

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR  
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 233 & 234/JP/2020  
निर्धारण वर्ष / Assessment Years :2014-15 & 2015-16

Rajesh Natani, A-2, Subhash Nagar, Shastri Nagar, Jaipur-302016 (Raj)	बनाम Vs.	I.T.O. Ward-4(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AAACN 5961 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri G.N. Sharma (Adv)  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 09/11/2021  
उदघोषणा की तारीख / Date of Pronouncement : 23/11/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

Both these appeals have been filed by the assessee against the separate orders of the Id. CIT(A), Ajmer dated 17/10/2019 for the A.Y. 2014-15 and 2015-16 respectively.

2. In both these appeals, common issues are involved, therefore, for the sake of convenience and brevity, both are clubbed and heard together and a common order is being passed.

3. The hearing of the appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

4. Firstly we take ITA No. 233/JP/2020 for the A.Y. 2014-15 as a lead case for deciding the appeals. In this appeal, the assessee has raised following grounds of appeal:

- “1. That, the Learned Commissioner of Income Tax (Appeals)-Ajmer,(Appellate Authority) has grossly erred on the facts and on the law in sustaining assessment order of the Income Tax Officer, Ward-4(5), Jaipur (Assessing authority) dated 26/12/2016 by which he disallowed interest 7,55,837/- paid as expenditure for purchasing shares in Natani Rolling Mills Pvt. Ltd., Neelkanth Industries Pvt. Ltd. In the preceding years and added in the returned income, thus, the impugned assessment order as well as appellate order both are against the provisions of the Act, bad in law, erroneous and liable to be quashed and addition of Rs. 7,55,837/ liable to be deleted, hence, the same may kindly be deleted, and the interest paid may kindly be allowed as business expenditure u/s 36(1)(iii) of the Act.*
- 2. That, the Learned Appellate Authority has grossly erred on the facts and on the law in sustaining assessment order of the Assessing authority dated 26/12/2016 by which he disallowed interest 7,55,837/- paid as expenditure for purchasing shares in Natani Rolling Mills Pvt. Ltd., Neel Kanth Industries Pvt. Ltd. And added in the returned income, it is further clarified that these share were purchased before the assessment year 2010-11 and not in the year under consideration, thus, the impugned assessment order as well as appellate order, both are against the provisions of the Act, bad in law, erroneous and liable to be quashed and addition of Rs. 7,55,837/ liable to be deleted, hence, the same may kindly be deleted, and the interest paid may kindly be allowed as business expenditure u/s 36(1)(iii) of the Act.*
- 3. That, the learned Appellate Authority has grossly erred on the facts and on the law in sustaining assessment order of the assessing authority dated 26/12/2016 by which he disallowed excess interest of Rs. 2,46,132/- paid on borrowings to the Bank who given the lo-an, because the assessee could not utilize the whole amount in his own business, thus, had to give as advances*

*to others i.e sister concern and as working capital in his partnership firm Oliya Import and Exports, thus, the impugned assessment order as well as appellate order both are against the provisions of the Act, bad in law, erroneous and liable to be quashed and addition of Rs. 2,46,132/ liable to be deleted, hence, the same may kindly be deleted and the interest paid may kindly be allowed as business expenditure u/s 36(1)(iii) of the Act.*

4. *That, the impugned appellate order has been served on 27/10/2019, hence, the appeal is beyond limitation as prescribed under the provisions of the I.T. Act' 1961, an application for condonation of delay u/s 253 (5) has been filed along with this appeal separately.*
5. *That, the appellant reserves its right to add, amend, alter or deletion any ground/s of appeal on or before hearing of the case."*

5. There is delay of 78 days in filing this appeal, for which the assessee filed an application for condonation of delay and the contents of application for condonation of delay reads as under:

*"With reference to the above referred subject, I beg to state that my case for the assessment year 2014-15 was argued by my consultant (Chartered Accountant) before the Commissioner of Income Tax (Appeals)-Ajmer and was awaiting for the appellate order.*

