-**

*“ If there were funds available, both interest free and interest bearing, then a presumption would arise that interest free funds have been generated for investments and no disallowance of interest could be made under section 14A. ”*

**1.7.4] That Hon'ble Apex Court in one of its latest order dt. 05.11.2015 in the case Of Hero Cycles V/s CIT has held that :-**

*“Once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. It further held that no businessman can be compelled to maximize his profit and that the income tax authorities*

*must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman.”*

1.7.5] **Hon’ble ITAT Indore Bench vide its Order dt. 16.03.2017 in the case of Assessee herself for the A.Y. 2010-11 in ITA No. 58/IND/2015 has allowed the appeal on similar issue and deleted the entire amount of disallowance as made by the A.O. out of Interest Paid. The hon’ble ITAT in para 1.5 has observed and held as under:-**

*1.5. We have heard the rival submissions of both the parties and have perused the material available on record. We find that the ld. A.O. has failed to establish that interest free advances to above stated parties were out of interest bearing funds. It is the contention of the assessee that it had sufficient non-interest bearing funds to the tune of Rs.16.88 crores as per balance sheet as on 31.03.2010 as against interest bearing funds at Rs. 23.26 crores. Hence, interest-free funds of Rs. 16.88 crores have been utilised for giving interest-free advances of Rs. 5.75 crores to aforesaid above parties on which no interest was charged or less interest was charged. Thus interest-free advance were given out of interest-free funds available with the assessee during the year for which sufficient interest-free funds were available. Therefore, we are of the view that the Ld. A.O. has failed to establish that interest free advances to above stated four parties were out of interest bearing funds. We find that the AO has not been able to establish the nexus between interest bearing funds utilized for non business purpose as held in above quoted decision of Hon`ble Supreme Court. The ld. A. R. has placed reliance in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom)/ 178 Taxman 135 (Bom) wherein it was held that if there was funds available both, interest-free and overdraft and or/loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest free funds were sufficient to meet the investments. In the present case, the sufficient interest free funds were available at the disposal of the assessee. Therefore, presumption would go in favour of the assessee that the interest free funds were given out of interest free funds available at the disposal of the assessee as per balance sheet of the assessee. We further*

*rely on the decision of Hon`ble Punjab & Haryana High Court in the case of CIT vs. Hero Cycles Ltd. (2010) 323 ITR 518(P&H) wherein it was held that no disallowance out of interest payment is permissible if AO does not establish nexus between the expenditure incurred and income generated. Therefore, by applying the ratio as laid down by the Hon`ble Bombay High Court in in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 178 Taxman 135 (Bom) and the decision of CIT vs. Hero Cycles Ltd. (2010) 323 ITR 518 (P&H) and other judgements as cited above and decision in the case of M/s Narendra Industries ITA No. 644/IND/2015 dated 28.2.2017 of I.T.A.T., Indore, we are of the considered opinion that no disallowance of interest is warranted in this case. In view of these facts and circumstances, the disallowance of interest of Rs. 22,58,779/- made by the AO is deleted. Accordingly ground no. 1 of appeal is therefore, allowed.*

1.8] *That in the present case under appeal also the assessee has interest free funds in form of Own Capital and Current Liabilities which is in excess of investment made in the fixed assets by the assessee. Thus, the interest bearing funds have properly been utilized for the purpose of his business. Hence, the Assessing officer was not justified in disallowing an amount of Rs. 5,53,024/- made out of Interest paid. The disallowance so made by the Assessing officer and maintained by the Ld. CIT(A) is contrary to the facts of the case and settled position of law.*

1.9] *That in view of the above, it is submitted that disallowance of Rs. 5,53,024/- made by the assessing officer and maintained by the Ld. CIT(A) out of interest paid is not justified. Your honour are therefore requested to delete the same.*

6. Ld. D.R. opposed these submissions and supported the orders of the authorities below.

7. I have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The Ld. counsel for the assessee has demonstrated that the assessee had made investment in fixed assets namely Oil Mill Machinery of Rs. 34,35,045/- and Oil Mill Building of Rs. 20,95,190/- totaling to Rs. 55,30,235/- during the year. The Assessee has submitted during the Assessment Proceedings that funds which were invested in fixed assets were out of funds available in the capital account. It is also stated that the loan which was taken by the assessee was utilized for the purpose of business. In support of this contention the assessee has drawn my contention to the inventory, sundry debtors, cash and bank, loans and advances. Hence, it is stated that the entire amount of loan of Rs.21,21,57,670/- was utilized for the purpose of business of the assessee. This fact is not rebutted by the revenue, therefore,

assessing officer is hereby directed to delete the addition.

Grounds raised in this appeal are allowed.

8. The appeal filed by the assessee is allowed.

*Order was pronounced in the open court on 06.03.2020.*

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

Indore; दिनांक Dated : 06/03/2020

*Patel/PS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard  
file.

By order

**Assistant Registrar, Indore**