

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 153/MUM/2019
Assessment Year: 2013-14**

Mrs. Nasreen Amin Rajwani, ACIT-23(2), Matru Mandir
Noor E Rehmat, 6th Floor 59, B.J. Vs. Tardeo Mumbai-400007.
Road, Bandra West,
Mumbai-400050.

PAN No. ACLPR6023K
Appellant

Respondent

Assessee by : Mr. M. H. Patel, AR
Revenue by : Mr. Dharm Veer Singh, DR

Date of Hearing : 14/01/2020
Date of Pronouncement : 20/03/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2013-14. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-48, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. The CIT(A) failed to allow the sum of Rs.5,64,991/- being interest paid on Overdraft account u/s 57(III) against the interest received on the Fixed Deposits.

2. The CIT(A) further erred in treating the said payment of interest on Overdraft account as personal in nature u/s 58(1)(a)(i) of the I.T. Act, 1961.

3. Briefly stated, the facts of the case are that the assessee filed the return of income for the assessment year (AY) 2013-14 on 05.08.2013 declaring total income at Rs.39,52,024/-. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee had declared a net interest income of Rs.6,49,781/-. As per the break-up of interest, the gross interest received by the assessee is Rs.15,19,772/- and after claiming interest on OD of Rs.8,69,991/-, the assessee had declared net interest of Rs.6,49,781/-. In response to a query raised by the AO to explain why interest on OD account should not be disallowed, the assessee filed a reply dated 27.08.2015 stating that :

"Our client's husband was in need of funds for purchase of shop. He had therefore, requested his wife to break all the fixed deposits and pay him as a loan. However, our client instead of breaking the said fixed deposits with bank, took an overdraft facility on the said fixed deposits, as she was losing interest on the said pre-matured breaking of fixed deposits. Thus our client has increased her income. Further, our client has given the loan without interest, however, her husband has paid her interest of Rs.3,05,000/-which she has offered for taxation.

Regarding our contention that excess interest paid to bank may not be disallowed. In the said matter, we have to state that our client, if she had broken the fixed deposits to give loan to her husband she would not have earned the interest on fixed deposits, which she has earned. Hence, she has shown more income from interest on fixed deposits. She has received interest from Fixed Deposits of Rs.11,55,203/- +Rs.3,05,000/- from husband. Thus she has received interest of Rs.14,60,203/- whereas she has paid interest on O/D of Rs.8,59,991/- only. Thus she has still shown interest income of Rs.7,23,971/-. Further, the transaction is between a husband and

wife, which should not be viewed from the business angle. Further, even after claiming interest paid to bank, she is still having positive income, and hence the said interest paid to bank cannot be disallowed.”

However, the AO was not convinced with the above explanation of the assessee on the ground that (i) as per the provisions of section 57(iii), while computing income chargeable under the head “Income from other sources”, any expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income shall only be allowed as deduction, (ii) the transaction between the assessee and Shri Amin Rajwani is a business transaction and the assessee, as on the date of entering into the transaction, was aware of the fact that she was not making or earning any income but actually suffering a loss by paying more interest than what she was earning, (iii) the contention of the assessee putting forth a hypothetical situation based on the probabilities of what would be the situation if the fixed deposits were broken pre-mature and taking that as the basis for making the claim is not legally tenable, (iv) the assessee has taken an O/D from the bank and paid interest of Rs.8,69,991/-, diverted the entire loan to her husband Shri Amin Rajwani and collected only Rs.3,05,000/- as interest from him, (v) the contention that the transaction being between the husband and wife and the assessee having positive income under the head “Income from other sources” does not take away the fact that the assessee had borrowed funds at a higher rate of interest and diverted it to her husband for a lower rate of interest and is claiming the higher interest as deduction.

With the above observations, the AO restricted the claim of expenditure by the assessee of Rs.8,69,991/- to Rs.3,05,000/- being the interest earned and thus disallowed the balance amount of Rs.5,64,991/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 16.11.2018, the Ld. CIT(A) dismissed the appeal filed by the assessee on the reason that the AO has taken a very reasonable approach and disallowance of interest has been restricted to Rs.5,64,991/- only, out of the total interest paid on overdraft of Rs.8,69,991/- by allowing the benefit of interest received. Further, the Ld. CIT(A) held that the provisions of section 58 are clearly attracted in his case because this being a personal expenditure by the assessee, the payment of interest on FD has to be restricted to Rs.3,05,000/- for computation of interest under the head "Income from other sources".