*That, due to heavy loss in both the Companies in which I am working as director, and firms in which I am working as partner had to start business in another commodity at Swroop Ganj (Abu) and used to live there with my family and come to Jaipur casually in two-three months / major festivals.*

*That, I received a show cause notice u/s 271(1)0 of the I.T. Act, 61 from the Income Tax Officer, Ward-4(5), Jaipur on 04/03/2020 through e-mail for imposing penalty.*

*That, after having received the above show cause notice, I came to Jaipur for conducting the required proceedings, and approached to the Chartered Accountant who appeared before the Appellate Authority in the case, about the service of the appellate order, because the assessment order was also served on my consultant who appeared before the Income Tax Officer during the course of the assessment under scrutiny of the case, and he refused about service of the appellate order, after refusal by the Chartered Accountant I asked to my parents i.e. Father and Mother who are residing here, about the order, because I have been living at Swaroop Ganj (Abu) along with my Family after starting the business there, but, my mother who received the Speed post could not understand about the post/order and forgot about the post received by her and she gave me on 05/03/2020.*

*That, After having received the envelop from my mother, I came to know about the service of appellate orders for the assessment years 2014-15 and 2015-16 in one envelop, but could not understand about date of service because there is no stamp of the concerning post office the dates either of booking or delivery, for your kind perusal and satisfaction the envelop in original is enclosed here with.*

*That, after having received the order as above, I took legal consultancy from advocates and came to decide to file an appeal before the Hon'ble Income Tax Appellate Tribunal.*

*That, although, there is no any particular date about the date of service on the envelop, I am assuming normal ten days from the date of order i.e. 17/10/2019 and service thereof on 27/10/2019.*

*Now, I have submitted an appeal against the appellate order dated 17/10/2019 today i.e. 13/03/2020 before this Hon'ble ITAT, the delay is 79 days only based on the assumed date of service.*

*That, the dispute is regarding question of law which is very important for adjudication by your honour.*

*That, in view of the above facts and circumstances of the case, it is clearly apparent that I could not submit the appeal in time limit as prescribed under section 253(3) of the Act on the reasons which were beyond my control, in support of the above facts an affidavit duly signed and Notarised is enclosed herewith.*

*Therefore, it is humbly prayed that the delay caused on the above reasons may kindly be condoned in submitting the appeal, the appeal may kindly be granted for adjudication in the interest of natural justice, and oblige.”*

6. On the other hand, the Id DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay.

7. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation of delay. In case **of Collector, Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471**, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations

should not come in the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

8. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of the case, we condone the delay of 78 days in filing the present appeal and admit the appeal for hearing.

9. The brief facts of the case are that the assessee derives income from Natani Rolling Mills Pvt. Ltd. as salary being Director of the company, house property and interest also. Return of income was electronically filed on 16/12/2015 declaring total income of Rs. 3,36,120/-. The case of the assessee was selected for scrutiny through CASS for

limited purposes and necessary notices were issued and served upon the assessee. The assessee filed its reply and finally the assessment was completed U/s 143(3) of the Act on 07/11/2017 determining total income of the assessee at Rs. 13,85,690/- by making additions/disallowances.

10. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of both the parties and material placed on record, upheld the action taken by the A.O..

11. Being aggrieved by the order of the Id. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

12. Grounds No. 1 and 2 of the appeal raised by the assessee are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in confirming the disallowance of Rs. 7,55,837/-. In this regard, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied on the written submissions filed before the Bench and the contents of the same are as under:

*"That the assessee-appellant is an individual assessee has been deriving his income as salary from Pvt. Ltd. Companies namely Natani Rolling Mills (Pvt.) Ltd and Neelkanth Industries (Pvt.) Ltd. Supreme Meta Cast*

*(Pvt.) Ltd. where he has been working as director, Remuneration as working partner and interest on working capital as working partner in partnership from those firms i.e. Oliya Import and Exports, Natani Steel Industries and Neelkanth Steel Corporation. The above Companies as well firms have been dealing in manufacturing and trading in all kinds of Iron and Steel such as Round Bars, MS Angle, Sections, Channels etc.*

*That the appellant-assessee is director in Natani Rolling Mills (Pvt,) Ltd and Neelkanth Industries (Pvt.) Ltd since long back and purchased shares of Neelkanth Industries (Pvt.) Ltd. Prior to the assessment year 2009-10 of Rs. 47,65,000/- and there was no any further investment in the shares, the fact is crystal clear from the page number 5 of the paper book submitted on 08/11/2021 before this Hon'ble bench and the share in another Company Natani Rolling Mills (Pvt,) Ltd. Were also purchased before the assessment year 2009-10 of Rs. 7,32,000/-, thus, the total share were purchased of Rs. 54,97,000/-, thus, in view of the above facts it is crystal clear that the appellant-assessee has the same shares only and there in no any direct nexus of investment out of the loan during the period under consideration because no any shares were purchased during the period under consideration.*

*That, the appellant-assessee took loan for business purposes from the financial institutions namely Bajaj Finance and thereafter from the HDFC Bank Ltd.*

*That, the appellant-assessee has been doing business as working partner in the partnership firms as well as profession/vocation as Director in three Companies, We have to see the relevant provision of the Income tax Act, 1961 (Act) to decide whether the directorship in the Companies is profession or not, we are pleased to reproduce here under the relevant provision 2(36) of the Act, which as under:-*

*Section 2(36) "Profession" includes Vocation.*

*We would like to have your kind attention that in view of the above definition of the profession the appellant-assessee is entitled for deductions of interest on loans took for business/profession , such matters have been considered by the Hon'ble Guahati High Court in the case of Nabadwip Chandra Roy vs Commissioner Of Income-Tax ... on 30 November, (1959) 1962 44 ITR 591 Gauhati and the same has been considered by the Hon'ble Calcutta High Court in the case of Commissioner of income Tax Vs Rajeev Lochan Kanoria, (1994) 208 ITR 616 (Cal), for your kind perusal and ready reference the relevant abstracts are reproduced here under:-*

*"12. What is chargeable to Income Tax under Section 28 is profit and gains of business or profession. The word "profession" is defined in Section 2(36) of the said Act to include vocation. The Assam High Court in Nabadwip Chandra Roy v. CIT MANU/GH/0073/1959 observed that the directorship is nothing but a vocation. The assessee was admittedly a director of several controlled companies. Even otherwise, the activity of controlling, managing, administering and financing companies is nothing but a business/professional/ vocational activity."*

*For your kind perusal printout of the above judgment in the case of Rajeev Lochan Kanoria is enclosed here with.*

*Thus, it is crystal clear that the interest was paid in the business and commercial expediency apart from that there was no any direct nexus between the investment in shares and loans taken thereafter.*

*On perusal of the sub-Section (iii) of Section 36, three ingredients are required for allowing interest paid which are as under;-*

- 1. There should be borrowing of funds*
- 2. Borrowing should be for business purpose, and*
- 3. There should be payment of interest.*

*That, the appellant fulfills all the above three conditions, as the appellant-assessee borrowed the funds from the bank as well as other, the borrowing was for the business purposes only and interest thereon was paid to the Bank as well as to others also, That, such matters have come before the Hon'ble Supreme Court in various cases and upheld the view taken by the Hon'ble Delhi High Court in the case of CIT Vs Dalmia Cement (Bharat) Ltd. reported in (2002) 175 CTR Del 559,*

*The Id. AR has also relied on the following judicial pronouncements:*

- (i) S.A. Builders Ltd. Vs Commissioner of Income Tax (Appeals), Chandigarh and Others, order dated 14/12/2006 reported in AIR 2007 SC 482, (2007)1 SCC 781, MANU/SC/8798/2006.*
- (ii) Commissioner of Income Tax Vs Vijay Solvex Ltd. (2015) 274 CTR (Raj.) 384.*
- (iii) Commissioner of Income Tax Vs Rajeev Lochan Kanoria, (1994) 208 ITR 616 (Cal)*
- (iv). Commissioner of Income Tax Vs Sanghi Finance and Investment Ltd. (2005) 273 ITR 268 (MP)*

13. On the other hand, the Id. DR has vehemently supported the order of the lower authorities and submitted that the Id. CIT(A) has passed a well reasoned order discussing all the material facts and circumstances of the case.

