

**IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH,
JODHPUR**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

**ITA No. 89/JODH/2020
Assessment Year: 2015-16**

Smt. Vijay Laxmi Garg, 20, Meera Marg, Bherughat, Pali Parwar-306401 (Raj). PAN No. AAYPG 2367 G	Vs.	Pr.CIT, Jodhpur.
--	-----	---------------------

Assessee by	Shri Amit Kothari, CA & Shri Abhinav Kothari, CA
Revenue by	Smt. Sanchita Kumar, CIT-DR
Date of Hearing	09/08/2021
Date of Pronouncement	06/09/2021

ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. Pr.CIT-1, Jodhpur dated 20/03/2020 for A.Y. 2015-16 passed u/s 263 of the Income Tax Act, 1961 (in short, the Act) wherein following grounds have been raised:

- “1. The order passed u/s 263 by the Ld. Pr.CIT is bad in law and bad on facts and the order passed u/s 143(3) cannot be said to be erroneous or prejudicial to the interest of revenue. The order u/s 263 is without proper jurisdiction.*
- 2. The order passed u/s 263 was also without giving proper opportunity of hearing to the appellant. On account of epidemic the Id. CIT was not justified in not granting proper opportunity of hearing.*

3. *The Id. CIT had erred in observing that the interest and bank commission claimed by the appellant is not allowable. The Id. CIT had failed to appreciate that the funds were mainly invested in her proprietorship business and were used for the propose of business. The Id. CIT had erred in observing that he claim of such interest and commission amounting to Rs. 50,36,464/- is apparently not allowable and was erroneously allowed though such fact was duly verified and was allowable.*
2. The brief facts of the case are that the assessee had filed return of income for A.Y. 2015-16 declaring total income of Rs. 29,37,250/- on 29.9.2015 which was assessed u/s 143(3) of the Act vide order dated 23.12.2017 at total income of Rs. 49,99,851/-.
2. The Id. PCIT observed that the assessee had claimed deduction of interest and bank commission of Rs. 50,36,464/- against income from other sources and there was no income under the head income from other sources and as such the deduction was not allowable u/s 57 of the Act. On this ground the PCIT directed the AO to reexamine the issue after affording due opportunity of the hearing to the assessee.
3. During the course of the appellate proceedings, the assessee submitted that as per paper book page 2 which contains the computation of total income, it is apparent that the assessee had business income and against business income interest paid was claimed under the head income from other sources, but in fact the funds were invested in her proprietorship business. Than at page 11 the Audited Balance Sheet of the proprietorship business Ramdas Amritlal was

shown, which indicates that the capital of the proprietor invested in the business was Rs. 5.29 crores. The Audited Personal Balance Sheet of the assessee was placed at paper book page 27 which indicates that her personal capital is Rs. 2.82 crores and about 4.13 cores represented unsecured loans taken which were mainly from her family members. Out of these funds 5.29 crores funds were invested in her proprietorship business. It was contented that during the course of assessment proceeding the AO vide his letter dated 5.7.2017 made a specific query in this regard and asked about allowability of such interest claimed u/s 57. This letter was shown to us and is placed at page 29 of the paper book. The reply by the assessee dated 13.7.2017 was shown at page 31 of the paper in which it was submitted that the interest has been paid on loans taken from the family members and these funds had been invested in the business carried on as proprietor. Again in letter dated 17.7.2017 submitted by the assessee it was stated that these loans taken had been invested in her business against which the deduction of interest had been claimed. The AO further on the same issue again vide letter dated 14.12.2017 at page 34 in para 3 enquired about the deduction of this amount of interest and bank commission claimed at Rs. 50,38,838/-. In reply to the same vide letter dated 18th December, 2017 is was pointed that deduction of interest is claimed against the business income. It was also pointed that in past also such deduction was allowed and in subsequent years these loans were duly transferred in her business proprietorship concern

where these funds were being used. Since the end use of the funds were for business purposes the deduction was allowable. After examining these facts during the course of assessment proceedings the AO allowed the deduction of these expenditure though he made some other additions which are not the subject matter here.

4. After careful consideration of the matter we find that in the present order the Id. PCIT is also not of the firm view whether the deduction so claimed is correct or not and directed to re examine the issue afresh. We also find that the AO during the course of the assessment proceedings had duly examined this issue and had found that the funds were used for the purpose of the business carried on under her proprietorship business. The utilization of the these funds in the business is also shown from the Audited Balance Sheet of the business concerns as well as per personal Balance Sheet which were duly examined by the AO during the course of the assessment proceedings. The funds in question are also from the family members, and are duly accepted deposits. The unsecured loans are also genuine and accepted deposits. The payment of interest is also not disputed only the head of income under which such deduction is to be allowed is being disputed. We also find that in relation to the query letter issued by the AO reply was duly submitted to the AO on these issues which were raised and filed the detailed replies to all the query raised. The PCIT has failed to

specify as to how and on what ground the said order is erroneous and how the same is prejudicial to the interest of revenue. In light of above discussion we hold that the order u/s 263 cannot be sustained as we find that the assessment order passed by the AO cannot be said to be erroneous or prejudicial to the interest of revenue, and accordingly the order made u/s 263 is quashed.

5. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 06/09/2021.

Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Jodhpur

Dated 06/09/2021

*Ranjan

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT (A)
5. The DR
6. Guard File

Assistant Registrar

Jodhpur Bench