

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.2571/Kol/2019 Assessment Year:2013-14
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Devendra Kumar Gupta A-74, Lake Gardens, Kusum Villa, Kolkata- 700045 [PAN No.ADYPG 2099 J]	<u>बनाम</u> / V/s.	Income Tax Officer Ward- 29(1), Aayakar Dakshin Bhawa, 4 th Floor, 2, Gariahat Road (South), Kolkata-68
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sandeep Gupta, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Jayanta Khanra, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	05-02-2020
घोषणा की तारीख/Date of Pronouncement	05-06-2020

आदेश /O R D E R

This assessee's appeal for assessment year 2013-14, arises against the Commissioner of Income-tax (Appeals)-8, Kolkata's order dated 11.10.2019 passed in case No. CIT(A), Kol-8/10129/2014-15, involving proceedings u/s. 154 r.w.s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal seeks to reverse both the lower authorities' action disallowing interest claim of ₹8,56,245/- during the assessment as well affirmed the lower appellate proceedings. The CIT(A)'s detailed discussion to this effect reads as under:-

"3. Observation and Decision:

*Ground of appeal no. 1: In this assessee, in the intimation u/s. 143(1) of the Income Tax Act, 1961 loss of Rs.8,50,325/- under the head “**income from other sources**” was not allowed.*

*During the course of appeal proceedings, the appellant stated that the loss had accrued mainly on account of payment of interest of Rs.8,04,000/- in respect of unsecured loans taken from various family members of the appellant. The appellant is having a business under the name and style of M/s Dev pack, which is self-owned by him. However, the loans taken against which the interest of Rs.8,04,000/- was paid was reflected in the personal balance sheet of the appellant and was not reflected in the balance sheet and profit and loss account of the business concern named as M/s Dev pack. Hence, the loans so taken have been shown by the appellant himself in his personal capacity and are not reflected in the books of account of M/s Dev pack and Hence the interest thereon have not been shown as an expense while calculating the income from business and profession. This interest on loans, as have been taken in the personal capacity, have been thus set off against incomes earned under the head “**income from other sources**”. While computing the income from other sources, it can lead to income only and there cannot be a net loss while calculating income from other sources. In view of this, the net loss shown by the appellant under the head “**income from other sources**” cannot be set off against other incomes earned by the appellant. Hence, the plea of the appellant that the loss arising under the head “**Income from Other Sources**” be allowed to be set off from the other sources of income is not tenable and the plea of the appellant cannot be accepted. In view of this, the appeal is **not allowed**.”*

3. The assessee himself alongwith his son is present in court. His only case during the course of hearing is that both the learned lower authorities ought to have allowed his interest claim since it pertains to capital borrowed for the purpose of deriving business income which stands accepted and assessed by the Assessing Officer. The Revenue’s case on the other hand is that this assessee has also declared income from other sources and since he could not prove nexus of the impugned expenditure with business income, the interest in issue has rightly been declined in both the lower proceedings. The assessee and his son have undertaken to place on record the necessary details in consequential proceedings at their own risk and responsibility. I deem it appropriate in this backdrop of pleadings that assessee deserves one more inning before the

Assessing Officer to prove that the impugned interest claim has direct nexus with his income assessed under the head “**business**”. I order accordingly. The Assessing Officer is directed to re-examine the entire issue afresh as per law within three effective opportunities of hearing.

4. Before parting, it is noted that the order is being pronounced after the ninety (90) days’ of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown day need to be excluded. For coming to such a conclusion, I rely upon the decision of the co-ordinate bench of Mumbai tribunal in the case of *DCIT vs. JSW Ltd.* in ITA No.6264/Mum/2018 & 6103/Mum/2018 decided on 14.05.2020 assessment year 2013-14.

5. This assessee’s appeal is accepted for statistical purposes in above terms.

Order pronounced in open court on 05/06/2020

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,
*Dkp/Sr.PS

दिनांक:- 05/06/2020 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Devendra Kr. Gupta, A-74, Lake Gardens, Kusum Villa
Kolkata-45
2. प्रत्यर्थी/Respondent-ITO Wd-29(1), Aayakar Dakshin Bhawan, 4th Floor 2,
Gariahat Road (South), Kolkata-68
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।