

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Ms. Sushma Chowla, Vice President**

**Dr. B. R. R. Kumar, Accountant Member**

**(E-Court Module)**

**ITA No. 9683/Del/2019 : Asstt. Year : 2016-17**

Sh. Anil Kumar (HUF), 4032, Chawri Bazar, Delhi-110006	Vs	Income Tax Officer, Ward-46(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAHA7048A</b>		

**Assessee by : Sh. K. Sampath, Adv.**

**Revenue by : Sh. Jagdish Singh Dahiya, Sr. DR**

<b>Date of Hearing: 15.07.2020</b>	<b>Date of Pronouncement: 17.07.2020</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-16, New Delhi dated 27.11.2019.

2. Following grounds have been raised by the assessee:

*"1. Ld. CIT (A)-16, Delhi is not justified in law and facts and circumstances of the case in confirming addition of Rs.1,59,37,109/- made by the AO.*

*2. Id. CIT (A)-16, Delhi is not justified in confirming interest income as business income hence expenditure incurred or interest paid is not allowable u/s 57(iii) of the Act.*

*3. Id. CIT (A) is not justified in law and facts and circumstances of the case in confirming that assessee has disclosed income in wrong head. The Assessing Officer is duty bound to assess the income in the*

*correct head and only real income is to be taxed if he considers that disclosure in wrong head of income.*

*4. Id. Assessing Officer has failed to appreciate the consistent system of assessee and accepted by department."*

**Facts of the case:**

3. Return of income in this case was filed on 19.11.2016 declaring "Nil" income. The case was selected for Limited Scrutiny for the reason "Whether the deduction against income from other sources has been correctly shown in the return of Income". Accordingly, notice u/s 143(2) was issued and the assessment u/s 143(3) was framed at an income of Rs. 1,59,37,110/- by disallowing the deduction claimed by the assessee under the head income from other sources. For better appreciation of facts, the relevant portion of the order of the Id. CIT (A) is reproduced hereunder:-

*"The brief facts of the case are that Return of income in this case was e-filed on 19.11.2016 declaring "Nil" income. The return was processed u/s 143(1) of the I.T. Act, 1961. Subsequently, this case was selected for Limited Scrutiny with the reason "Whether the deduction against income from other sources has been correctly shown in the return of income. Subsequently statutory notices were issued and served upon the assessed. On perusal of the computation of income and P&L. account tiled by the assessee, it was observed that the assessee has debited an amount of Rs. 95,85,469/- interest paid to M/s Aditya Biral and Rs 63,51,639/- as interest paid on loans aggregating to Rs. 159,37,109/- as interest expenditure. Against this the assessee has shown interest of Rs. 1,34,39,809/- under the head 'interest received. It was also observed that the assessee has claimed deduction of Ps. 1,59,37,109/ u/s 57 of the IT Act, 1961 on*

*account of interest paid against the interest income of Rs. 1,34,39,809/- and thus claimed loss of Rs. 24,97,300/- on account of interest paid. Further from the details filed by the assessee, it was also observed that the assessee has received interest income @ 12% on loan advanced and paid interest on loans @ 12-15 50% on loan taken In this regard the assessee was asked to furnish the details of the persons to whom interest was paid during the F.Y. 2015-16. After examining the submissions of the assessee, the AO recorded a finding that the assessee did not file any justification for the amount of interest paid as deduction nor produce any evidence regarding identity of the parties, genuineness of transaction and creditworthiness of parties who have advanced such loans to the assessee and to whom interest amount has been paid. The assessee has not explained the correct nature of such interest expenditure and has also failed to prove the nexus between such expenditure incurred & the income sought to be earned. Accordingly, the AO recorded a finding that the assessee has not fulfilled the condition laid down in section 57(iii) of the I.T Act, 1961 and hence disallowed the claim of Rs 1,59,37,109/- and added it back to the income of the assessee.*

