

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.926/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2008-09

The Incom Tax Officer,  
Ward – 7(2), Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Mahanagar Construction,  
S. No. 129, Hissa No. 1/2,  
Near RTO Office, Alandi Road,  
Yerwada, Pune – 411006

PAN : AAJFM8909K

.....प्रत्यर्थी / Respondent

Assessee by : Shri Krishna Gujarathi  
Revenue by : Shri Abhishek Meshram

सुनवाई की तारीख / Date of Hearing : 11-09-2020  
घोषणा की तारीख / Date of Pronouncement : 28-09-2020

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the Revenue against the order dated 30-11-2016 passed by the Commissioner of Income Tax (Appeals)-5, Pune [‘CIT(A)'] for assessment year 2008-09.

2. The only ground raised by the Revenue challenging the action of CIT(A) in allowing the interest paid on term loan as deduction u/s. 57(iii) of the Act is admissible against business income in the facts and circumstances of the case.

3. The brief facts relating to the case on hand are that the assessee is a partnership firm reported income from business and other sources. The assessee filed return of income declaring total income of Rs.24,06,250/-, on scrutiny the AO accepted the return of income vide its order dated 31-03-2010 passed u/s. 143(3) of the Act. The said assessment was reopened, according to the AO, the assessee received interest income of Rs.2,08,49,311/-, out of which interest of Rs.2,07,18,311/- earned on loans and advances given to its associate concerns is not business income and held the same as income from other sources. An amount of Rs.1,31,000/- from flat holders is only business income. He was of the opinion that the interest income earned on loans and advances cannot be claimed as business expenditure from the profit declared u/s. 80IB(10) of the Act and treated the same as income from other sources, held chargeable to tax. Before the CIT(A) the assessee contended that the funds advanced to its associate concerns are out of borrowed funds on which the assessee has paid interest, the interest expenses incurred thereon is an allowable expenditure. Considering such submissions the CIT(A) directed the AO to verify and compute the exact quantum of deduction under Clause (iii) of section 53 of the Act. The relevant portion of which is reproduced here-in-below :

*“5.4 I have perused the material on record and submission made by the Appellant carefully. The Appellant itself, in its submissions made during the Appellate Proceedings as admitted that, the borrowed funds were not utilized by the Appellant for the purpose of business as it had enough capital and advances from customers. It was also not required to borrow funds for the business and the funds from the bank i.e. term loan facility/cash credit facility were not fully utilized for the project and given on interest to other*

concerns. It was also pointed out that, the partners capital balance was Rs.19.85crore and the borrowed funds were Rs.7.63 crore thus totalling to Rs.27.48 crores. It was stated further that, the loans advanced was Rs.27.09 crores on 31.03.2008. It was also stated that, the advancement of loans was not possible unless the Appellant borrowed the amounts from the bank. The Appellant has also contended that, the interest paid by the Appellant is for the purpose of earning of interest and therefore, the interest paid needs to be set off against the interest earned.

5.5 I tend to agree with the Appellant. The Appellant has been able to prima-facie establish that, the Appellant has been earning interest by utilizing borrowed money and hence, interest paid on such borrowing would be allowable deduction u/s 57(iii). Though, the AO has considered the income earned from interest under the head 'Income from Other Sources', the AO has not considered this claim of the Appellant regarding the interest paid. The AO is directed to verify and compute the exact quantum of deduction u/s 57(iii) of the I.T. Act, 1961. The AO is also directed not to treat this quantum of deduction allowed u/s 57(iii) of the I. T. Act as business expenditure. This Ground is allowed for statistical purpose.”

4. The ld. DR, Shri Abhishek Meshram submits that the assessee for the year under consideration shown gross total income of Rs.12,13,57,416/- which comprises business income as well as income from other sources. The assessee claimed deduction u/s. 80IB(10) of the Act to an extent of Rs.11,89,51,169/-. The assessee earned gross interest income of Rs.2,08,49,311/- from M/s. Mahanagar Estate, M/s. Mahanagar Developers and from certain flat holders. The assessee also paid gross interest of Rs.1,83,86,884/- to Andhra Bank, M/s. Indian Overseas Bank and to certain flat holders. The AO held an amount of Rs.2,07,18,311/- under the head income from other sources and interest of Rs.1,31,000/- as business income. The assessee advanced term loan funds to its associate concerns from borrowed funds which has been obtained for the purpose of assessee's business and the assessee is not entitled to claim the interest under the head business income. The CIT(A) without having anything on record to show that there is nexus between the interest earned and expenditure thereon directed the AO to consider the same as deduction.

5. Shri Krishna Gujarathi, the ld. AR pointed that though borrowed funds were not utilized for the actual business of assessee but the funds to

an extent of Rs.27.48 crores is a mixed fund consisting of borrowed funds and partners capital balances.

6. Having heard both parties and on perusal of the record, we note that the assessee itself admitted the borrowed funds were not utilized for the purpose of business for which they were obtained. Admittedly, the assessee borrowed funds to an extent of Rs.7.63 crores under the scheme term loan facility. The assessee did not file any document to show on what condition the bank has granted said amount under the scheme term loan facility. However, we note that the assessee admitted before the two lower authorities that the term loan has been obtained for the purpose of business and the same was not utilized for the purpose of business as it had enough capital. In our opinion the term loans are obtained for specific purpose, since the assessee is in the business of housing construction, the said term loan should have been used for the purpose of said business but however as noted above having enough capital and advances from customers the term loan fund advanced to its associate concerns and earned interest income. The CIT(A) having examined the case of assessee held that the assessee is entitled to get deduction under Clause (iii) of section 57 of the Act but however without there being concrete finding to this effect that the interest paid is for the purpose of earning interest. The CIT(A) should not have remanded the matter to the file of AO which in our opinion is contrary to the jurisdiction available to CIT(A). Before us, the ld. AR pointed that the assessee had mixed funds to an extent of Rs.27.48 crores and no break up to that effect filed before us. In such a situation we deem it proper to remand the matter to the file of CIT(A) to verify the nexus between loans advanced and interest paid for the purpose of interest earning in terms of Clause (iii) of section 57 of the Act. Thus, the order of

CIT(A) is set aside and the assessee is liberty to file all evidences if any in support of its claim in terms of Clause (iii) of section 57 of the Act. The CIT(A) shall consider the same and pass the order, in accordance with law. Thus, only ground raised by the Revenue is allowed for statistical purpose.

7. In the result, the appeal of Revenue is allowed for statistical purpose.

Order pronounced in the open court on 28<sup>th</sup> September, 2020.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28<sup>th</sup> September, 2020.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-5, Pune
4. The Pr. CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune