

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI SHAMIM YAHYA, AM

आयकर अपील सं/ I.T.A. No.206/Mum/2019

(निर्धारण वर्ष / Assessment Year:2012-13)

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| Heaven M. Shah 501/502 Cosmos N.M. Road Vile Parle (W), Mumbai- 400056. | बनाम/ Vs. | ACIT-33(1) Room No.711, C-12 Bldg, Pratyakshakar Bhavan, BKC, Bandra (E), Mumbai- 400051. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPS3148F | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Assessee by: | Shri R. C. Jain | |
| Revenue by: | Shri Dharm Veer Singh (DR) | |

सुनवाई की तारीख / Date of Hearing: 15/01/2020

घोषणा की तारीख /Date of Pronouncement: 03/03/2020

आदेश / ORDER

PER SHAMIM YAHYA, AM:

This appeal by the assesses against the order of learned CIT(A) dated 10.09.2018 and pertains to A.Y.2012-13.

2. Grounds of appeal read as under.:-

- “1. The Ld. CIT(A) erred in upholding the disallowance made by the AO of interest paid of Rs.665842/- (net of receipt) u/s 57(iii) of the Act.
2. In doing so, the Ld. CIT(A) did not appreciate that the appellant had sufficient interest free funds available with him which could have been deemed to be utilized for investment in properties and in contributing towards capital in the partnership firms in which he is a partner.
3. In any event, the Ld. CIT(A) ought to have restricted the disallowance out of interest paid to the extent of interest paid in relation to loans borrowed during the year as reduced by interest received during the year in as much as interest relating to the loans brought forward from the last year was allowed u/s 57(iii) of the Act in earlier years.”



3. Brief facts of the case are that the assessee is an individual and his income included salary, business income, capital gains and income from other sources. During the course of assessment, the AO noted that the assessee has shown the interest of Rs.4,49,088/- and has claimed interest payment of Rs.11,14,930/-. The AO asked the assessee to prove one is to one nexus of interest bearing funds on which interest of Rs.11,14,930/- has been paid which has been utilized for earning of interest of Rs.4,49,088/-. The assessee responded as under.:-

“Clarification for interest Expense of Ps. 11,14,930/-

- a. *Total interest paid Rs.14,94,500/-*
- b. *14A working shows disallowable interest is As. 3,79,570/- on account of interest expense referred to exempted income arise due to investment in Shares& Mutual fund.*
- c. *After deduction by not claiming there expense I have claimed only Rs.11,14,930/- (14,94,500 - 3,79,570).*
- d. *Interest expense under income from others source are Ps. 11,14,930/- against Ps. 4,49,0881- as interest income. Net off to Rs. 6,65,842/-as Interest expense claimed in computation.*
- e. *I have invested Ps. 62,49,658/- in the Partnership firm as my capital from borrowed & other funds.*
- f. *From the investment in firm, income is interest & share of profit & remuneration. These is not following under exempted income subject to disallowance in sec 14A*
- g. *My borrowed fund are utilized by way of investment in partnership firm also. Therefore, such interest Is allowable expense under business head, but since computer program does not accept such interest expense minus figures. I have claim these interest under head of other source.
Even interest @ 10% on Investment in firm may cost Rs.6,24,658/- as expense on borrowed fund.*
2. *In addition to this I have invested current period fund for taxable bond and property which has given Income in next year. Therefore, interest income & interest expense should not be linked to work out why there is overall minus interest.*
3. *Overall the Interest claim of Ps. 11,14,930/- is allowable expense.”*



4. However, the AO was not satisfied, he disallowed the claim u/s 57(iii) of the Act by observing as under:-

- “(a) The assessee has failed to establish nexus of whole interest expenditure has been utilized for earning the income.
(b) Also, the investment in partnership firm attracts exempted income as profit of firm is exempted one.
(c) Next year income has no relevance with the current year expenditure.”