5. Before us, the Ld. counsel for the assessee submits that during the year the appellant had shown total income from other sources amounting to Rs.15,19,772/- and claimed interest expenses of Rs.8,69,991/- on overdraft. Further, it is stated that the assessee was having fixed deposits with Development Co-operative Bank. The husband of the assessee was in need of funds for purchase of shop and he therefore, requested his wife to break the fixed deposit and pay him the money as loan. However, the assessee in order to safeguard her investment took overdraft from the said Development Co-operative Bank against the said fixed deposit and advanced the money to her husband. Further, it is stated that the appellant received interest on her fixed deposits amounting to Rs.11,55,203/- plus interest of Rs.3,05,000/- from her husband and paid interest on overdraft amounting to Rs.8,69,991/-. It is

argued that what section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income and here the expenditure made by the appellant is to earn the interest on the fixed deposit and therefore it is an allowable expenditure u/s 57(iii) of the Act

In support of his contentions, the Ld. counsel relies on the decision in *Rajkumari Agarwal v. DCIT Circle 2 Agra* [ITA No. 176/Agra/2013-ITAT Agra], *Sasson J. David & Co. Pvt. Ltd. v. CIT Bombay* 1979 [AIR 1441 Civil Appeal No. 2501 of 1972], *CIT West Bengal III v. Rajendra Prasad Moody* 1979 – AIR 373, *Roshan Sethia v. ACIT Ward 18(2), Mumbai* [ITA No. 5860/M/2012].

On the basis of the above facts and case laws, the Ld. counsel submits that the appeal filed against the order of the Ld. CIT(A) be allowed.

6. On the other hand, the Ld. Departmental Representative (DR) explains that the assessee had taken an O/D from the bank and paid interest of Rs.8,69,991/- ; diverted the entire loan to her husband and collected only Rs.3,05,000/- as interest from him. Referring to section 57(iii), the Ld. DR explains that the order passed by the CIT(A) be affirmed.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

As mentioned earlier, the assessee was having fixed deposits with Development Co-operative Bank. It is the contention of the assessee that her husband was in need of funds for purchase of shop and therefore, requested his wife to break the fixed deposit and pay him money as loan ; however,

the assessee, in order to safeguard her investment took overdraft from the said Development Co-operative Bank against the said fixed deposit and advanced the money to her husband.

At this juncture, we discuss the case laws relied on by the Ld. counsel. In the case of *Rajkumari Agarwal* (supra), the assessee had made a fixed deposit of Rs.1,00,00,000/- with ICICI Bank and earned interest of Rs.11,77,574/- on these deposits. However, while computing the income from other sources, the assessee claimed a deduction of Rs.4,36,705/- on account of interest paid on loan of Rs.75,00,000/- taken, on security of deposits. When asked to justify these deductions, the assessee submitted that the assessee needed the funds, as she had to give money to her son and with a view to avoid pre-mature encashment of the fixed deposits, for that purpose, which would have resulted in net loss to her, she took a loan against fixed deposits so as to keep a fixed deposit intact and earn the interest income thereon. It was contended that the interest of Rs.4,36,705/- thus paid on the borrowings from ICICI Bank against security of fixed deposit, was thus made for the purpose of earning FDR interest income of Rs.11,77,574/-. However, the AO rejected the claim of deduction for Rs.4,36,705/- on the ground that "since the expenditure of Rs.4,36,705/- being accrued interest on loan has not been laid out or expended wholly and exclusively for the purpose of making or earning income from FDRs, claim of the assessee is not correct and not admissible in view of the provisions of section 57(iii) of the Act. The Tribunal held that a borrowing against fixed deposit cannot be considered and isolation of a fixed deposit itself in as much as, going by the admitted facts of this case, the interest chargeable on the fixed deposit itself is linked to the interest accruing and

arising from the fixed deposit. Further, it stated that on these facts, in order to protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so incurred is wholly and exclusively to earn the fixed deposit interest income. The Tribunal thus concluded that the expenditure so incurred is an expenditure incurred wholly and exclusively for earnings from interest on fixed deposits and the interest on borrowings against the fixed deposits could be said to protect the interest income from fixed deposit interest and thus, incurred wholly and exclusively for the purposes of earning such income.

In the instant appeal, as mentioned earlier the assessee and her husband are distinct taxable entities. It is the contentions of the assessee that her husband was in need of funds for purchase of shop and therefore requested his wife to break the fixed deposit and pay him the money as loan. However, the appellant, in order to safeguard her investment took overdraft from the said Development Co-operative Bank against the said fixed deposit and advanced the money to her husband. Thus in the instant appeal, it is not a case that in order to protect the interest earnings from the fixed deposits and to meet her financial needs, the assessee had raised a loan against the fixed deposits so as to keep the source of earning intact and therefore, the expenditure so incurred is wholly and exclusively to earn the fixed deposit interest income. To reiterate, in the instant appeal, it is not a case that the assessee indeed required that money, so raised by borrowing against the fixed deposits, for her personal purposes. Therefore, the instant appeal is

distinguishable from the decision in *Rajkumari Agarwal* (supra) relied on by the Ld. counsel.