14. We have heard the rival contentions of both the parties and have also gone through the written submissions filed by the assessee. We have also deliberated upon the decisions cited in the orders passed by the

authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per facts of the present case, we observed that the assessee is deriving his income from Natani Rolling Mills Pvt. Ltd as salary there from being director therein, house property, Interest also. The assessee filed his e-return of income on 14/02/2015 declaring total income of Rs. 2,14,800/-. The assessee took a loan from HDFC Bank Ltd for business purposes of Rs. 2.5 Crore interest @ 13.75% in the financial year 2012-13 and the assessee made investment in shares of Natani Rolling Mills Pvt. Ltd. Rs. 7,32,000/- and Neel Kanth Industries Pvt. Ltd. Rs. 47,65,000/-. The assessee had made investment in Oliya Import and Export in the earlier periods and deriving income there from as interest, it is pertinent to mention here that are not interest bearing funds i.e. out of borrowings on interest. The assessee had also made investment in Girraj Buildcon on interest @ 12% Rs. 1,57,33,588/- out of borrowings which remained spare, for business purposes in the commercial expediency and derived income of interest and declared as income from other source in the return of income. He has also made investment in his partnership firm M/s Natani Steel Industries Rs.1,45,50,000/- as addition in working capital for the business purposes in the commercial expediency, but, due to losses in the firm, the firm did not give any interest on the working capital, however, the

assessee had to pay interest thereon to the Bank. The assessee had made investment shares of Rs. 7,32,000/- in Natani Rolling Mills Pvt. Ltd. out of own funds in the preceding years and not in the year under consideration, hence, this is not a diversion of interest bearing funds during the period under consideration.

15. We observed from perusal of the record that the assessee advanced loan of Rs. 12,76,911/- to Shri Babu Lal Natani on interest @ 15% and derived income there from as interest and declared in the "income from other sources", the rate of interest charged 15% is more than interest on borrowed funds.

16. It is not in dispute that the assessee is an individual and derived his income as salary from Pvt. Ltd. Companies namely Natani Rolling Mills (Pvt.) Ltd and Neelkanth Industries (Pvt.) Ltd. and Supreme Meta Cast (Pvt.) Ltd. where he has been working as director, remuneration as working partner and interest on working capital as working partner in partnership from those firms i.e. Oliya Import and Exports, Natani Steel Industries and Neelkanth Steel Corporation. The above Companies as well firms have been dealing in manufacturing and trading in all kinds of Iron and Steel such as Round Bars, MS Angle, Sections, Channels etc. The assessee is director in Natani Rolling Mills (Pvt,) Ltd and Neelkanth

Industries (Pvt.) Ltd since long back and purchased shares of Neelkanth Industries (Pvt.) Ltd. prior to the assessment year 2009-10 of Rs. 47,65,000/- and there was no any further investment in the shares and the share in another Company Natani Rolling Mills (Pvt.) Ltd. were also purchased before the assessment year 2009-10 of Rs. 7,32,000/-, thus, the total share were purchased of Rs. 54,97,000/-, thus, we are view of that the assessee has the same shares only and there in no any direct nexus of investment out of the loan during the period under consideration because no any shares were purchased during the period under consideration.

17. We further observed that the assessee took loan for business purposes from the financial institutions namely Bajaj Finance and thereafter from the HDFC Bank Ltd. The assessee has been doing business as working partner in the partnership firms as well as profession/vocation as Director in three Companies. In this regard, now we have to see the relevant provision of the Act to decide whether the directorship in the Companies is profession or not, for which we reproduce the relevant provisions of Section 2(36) of the Act, which as under:-

**Section 2(36) "Profession" includes Vocation.**

From perusal of the above definition of the profession the assessee is entitled for deductions of interest on loans took for business/profession. In this regard, we draw strength from the decision of the Hon'ble Guahati High Court in the case of **Nabadwip Chandra Roy vs Commissioner Of Income-Tax on 30 November, (1959) 1962 44 ITR 591 Gauhati** and the same has been considered by the Hon'ble Calcutta High Court in the case of **Commissioner of income Tax Vs Rajeev Lochan Kanoria, (1994) 208 ITR 616 (Cal) and the** relevant abstracts of the decision are reproduced here under:-