*Without prejudice to the aforementioned finding, the AO also concluded that the assessee is engaged in the business of financing by taking loans and further granting or loans to earn interest income and hence treated the interest income as business income of the assessee. The AO further observed that without prejudice to disallowance of interest paid aggregating to Rs 1,59,37,109/- u/s 57(iii) of the I.T. Act, 1961, the same is also not allowable under section 40(a)(ia) of the I T Act, 1961 as no IDS has been deducted at source in accordance with the provisions of chapter XVII-B.*

*Before me, the AR of the appellant contended that the AO was wrong in rejecting the claim of deduction u/s 57(iii) of the Income Tax Act and treating the interest Income as business income, AR claimed*

*that the nexus between income earned and expenditure claimed was established. The AR further contended that even if the interest paid/interest received was i part of business activity, the interest paid should be allowed u/s 37(1) of the Income Tax Act.*

*The claim of the appellant was examined.*

*The undisputed fact is that the appellant has claimed deduction of Rs. 1,59,31,109/ u/s 57 of the I T Act, 1961 on account of interest paid against the interest income of Rs. 1,34,39,809/- and thus claimed loss of Rs 24,97,300/. The AO after examining the facts/evidences filed, recorded a finding that the appellant was unable to establish a nexus between income earned under the head 'Income from Other Sources' and expenditure laid out or expended wholly and exclusively for purpose of earning such income as per section 57(iii) of the Income Tax Act. The AR of the appellant, however, claimed that nexus is established and filed documents such as ledger account of DBS Bank and IDFC bank in appellant's books, bank account No 820210109581 of Ram Kishore & Sons "in DBS Bank and ledger accounts of Shailesn Kumar Kalwadia, Sharad Kalwadia and Sanjay Kumar Kaiwadia to whom loans had been advanced by the appellant. The AR claimed that loans were given to the aforementioned 3 persons, after receiving loan from Ram Kishore Nagar Mai marketing (P) Ltd of Rs. 20,00,000/-, Rs. 25,00,000/- and Rs. 20,00,000/ on 27.03.2015, 28.03.2015 and 30.03.2015 as reflected in the Ledger account of the company and this loan received from Ram Kishore Nagar mal Company was advanced to the them, Hence there was a clear-cut nexus between the loans received and loans taken and hence between the interest income earned and interest paid. A perusal of the accounts so produced was made and my observations in this regard are as under:*

- *Although the amounts of Rs 20,00,000/- Rs 25,00,000/- and Rs 20,00,000/ have been debited on 27.03.2015, 28.03.2015 and 30.03.2016 in the account of Ram Kishor Nagar Mal account,*

*the concomitant credit in the account of Anil Kumar (HUF) is not reflected.*

- *That the loans given out are sourced from loans taken as claimed by the appellant, is not established from any of the accounts filed by the appellant.*
- *A perusal of the ITR shows a list of parties from whom loans have been taken and to whom interest has been paid on account of loan taken. However, the list does not include the name of Ram Kishore Nagar Mal marketing (P) Ltd. In fact, the appellant has received interest from the said party which completely repudiates the claim of the appellant.*
- *The appellant has paid interest on loans to 11 parties and received interest from 7 parties. However, the appellant, neither during course of assessment proceedings nor during appellate proceedings was able to establish that interest paid of Rs 1,59,37,109/- was expended to earn interest income of Rs 1,34,39,809/-.*
- *A scanned copy of the parties from whom interest was received and to whom interest was paid is detailed as under to authenticate my two immediately preceding observations:*

*From a perusal of the above analysis, it is clear that the appellant neither during course of assessment proceedings nor during appellate proceeding has able to establish that interest paid of Rs 1,59,31,109/ was expended to earn interest income of Rs 1,34,39,809/-. In the absence of such a nexus having been established, I see no reason to interfere with the finding of the AO that the claim of deduction of Rs 159,31,109/- does not fall within the ambit of Section 56(iii) of the Income Tax Act.*

*Also, as the appellant had admitted before the AO that he was conducting the business of giving loans on interest, the AO rightly treated his interest income as business income. As to the AR's claim*

*that if the interest income is treated as business income, he may be allowed interest expenses u/s 37 of the Income Tax Act.*