In *Sasson J. David & Co. Pvt. Ltd.* (supra), the issue was allowability of deduction u/s 10(2)(xv) of the Income Tax Act, 1922. In the instant case, the dispute relates to the applicability of section 57(iii) of the Income Tax Act, 1961.

In *Rajendra Prasad Moody* (supra), it is held that :

“(1) The plain and natural construction of the language of Sec. 57(iii) of the Income Tax Act irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. What Sec. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of Sec. 57(iii) and that purpose must be making or earning of income. Sec. 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of Sec. 57(iii) to suggest that the purpose for which expenditure is made should fructify into any benefit.”

In the instant case, as mentioned earlier the assessee had received interest on her fixed deposits amounting to Rs.11,55,203/- along with interest of Rs.3,05,000/- from her husband and paid interest on overdraft amounting to Rs.8,69,991/-. Here it is not a case that ‘the purpose for which expenditure is made should fructify into any benefit’. Therefore, the present appeal is distinguishable from the decision in *Rajendra Prasad Moody* (supra) relied on by the Ld. counsel.

In *Roshan Sethia* (supra), the AO observed that the assessee had disclosed interest income of Rs.23,64,399/- under the head “Income from other sources”, whereas the assessee had debited the interest paid to various parties amounting to Rs.43,88,240/- and clubbing interest income of Rs.41,23,008/-. The Tribunal, observing that the authorities below have ignored the potential income and the purpose of expenditure laid out for earning the potential income on the investment held that the interest expenditure on the borrowed amount used for the purpose of the investment in the shares is an allowable deduction u/s 57(iii) of the Act.

As mentioned earlier, in the instant case the assessee had received interest on her fixed deposits amounting to Rs.11,55,203/- along with interest of Rs.3,05,000/- from her husband and paid interest on overdraft amounting to Rs.8,69,991/-. Here the issue of ‘potential income and the purpose of expenditure laid out for earning the potential income on the investment’ is not there. Therefore, the present appeal is distinguishable from the decision in *Roshan Sethia* (supra) relied on by the Ld. counsel.

7.1 The dispute here falls in a narrow compass. The assessee received interest on her fixed deposits amounting to Rs.11,55,203/- and also interest of Rs.3,05,000/-, from her husband and paid interest on overdraft amounting to Rs.8,69,991/-. The AO has added a sum of Rs.5,64,991/- (Rs.8,69,991/- minus Rs.3,05,000/-) to the total income of the assessee on the ground that the said interest was not made by the assessee to earn interest of the fixed deposits.

At this moment, we refer to section 57(iii) below :

“57. The income chargeable under the head “Income from other sources” shall be computed after making the following deductions, namely : -

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income”

Thus section 57(iii) provides for deduction only of expenditure incurred wholly and exclusively for the purpose of making or earning such income. In order that an expenditure may be admissible u/s 57(iii), it is necessary that the primary motive of incurring it is directly to earn income falling under the head “income from other sources” and u/s 57(iii), deduction will not allowed if the expenditure is not incurred for the purpose of earning income falling under the head income from other sources.

Let us give an illustration here. The query is “If an assessee earns interest on FDR with a bank and also pays interest to the bank on loan taken against the FDR, can he reduce the interest paid from the interest income?” In *CIT v. Dr V. Gopinathan* (2001) 248 ITR 449 (SC), the Hon’ble Supreme Court has held that interest received by the assessee from the bank on a fixed deposit is income in his hands and there could be no deduction therefrom unless there is a law permitting such deduction. The interest on a loan taken by the assessee on the contrary on the security of the fixed deposit did not go to reduce the income by way of interest on the fixed deposit as there was no provision for deduction of such interest on the loan.

As mentioned earlier, assessee and her husband are distinct taxable entities. The return of income is filed separately. It is not a case of clubbing of income. The charge of income tax is on every 'person'. Thus the definition of the expression 'person' occurring in section 2(31) is a very crucial definition because it is with reference to the categories of entities specified in section 2(31) that the liability to tax under the Income Tax Act is determined. The assessee herein has received interest on her fixed deposits amounting to Rs.11,55,203/- and interest of Rs.3,05,000/- from her husband. The assessee had paid interest on overdraft amounting to Rs.8,69,991/-. In the instant case, the expenditure has not been laid out or expended wholly and exclusively for the purpose of making or earning the income. Here it is in the nature of personal expenses of the assessee. In view of the specific provisions of section 57(iii), we are of the considered view that the AO has rightly disallowed Rs.5,64,991/- (Rs.8,69,991/- minus Rs.3,05,000/-) to the total income of the assessee.

In view of the above facts and position of law, we affirm the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 20/03/2020

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 20/03/2020
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai