

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri C.N. Prasad (JM)

I.T.A. No. 706/Mum/2017 (Assessment Year 2012-13)

Shri Ashok M. Wadhwa 101-A, Maker Tower-A Cuffe Parade Mumbai-400 005. PAN : AAAPW2741E (Appellant)	Vs.	ACIT-3(1) Mumbai (Respondent)
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Assessee by	Shri Manish Malik
Department by	Shri Michael Jerald
Date of Hearing	23.01.2020
Date of Pronouncement	17.03.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 25.10.2016 and pertains to A.Y. 2012-13.

2. Grounds of appeal read as under :-

1. Learned AO/CIT (A) has erred in making addition on account of interest of Rs.50,99,512/- against the principle of equity and natural justice.
2. Learned AO/CIT(A) has erred in making disallowance of interest paid of Rs. 50,99,5127- by invoking the provision of sec 57 against the stated position of law.
3. Learned AO/CIT(A) has failed to appreciate that assessee had to pay interest as he could not get the money back in time & money borrowed was as the instance of assessee borrower.
4. Learned AO/CIT(A) has failed to appreciate that assessee has claimed interest only to extent of interest earned. Though actual interest expenditure is much higher.
5. Your appellant craves the leave to, add to, alter to or amend the grounds of appeal from time to time.

3. Brief facts of the case are that the assessee is an individual and it had shown income from salary, business and profession, capital gains and other sources. During the course of assessment proceedings, the assessing officer observed that the assessee had during the year earned dividend from the shares and mutual funds amounting to Rs. 34,80,749/- which was claimed as exempt u/s. 10(34) &(35), long-term capital gains amounting to Rs, 1,84,470/- exempt u/s. 10(38) and share of profit from firm amounting to Rs. 1,00,000/- claimed as exempt u/s. 10(2A) of the Income Tax Act. Therefore, during the course of hearing, the assessee was asked to furnish justification and working of the disallowances to be made u/s. 40A in accordance with Rule 8D. In response, the assessee by its letter dated 1/12/2014 furnished written submission which was considered by the Assessing Officer but found not acceptable. Therefore, the Assessing Officer concluded that the disallowance u/s. 14A was required to be computed in accordance with Rule 8D as this Rule takes into consideration the interest and overhead expenses attributable towards earning of exempted income. The Assessing Officer worked out the disallowance under section 14 A read with Rule 8D as under:

(i) The amount of expenditure directly relating to income which does not form part of the total income

Management fees	3, 26, 425	
Dematcharges	386	
Depository charges	1,328	
STT	1, 18, 697	
Service tax	21,987	
Other charges	24, 007	
Interest	1,62,37,010	1,67,29,840/-(A)

(ii) 0.5% of the average value of investments, the income from which does not form part of the total income:

opening value of investments	29,38,40,516
closing value of investments	<u>27,63,69,126</u>
average value of investments	<u>28,51,04,821</u>

0.5% of Rs. 28,51,04,821/-	14, 25,524/- (B)
Disallowance under section 14 A (A+B)	Rs. 1,81,55,364/-

Thus, the total disallowance under section 14A r.w. Rule 8D was Rs. 201,81,55,364/-. Since the assessee had already made an adhoc disallowance of Rs. 1,67,29,8407- on its own in the computation of total income, the total disallowance of Rs. 14,25,524/- was made under section 14A and added back to the total income of the assessee. From the computation of income, the Assessing Officer observed that the assessee had shown 'income from other sources' under section 56 on account of interest income of Rs. 50,99,512/-. The assessee had claimed deduction u/s. 57 on account of interest paid during the year. During the course of assessment proceedings, the assessee was asked to file specific details of the interest earned and interest expenses of the year under consideration and also to establish that such interest expenditure was allowable under section 57(iii) as expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. The assessee filed its submissions vide letter dated 19/1/2015. The submissions were considered by the Assessing Officer but not acceptable as from the details filed by the assessee, it was not ascertainable as to whether the interest paid for the funds were utilised to earn the interest income. Moreover, no documentary evidences was brought on record by the assessee to establish beyond doubt that this expenditure was made to earn interest income. The assessee also did not give any substantial evidence to co-relate between the interest paid and interest earned. Therefore, the Assessing Officer concluded that the deduction u/s. 57(3) of the Income Tax Act as claimed by the assessee of Rs. 50,99,512/- against the income from other sources was not allowed and interest income to be taxed as 'income from other sources' was to be taken at the 50,99,512/-. Thereafter, the Assessing Officer completed the assessment and passed order under section 143(3) of the Act dated 25/3/2015 assessing the total income at Rs. 4,35,70,108/-.

4. Against the above order assessee appealed before learned CIT(A).

5. Apropos addition u/s. 57 of the I.T. Act :-

Assessee submitted before learned CIT(A) that the assessee had given some advances which could not be recovered in time and therefore assessee had to borrow some money. Further it was submitted that deduction was claimed u/s. 57 only to the extent of interest earned. However, learned CIT(A) noted that the Assessing Officer has not accepted this on the ground that the assessee could not establish that interest paid was used to earn interest income and has disallowed the entire amount. Learned CIT(A) also noted that the assessee has relied upon the decision of Hon'ble Madras High Court in the case of CIT Vs. Dunkerly & Co. Pvt. Ltd. (243 ITR 646). However, learned CIT(A) found that the said decision was with reference to the company in liquidation and certain expenditure was made by the official liquidator. Hence, it was held that since the expenditure was to protect and preserve the source that yielded income, it had a nexus with interest income earned. Furthermore, learned CIT(A) held that the assessee has not been able to show that interest expenditure was incurred to protect and preserve source that yielded, the interest income i.e. loans and advances that earned him the interest. Learned CIT(A) further placed reliance upon the decision of Hon'ble Gujarat High Court in the case of Virmati Ramakrishna Vs. CIT (131 ITR 659) and decision of Hon'ble Supreme Court in the case of Eastern Investments Ltd. Vs. CIT (20 ITR 1) and other decisions regarding the proposition for deduction of expenditure u/s. 57(iii) of the Act. Accordingly learned CIT(A) concluded as under :-

“I find that the appellant has not been able to substantiate his claim that the interest paid, even to the extent of interest earned was wholly and exclusively for the purpose of earning interest income. Therefore, in the facts and circumstance of the case and applying the general principles as given in the above quoted decisions, the disallowance of Rs. 50,99,512/- is upheld. These grounds of appeal are dismissed.”

6. As regards the disallowance u/s. 14A amounting to Rs. 14,25,524/- learned CIT(A) decided the issue in favour of the assessee on the ground that the Assessing Officer has mechanically applied Rule 8D(2)(iii).

7. As against the above disallowance u/s. 57 of the Act the assessee appealed before us.

8. We have heard both the counsel and perused the records. Learned Counsel of the assessee submitted that the assessee has borrowed funds and incurred expenditure as it was not in a position to recover the sums advanced on which it was earning income. That subsequently assessee received interest on advances and hence, he submitted that the issue should be decided in favour of the assessee. Learned counsel submitted that the assessee has the relevant documents and if given an opportunity the same can be established duly.

9. Per contra, learned Departmental Representative relied upon the orders of the authorities below.

10. Upon careful consideration, we note that the assessee's counsel has prayed that assessee is able to earn interest on the sum advanced. He has pleaded that recovery of the loan could have led to loss of interest income. Moreover, the recovery itself had become difficult. Hence, the assessee's prayer that sum have been borrowed to protect the interest/income earning apparatus deserves due consideration. As the learned Counsel of the assessee has prayed that he has the necessary papers to bolster the ground. We deem it appropriate to remit the issue to the file of the Assessing Officer. The Assessing Officer shall examine the issue in light of our observation as above. Needless to add the assessee shall be given adequate opportunity of being heard.

11. In the result, the appeal stands allowed for statistical purposes.

Order has been pronounced in the Court on 17.3.2020.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/03/2020

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai