



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

ITA no.6112/Mum./2018  
(Assessment Year : 2013-14)

ITA no.6113/Mum./2018  
(Assessment Year : 2014-15)

Shri Pinakin Laxmichand Shah  
212, Shreeji Chambers  
Opera House, Mumbai 400 004  
PAN – AACPS7747Q

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-19(2), Mumbai

..... Respondent

Assessee by : Shri S.C. Tiwari a/w  
Ms. Rutuja Pawar  
Revenue by : Shri Kumar Padmapani Bora

Date of Hearing – 16.12.2020

Date of Order – 13.03.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The captioned appeals by the same assessee are against two separate orders, both dated 20<sup>th</sup> August 2018, passed by the learned Commissioner of Income Tax (Appeals)-4, Mumbai, pertaining to assessment years 2013-14 and 2014-15.

2. The first common issue arising in both the appeals relates to disallowance of interest expenditure claimed against interest income earned.

3. Brief facts are, during the assessment proceedings the Assessing Officer noticed that in the computation of total income for the assessment year 2013-14, the assessee has offered interest income of ₹ 30,25,136, under the head "*Income From Other Sources*" and against such income, he has set-off interest expenditure amounting to ₹ 35,62,198, and the balance amount of ₹ 5,37,062, was claimed as loss under the head "*Income From Other Sources*" and set-off against income under other heads. Being of the view that the assessee can only claim interest expenditure to the extent of interest income earned, the Assessing Officer disallowed the excess interest expenditure of ₹ 5,37,062, which was claimed as loss by the assessee. Similarly, for the assessment year 2014-15, the Assessing Officer found that as against interest income of ₹ 42,34,648, the assessee has claimed interest expenditure of ₹ 53,23,969, thereby claiming the excess interest expenditure of ₹ 10,89,321, as loss under the head "*Income From Other Sources*" and set-off against other heads of the income. Adopting the same reasoning as in the assessment year 2013-14, the Assessing Officer disallowed the excess interest of ₹ 10,89,321. The assessee contested the aforesaid disallowances before the first appellate authority.

4. In the course of proceedings before the first appellate authority, it was submitted by the assessee that section 57(iii) of the Income Tax

Act, 1961 (for short "*the Act*") does not contemplate disallowance of interest expenditure over and above the interest income. Further, it was submitted by the assessee that the interest expenditure was incurred wholly and exclusively for the purpose of business as interest bearing funds were either given towards interest bearing loan or invested in firms wherein the assessee is a partner. To support his claim, the assessee relied upon certain judicial precedents. After considering the submissions of the assessee, learned Commissioner (Appeals), however, did not find them acceptable. He observed, the assessee himself has claimed both the interest income as well as interest expenditure under the head "*Income From Other Sources*" and interest expenditure has been claimed as per section 57(iii) of the Act. Therefore, he held that assessee's claim that the interest expenditure should be allowed under section 36 of the Act cannot be accepted. In that context, he also rejected assessee's reliance upon the decision of the Hon'ble Jurisdictional High Court in CIT v/s Reliance Utility and Power Ltd., [2009] 313 ITR 340 (Bom.). Accordingly, he upheld the disallowance made by the Assessing Officer on the reasoning that the loss claimed under the head "*Income From Other Sources*" is nothing but pre-meditated loss claimed by the assessee to reduce his tax burden.

5. The learned Authorised Representative submitted, the entire borrowed fund on which the assessee has paid interest and claimed it as expenditure was utilized for the purpose of assessee's business. He submitted, in the computation of total income the assessee has wrongly shown interest income and interest expenditure under the head "*Income from Other Sources*" instead of "*Income from Business*". He submitted, the assessee had sufficient interest free fund available with him which is far more than the loan advanced. Therefore, no part of the interest expenditure can be disallowed. Further, he submitted, section 57(iii) of the Act also does not put any restriction on the quantum of interest expenditure as the only condition imposed therein is, the expenditure should not be capital in nature and it should have been laid out or expended wholly and exclusively for the purpose of earning interest income. He submitted, in assessee's case, the conditions of section 57(iii) of the Act stand satisfied. Therefore, the excess interest expenditure incurred by the assessee can be set-off against the other heads of income. Further, he submitted, similar claim made by the assessee in the assessment years 2011-12 and 2012-13, has been allowed by the Assessing Officer and the first appellate authority respectively. Further, in support of his contention, the learned Authorised Representative relied upon the following decisions:-

- i) *Kedarnath Jute Mfg. Co. Ltd. v/s CIT, [1971] 82 ITR 363 (SC);*
- ii) *Jute Corporation of India Ltd. v/s CIT, [1990] 53 Taxman 85 (SC);*
- iii) *CIT v/s Nirbheram Deluram, [1997] 91 Taxman 181 (SC);*
- iv) *National Thermal Power Co. Ltd. v/s CIT, [1998] 229 ITR 383 (SC);*
- v) *Woolcombers of India Ltd. v/s CIT, [1981] 7 Taxman 188 (Cal.);*
- vi) *East India Pharmaceutical Works Ltd. v/s CIT, [1997] 91 Taxman 185 (SC); and*
- vii) *CIT v/s Reliance Industries Ltd., SLP(C) no.37/2019, etc., dated 08.01.2019.*

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. Undisputedly, in the computation of total income accompanying the return of income filed for the impugned assessment years, the assessee has offered the interest income under the head "*Income from Other Sources*" against which the assessee has also claimed interest expenditure and the excess interest expenditure was claimed as loss and set-off against business income. This is the factual position in both the years under appeal. It is further noticed, while computing his income under the head "*Income from Business*", the assessee has separately claimed interest expenditure. Thus, from the

aforesaid facts, it is very much clear that the interest expenditure claimed under the head "*Income from Business*" and "*Income from Other Sources*" were on account of interest paid on loans availed for specific purpose of business and advancing loan for earning interest income. Therefore, assessee's contention that the interest expenditure claimed under the head "*Income from Other Sources*" should be allowed as business expenditure is not acceptable.

8. Having held so, the issue which now falls for consideration is, whether the excess interest expenditure claim as loss under the head "*Income from Other Sources*" can be set-off against income from other heads. For this purpose, one has to look into the provisions contained under section 71 of the Act. As per the said provision, the loss arising under one head, except loss from capital gain, can be set-off against other heads of income provided the assessee has no income under the head "*Capital Gain*". Therefore, the Assessing Officer is directed to factually verify this aspect and keeping in view the provisions of section 71 of the Act must decide the issue after providing reasonable opportunity of being heard to the assessee. Insofar as the decisions cited before us by the learned Authorised Representative, after examining them carefully, we are of the humble opinion that they do not apply to the facts of the present case. Therefore, they would be of no help to the assessee. The ground raised by the assessee is allowed for statistical purposes.

9. The next common issue for our consideration is disallowance of interest expenditure under section 14A of the Act.

10. Brief facts are, during the assessment proceedings, the Assessing Officer noticed that the assessee has earned exempt income by way of dividend as well as share income from a partnership firm. From the details available on record, he found that the assessee has borrowed interest bearing fund and has introduced such fund as capital in the partnership firm. The interest paid on such loan amounting to ₹ 25,88,744, in assessment year 2013-14 and ₹ 20,592, in assessment year 2014-15, has been set-off against other business income. After calling for necessary details, the Assessing Officer found that the assessee had availed loan from ICICI Bank and deposited in the Bank account of the partnership firm Dhanera Metal Supply Corporation. He found that the said loan amount was credited to assessee's capital account in the said firm. However, in the current year, the assessee neither received any income towards interest or remuneration from the said firm which is taxable at the hands of the assessee. Thus, being of the view that the entire interest expenditure is attributable towards earning the share income from the firm which is exempt, the Assessing Officer disallowed the interest expenditure of ₹ 25,84,744, under section 14A of the Act in the assessment year 2013-14. However, in assessment year 2014-15, applying the provisions of rule

8D, he disallowed an amount of ₹ 20,592, towards interest expenditure and an amount of ₹ 35,864 towards administrative expenditure, both aggregating to ₹ 56,456. The assessee contested the aforesaid disallowances before the first appellate authority.

11. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals), upheld the disallowances made by the Assessing Officer.

12. The learned Authorised Representative submitted, the assessee had sufficient interest free fund available with it, therefore, the entire interest expenditure cannot be attributed to the exempt income as there is no direct nexus between the borrowed funds and investment made for earning exempt income. The learned Authorised Representative submitted, in the course of assessment proceedings the assessee had furnished computation of disallowance under section 14A r/w rule 8D, which has not at all been examined by the Assessing Officer. Thus, he submitted, the disallowance under section 14A r/w rule 8D should be restricted to the amounts computed by the assessee.

13. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

14. We have considered rival submissions and perused the material on record. The first objection raised by the learned Authorised Representative is, since the assessee had sufficient surplus fund and there is no direct nexus between the interest bearing funds and the investments made for earning exempt income, the entire interest expenditure cannot be disallowed. On a perusal of the material on record, it is noticed that before the Departmental Authorities also the assessee had submitted that he had sufficient surplus funds, therefore, in the absence of any direct nexus between interest bearing fund and investment made in exempt income yielding asset, the entire interest expenditure cannot be disallowed. In our view, the aforesaid contention of the assessee requires examination and the assessee must be given opportunity to establish his claim with supporting material. Further, it has been brought to our notice by the learned Authorised Representative that in the course of assessment proceedings, the assessee had furnished computation of disallowance under section 14A r/w rule 8D for both the years. As it appears, the aforesaid computations furnished by the assessee have not at all been verified either by the Assessing Officer or by learned Commissioner (Appeals). Considering the above, we are inclined to restore the issue to the Assessing Officer for fresh adjudication after providing reasonable opportunity of hearing to the assessee. The Assessing

Officer is also directed to verify the acceptability of disallowance computed under section 14A r/w rule 8D by the assessee. These grounds are allowed for statistical purposes.

15. In the result, assessee's appeals are partly allowed for statistical purposes.

Order pronounced in the open Court on 13.03.2020

**Sd/  
S. RIFAUH RAHMAN  
ACCOUNTANT MEMBER**

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 13.03.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai