

आयकर अपीलीय अधिकरण न्यायपीठ जोधपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

माननीय श्री संदीप गोसाईं, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.136/Jodh/2019
(निर्धारणवर्ष / Assessment Year: 2016-17)

Sh. Dinesh Kumar Bagrodia Kalani & Co.(CA) 5 th Floor, Milestone Building, Gandhinagar Turn, Tonk Road Jaipur, Rajasthan-302 015.	बनाम/ Vs.	ACIT–Circle Bhilwara ITO-Ward-4(1), Jaipur Rajasthan.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. AEZPB-0297-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri P.C. Parwal (CA)- Ld. AR
Revenue by	:	Shri A.S. Yadav - Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	02/11/2020
घोषणा की तारीख / Date of Pronouncement	:	21/12/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2016-17 contest the order of Ld. Commissioner of Income-Tax(Appeals), Ajmer, [in short referred to as 'CIT(A)],

Appeal No.281/2018-19 dated 20/02/2019 on following effective grounds:-

1. The Id. CIT(A) has erred on facts and in law in confirming the disallowance of Rs.30,86,067/- u/s. 14A read with Rule 8D. He has further erred in confirming the disallowance ignoring that income claimed exempt is Rs.16,66,224/- and against the interest expenditure of Rs.36,48,638/-, assessee has declared interest /remuneration from partnership firm.

As evident, the assessee is aggrieved by confirmation of disallowance u/s 14A for Rs.30.86 Lacs.

2. We have carefully heard the rival submissions and perused relevant material on record including written submissions and documents placed in the paper book. The judicial precedents as relied upon during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident individual was assessed u/s 143(3) on 10/12/2018 wherein it was saddled with impugned disallowance u/s 14A for Rs.30.86 Lacs. The same would stem from the fact that the assessee claimed interest expense of Rs.36.48 Lacs against remuneration and interest income earned from two partnership firms (M/s Manglam Yarn Agencies & M/s Manglam Fabrics) which would fall for taxation under the head *Business Income*. The assessee claimed other interest of Rs.25.58 Lacs against interest income of Rs.26.71 Lacs received from other parties. The same would fall under the head *Income from other sources*. However, Ld. AO, going by the factual matrix, opined that the interest expenses could not be held

to be expanded wholly and exclusively for the purpose of making or earning such interest income under the head *Business Income*.

3.2 It was noted that the assessee earned exempt income of Rs.16.66 Lacs including share of profits from two firms. Since the assessee claimed interest expenditure of Rs.36.48 Lacs, Ld.AO further opined that disallowance u/s 14A would apply. The assessee submitted that interest expenditure of Rs.36.48 Lacs had direct nexus with interest income from partnership firm and hence, allowable. It was submitted that the assessee would not be able to earn more than 12% from the firm whereas loans were obtained from market at higher rates to make investment in the firm.

3.3 However, rejecting the submissions, Ld. AO computed aggregate disallowance of Rs.30.86 Lacs u/s 14A read with Rule 8D which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.28.99 Lacs and administrative expense disallowance u/r 8D(2)(iii) for Rs.1.86 Lacs. In the absence of any satisfactory reply, as well as documentary evidences forthcoming from the assessee, the said amount was added to the income of the assessee.

3.4 It is evident from appellate order that Ld. CIT(A) merely chose to confirm the stand of Ld. AO without going into factual aspect as submitted by assessee during appellate proceedings. Aggrieved, the assessee is in further appeal before us.

4. At the outset, it is noted that the assessee has merely claimed interest expenditure against interest earned from partnership firms and did not claim any other expenditure. Therefore, the disallowance of administrative expenditure u/r 8D(2)(iii), could not

be, by any stretch of imagination, be added back to the income of the assessee.

5. Proceeding further, the interest income earned from partnership firms would be assessable as *Business Income* and the expenditure having direct nexus with earning of the said income would be an allowable expenditure. The only thing that was to be verified was the fact that whether the borrowed capital on which interest expense of Rs.36.48 Lacs was paid, had direct nexus with investments in the two partnership firms or not. If so, the interest expenditure would be an allowable deduction.

6. The perusal of page nos. 8-9 of the paper-books would reveal that the assessee has identified as well as tabulated each and every loan obtained during the year. The assessee has paid interest of Rs.25.58 Lacs against loans having closing balance of Rs.202.23. This expenditure has been claimed under the head *Income from other sources*. On the other hand, has paid interest of Rs.36.48 Lacs against loans having closing balance of Rs.258.43 Lacs. The same has been claimed under the head *Business Income*. The assessee has much higher opening as well as closing capital balances in the two partnership firms. It is evident that the assessee has paid higher rate of 15% as against earned rate of 12% which has resulted into interest expenditure being higher than the interest earning from partnership firms. Nevertheless, the unsecured loans taken by the assessee has direct nexus with the investments made in the partnership firms since the capital balances in the firms are more than unsecured loans.

Therefore, on the facts and circumstances we are inclined to delete the impugned additions as made by Ld. AO.

7. The appeal stands allowed in terms of our above order.

*Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal)
Rules, 1963.*

Sd/-
(Sandeep Gosain)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/12/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जोधपुर / DR, ITAT, Jodhpur
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, जोधपुर / ITAT, Jodhpur.