*“12. What is chargeable to Income Tax under Section 28 is profit and gains of business or profession. The word “profession” is defined in Section 2(36) of the said Act to include vocation. The Assam High Court in Nabadwip Chandra Roy v. CIT MANU/GH/0073/1959 observed that the directorship is nothing but a vocation. The assessee was admittedly a director of several controlled companies. Even otherwise, the activity of controlling, managing, administering and financing companies is nothing but a business/professional/vocational activity.”*

Thus, it is crystal clear that the interest was paid in the business and commercial expediency apart from that there was no any direct nexus between the investment in shares and loans taken thereafter.

18. We further observed that A.O. disallowed interest paid on loan U/s 36(1) (iii) of the Act, therefore, for ready reference, Section 36(1)(iii) of the Act is reproduced here under:-

“ (iii) *the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :*

*Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.*

*Explanation.—Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;*

From perusal of the above sub-section, three ingredients are required for allowing interest paid which are as under;-

1. There should be borrowing of funds
2. Borrowing should be for business purpose, and
3. There should be payment of interest.

The assessee fulfills all the above three conditions, as the assessee borrowed the funds from the bank as well as other, the borrowing was for the business purposes only and interest thereon was paid to the Bank as well as to others also. In this regard, we draw strength from the decision of the Hon'ble Supreme Court in the case of **S.A. Builders Ltd. Vs Commissioner of Income Tax (Appeals), Chandigarh and Others, order dated 14/12/2006 reported in AIR 2007 SC 482, (2007)1 SCC 781, MANU/SC/8798/2006** wherein it was held as under:

*"20. We agree with the view taken by the Delhi High Court in CIT V. Dalmia Cement (Bhart) Ltd. MANU/DE/0309/2002 :[2002] 254 ITR 377*

*(Delhi) that once it is established that there was nexus between expenditure and the purpose of the business (which need not necessarily be the business the assessee itself), the revenue cannot justifiably claim to put itself in the arm-chair of businessmen or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessmen can be compelled to maximize its profit. The Income Tax Authorities must put themselves in the shoes of the assessee and see how to prudent businessmen would act. The authorities must not look at the matter from their own view point but that of a prudent businessmen. As already stated above, we have to see the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."*

*"22. In view of the above, we allow the appeals and set aside the impugned judgments of the High Court, The Tribunals and other authorities and remand the matter to the Tribunal for a fresh decision, in accordance with law and in the light of the observations made above. We also make it clear that we are not setting aside the order of the Tribunal or other Income Tax Authorities in relation to the other points dealt with by these authorities, except the point of deduction of interest on the borrowed funds.*

We also draw strength from the decision of the Hon'ble Rajasthan High Court in the case of **Commissioner of Income Tax Vs Vijay Solvex Ltd. (2015) 274 CTR (Raj.) 384**, wherein judgment of the Hon'ble Apex court in the case of S.A. builders has been followed. The relevant abstract of the judgment of the Hon'ble Jurisdictional High court is reproduced here under:-

*"8. It may be that the assessee on account of business expediency advanced money to sister concerns or other concerns at a lower rate of interest or did not charge interest that by itself does not prove that the assessee diverted interest-bearing loans to the said firms. An assessee is*

*required to run business looking to the commercial expediency and several other factors.*

*9. Apex Court, in the case of S.A. Builders Ltd. vs. CIT MANU/SC/8798/2006 : (2006) 206 CTR (SC) 631 : (2007) 288 ITR 1 (SC), after considering what is commercial/business expediency, has observed as under:*

*"The expression 'commercial expediency' is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency."*