*To examine the claim of the AR of the appellant I would like to refer to provisions of Section 37 of the Income Tax Act which mandates as under:*

*37. (1) "Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head, "Profits and Gains of Business or Profession"*

*Conditions for allowance under section 37 are clear*

- Such expenditure should not be covered under the specific section i.e. section 30 to 36.*
- Expenditure should not be of capital nature*
- The expenditure should be incurred during the previous year*
- The expenditure should not be of personal nature.*
- The expenditure should have been incurred wholly or exclusive for the purpose of the business or profession.*
- The business should be commenced*

*Here, it is pertinent to observe that the AO has given a clear and unequivocal finding that the assessee has been unable to establish that interest expended is for income earned. This finding has been upheld by me in the preceding paras also, the appellant, neither during assessment proceedings nor appellate proceedings has been able to establish that the interest expended of Rs 1.59 crore has been incurred wholly or exclusively for purpose of business. Here, it is pertinent to observe that onus with regard to any expense claimed under section 37 squarely lies upon the person claiming such an expense. So, it is also clear that the onus is upon the assessee to*

*substantiate claim of expenses with requisite evidence and also to establish that it was for business or on account of commercial expediency. This onus has not been discharged by the appellant company.*

*Here, reliance is being place on the principles enunciated by the Hon'ble ITAT New Delhi Dharmendra Kumar Vs ITO, ITA No 1121/Del/17, wherein the Hon'ble ITAT New Delhi held as under:*

*4.2.4 From the above, it is evident that before allowing a claim of expenditure made by the assessee, it is necessary to examine that appellant has discharged his onus to establish that the claim has been made considering the above proposition of the specific Section 37(1) of the Act. However from the facts of the present case and non-compliance of the statutory notices issued during assessment and appellate stage, it is not discernible whether the claim of expenses made in respect of above heads are fully allowable in view of above provisions of Section 37(1) of the Act. Therefore, the onus is on the appellant to substantiate that the expenditure has been laid out and expended wholly and exclusively for the purpose of business.*

*4.2.5 However, appellant fails to discharge his onus not only during the assessment stage but even at the appellate stage too, despite being given ample opportunities, as indicated above. In these circumstances, there is no occasion to deviate from the conclusion drawn by the AO that assessee has no concrete evidence with him to justify the claim of above expenses. In the absence of supporting evidences, bills & vouchers, books of accounts, it is fair and just on the part of the AO to consider various business exigencies and make an estimate for making disallowance cut of expenses claimed. Keeping in view the above factual matrix of the case, I am of the considered view that AO has rightly made an earnest attempt to make just and reasonable disallowance to the extent of 10% out of*

*total expenses claimed of Rs. 2,21,25,132/-. The same is upheld and ground of appeal taken by the appellant is dismissed.*

*A similar adjudication has been made by ITAT, Bangalore in the case of Kanhaiya Lal Dudheria vs CIT on 17 May, 2017 in ITA 782 and 1495, wherein the Tribunal held as under:*

*"But the onus lies on the assessee to prove that the expenditure was incurred for the purpose of business. Once the assessee discharges this onus, assessoo would be entitled to deduction u/s 37(1). In the present case, no factual condition was laid by the assessee to establish that this expenditure was Incurred for business purpose nor any attempt is discernible before the tower authorities Mere bald assertion that the expenditure was incurred for promoting business cannot be accepted without establishing the nexus between expenditure and business."*

*Here, before concluding, I would like to add that in normal circumstances, it is not the job of the revenue to step into the shoes of the assessee and to decide how he should run his business. But when the assessee starts claiming interest expenses for the funds which are not deployed in the business then it becomes the duty of the revenue to investigate the claim and make a disallowance of expenses which are bogus in as much as they have not been incurred for the purposes of business This is what the AO has done. I uphold the finding of the AO in this regard.*