5. Against above order, assessee is in appeal before the Ld. CIT(A). The CIT(A) upheld the action of the Assessing Officer by holding as under:-

“4.4 I have carefully gone through the assessment order and submissions of the assessee. It is seen that the borrowed funds during the year as under:-

| S. No. | | Opening Balance | Received | Paid | Interest Paid |
|--------|---------------------------|-----------------|-----------|----------|---------------|
| 1 | Dhiman Trading P. Ltd. | 5321781 | 0 | 5646028 | 324247 |
| 2 | Disha Cosntruction (Loan) | 6563432 | 23631013 | 11968000 | 945670 |
| 3 | Mahendra J. Shah | 0 | 8307305 | 3889045 | 165452 |
| 4 | Prafulla M. Shah | 0 | 2027487 | 2123904 | 42487 |
| 5 | Vaishali Gems | 938836 | 0 | 955480 | 16644 |
| | Total | 12824049 | 339658065 | 21082317 | 1494500 |

Out of the borrowed funds, the assessee invested in various items. The pattern of investment shows that the assessee invested majority of funds in immovable properties and mutual funds & shares. It is submitted that the investments in properties was made towards the end of the year. This argument is not supported by any evidence on record. He invested part of the amount in partnership firms. Assessee is showing borrowed funds and interest paid under the head 'Other Sources'. However, the funds borrowed were diverted to invest in Mutual funds and shares dividend income form which is exempt, and income from LTCG on sale of these is also exempt. He also diverted some part of loans to investment in immovable properties, from which there is no immediate income. By diverting the borrowed funds to investments



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income from which is either exempt or there is no income for the year, the assessee is making the revenue to pay for his investments. In other words, the heavy interest paid is being claimed against the other income by set off loss reducing the incidence of tax. Courts have held that interest on loans borrowed for purchase of shares have to be added to cost of shares. Similarly, the interest paid on loans relevant to properties held by the assessee will go to add to the cost of asset. However, the assessee is claiming the interest paid on the funds utilized for other purposes particularly investments in personal assets and investments income from which is exempt under the head 'Other Sources' u/s 57(iii) of the Act. Section 57(iii) the allowable expenditure against Income from other sources reads:-

"57. Deductions. - 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."

As can be seen from the provisions of section 57(iii), only expenditure which is laid out or expended wholly and exclusively for the purpose of making or earning such income is allowable against the income from other sources. The interest paid on the funds utilized for investments in personal assets and for investments, income from which is exempt cannot be claimed against the interest income under the head other sources. Therefore, the disallowance made by the assessing officer is on the right footing and correct as per the Act."

6. Against above order, assessee is in appeal before us. I have heard both the counsel and perused the records. Learned counsel of the assessee has contended that the assessee has sufficient own funds hence no disallowance should be done.

7. The learned counsel of the assessee submitted that the matter may be remitted to the file of assessing officer to enable the assessee to properly canvass the appeal.

8. Upon careful consideration, I find that the request of the learned counsel of the assessee is not acceptable. Assessee in its submissions



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as above has himself accepted that he has invested a sum of Rs.62,49,658/- in partnership firms out of borrowed funds from where it has received interest on share of profit and remuneration. The assessee submission that no disallowance under section 14A can be done on this account is not in accordance with the law. Assessee himself submits that interest at the rate of 10% on investment in firm may cost Rs.6,24,658/- as expense on borrowed funds. Since this borrowed firm has been used to make investment for earning income which is exempt from tax the said interest is not allowable. Hence in my considered opinion there is no infirmity in the disallowance of Rs.6,24,658/-. Hence I hold that the disallowance to this extent is sustainable. I direct accordingly.

9. As regards the argument of the assessee that assessee has sufficient own funds to make investment, I note that the issue is not availability of fund rather the issue is utilization of the borrowed funds for earning the interest income. Since it has not been cogently proved that those borrowed funds were used for earning the interest income the adjustment thereof is not permissible.

In the result, this appeal by the assessee stands partly allowed.

Order pronounced in the open court on 03/03/2020

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03/03/2020
Vijay Pal Singh/Sr. PS



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**