*The claim of the appellant that the AO has violated consistency in not accepting the accounting treatment applied by the AO. Here, it is pertinent to appreciate that perpetuating an error does not become a quasi judicial authority and if on the basis of evidences on record, the AO ascertains the error in the claim of the appellant, he is empower to redress the error. Thus, the claim of the appellant has no locus standi and is rejected. Here I would like to draw strength*

*from the principle enunciated by the Apex Court, that there is no valour in perpetuating an error. Here, I would like to draw strength from the order of the Apex Court in the case of Distributors (Baroda) (P) Ltd. vs. UOI (1985) 155 ITR 120 (SC) wherein it was held that to perpetuate an error is no heroism, to rectify it is the compulsion of the judicial conscience.*

4. Thus, we find two issues arise out of the order of the Id. CIT(A).

(A) Whether the assessee is eligible to claim the expenditure incurred in earning of the interest income as per the provisions of Section 57 of the Act.

(B) Whether the assessee is eligible to claim deduction u/s 37 in case such interest income is to be treated under the head "income from the profits and gains of business or profession".

5. With regard to the issue whether the assessee is eligible to claim the expenditure incurred in earning of the interest income as per the provisions of Section 57 of the Act, we find that the assessee has earned interest of Rs.1,34,39,809/- from the following parties:

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount</i>
1.	<i>Universal Buildwell Pvt. Ltd.</i>	<i>6420000.00</i>
2.	<i>Ram Kishore Nagarmal Marketing Pvt. Ltd.</i>	<i>3941360.00</i>
3.	<i>C L International</i>	<i>397017.00</i>
4.	<i>Kabra Plastics Ltd.</i>	<i>1961432.00</i>
5.	<i>Sanjay Kumar Kalwadia</i>	<i>240000.00</i>
6.	<i>Shailesh Kumar Kalwadia</i>	<i>240000.00</i>
7.	<i>Sharad Kalwadia</i>	<i>240000.00</i>
	<i>Total</i>	<i>1,34,39,809.00</i>

6. The assessee has paid interest to the following parties:

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount</i>
1.	<i>Satish Pushpa Chander Goyal</i>	<i>120000.00</i>
2.	<i>Anjani Singhania HUF</i>	<i>94867.00</i>
3.	<i>Neena Singhania</i>	<i>45175.00</i>
4.	<i>Anil Bansal</i>	<i>3489777.00</i>
5.	<i>Anand Parkash Singhania</i>	<i>757340.00</i>
6.	<i>RKS Global Agencies Ltd.</i>	<i>4025891.00</i>
7.	<i>Abha Gupta</i>	<i>322900.00</i>
8.	<i>Ram Kishore Organics Pvt. Ltd.</i>	<i>522278.00</i>
9.	<i>Ram &amp; Ram Commercial</i>	<i>109000.00</i>
10.	<i>Aditya Birla Finance Ltd.</i>	<i>6351639.00</i>
11.	<i>Interest paid to Relance Capital Ltd.</i>	<i>96242.00</i>
	<i>Total</i>	<i>1,59,37,109.00</i>

7. But for the amount received on interest, the assessee would not be in a position to lend the amount on interest to earn interest income. Hence, netting of the interest income on the interest expenditure is a prerequisite for correct determination of taxable income. Keeping in view, the facts narrated above, the decision of the Id. CIT (A) that there is no nexus between the interest earned and the interest paid cannot be upheld. As a result, the assessee is allowed to claim the interest expenses.

8. Regarding the alternate decision of the Id. CIT (A) that the interest income constitutes the business income, even in those circumstances, the interest paid to earn such interest income is to be allowed as deduction u/s 37 of the Act.

9. Since, we hold in principle that the expenditure is allowable either way-: u/s 57, if the income is treated under the head "income from other sources" as per the provisions of Section 56 or u/s 37, if the income is treated under the head "profits and gains of business or profession" as per the

provisions of Section 28, at this juncture, we refrain from determining issue of the claim of preclusion or collateral estoppel under "which head" the income earned by the assessee is taxable.

10. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 17/07/2020.

Sd/-

**(Sushma Chowla)**  
**Vice President**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 17/07/2020**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**