*9.1 The Hon'ble apex Court further observed in the above judgment as under:*

*"To consider whether one should allow deduction under s. 36(1)(iii) of interest paid by the assessee on amounts borrowed by it for advancing to a sister concern, the authorities and the Courts should examine the purpose for which the assessee advanced the money and what the sister concern did with the money. That the borrowed amount is not utilized by the assessee in its own business but had been advanced as interest-free loan to its sister concern is not relevant. What is relevant is whether the amount was advanced as a measure of commercial expediency and not from the point of view whether the amount was advanced for earning profits.*

*Once it is established that there was nexus between the expenditure and purpose of the business (which need not necessarily be the business of the assessee itself) the Revenue cannot justifiably claim to put itself in the armchair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits."*

*15. In view of the authoritative pronouncement of the apex Court and other judgments referred supra, in our view, the assessee admittedly had its own funds, as referred to earlier, and admittedly such funds/reserves being substantially higher than, even otherwise, the advances to the debtors, no notional interest or hypothetical interest could have been*

*disallowed on such facts. The Revenue has failed to prove nexus. In our view, the Tribunal has correctly appreciated the facts and law. In view of our observations hereinabove, the Tribunal was correct in deleting the notional interest, disallowed by the AO at Rs. 5,80,215 and accordingly, the appeal is decided against the Revenue and in favour of the assessee. No costs."*

Considering the totality of facts and circumstances of the case, material placed on record and the case laws relied upon by the Id. AR, we found merit in the contentions raised by the assessee and the Id. DR has not brought on record any new material to rebut or controvert the submissions and documents placed before us, therefore, we direct to delete the disallowances confirmed by the Id. CIT(A). We order accordingly. Hence, Ground No. 1 and 2 of the appeal are allowed.

19. Ground No. 3 of the appeal raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the disallowance with regard to excess interest of Rs. 2,46,132/- paid on borrowings to the Bank who given the loan, because the assessee could not utilize the whole amount in his own business.

20. Having considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we noticed that the assessee is working partner in Oliya Import Export and out of the loan taken being a working partner invested as working capital in the partnership firm but due to certain conditions of Section 40(b)(iv) of the

Act could not obtain interest exceeding 12% because the deed of partnership and Section 40(b)(iv) of the Act allow interest on working capital to the partners maximum 12% only, in other words it could be said that partnership deed does not allow interest on the working capital exceeding 12%. For ready reference, we reproduce the relevant provision of the Act as under:-

*"Section 40(b)(ii): any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorized by, or is not in accordance with, the terms of the partnership deed: or,*

*40(b)(iii) .....Not relevant here.*

*Section 40(b)(iv) any payment of interest to any partner which is authorized by, and is in accordance with, the terms of the partnership deed and relevant to any period falling after the date of such partnership deed is in so far as such amount exceeds the amount calculated at rate of twelve per cent simple interest per annum; or"*

Thus, in view of the above provisions of the Act and the deed of partnership, it is crystal clear that the assessee could not take interest on advances as working capital to its partnership firm i.e. Oliya Import Export exceeding 12% which was advanced as working capital. It is important to mention here that in the course of business, it is not necessary to have profit only and there should not be any loss therein. As far as advances to Giriraj Buildcon is concerned, we noticed that the Giriraj Buildcon is a sister concern of the assessee as proprietor of the

Giriraj Buildcon was also a director in the Natani Rolling Mills Pvt. Ltd. and had dealing in purchasing from the company during the period under consideration and in subsequent year also. Hence, looking to the commercial expediency given some advance for his business. Considering the totality of facts and circumstances of the case, material placed on record as well as the relevant provisions of the Act, we found merit in the contentions raised by the assessee and the Id. DR has not brought on record any new material to rebut or controvert the submissions and documents placed before us, therefore, we direct to delete the disallowance of Rs. 2,46,132/- confirmed by the Id. CIT(A).

21. Ground No. 4 of the appeal raised by the assessee relates to condoning the delay. We have already condoned the delay in filing the present appeal by giving a finding in earlier paragraphs of this order, therefore, there is no need to adjudicate the same afresh.

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

23. Now we take ITA No. 234/JP/2020 for the A.Y. 2015-16.

In this appeal, grounds, facts and circumstances as well as submissions of both the parties and identical to the facts, grounds and submissions made in ITA No. 233/JP/2020 for the A.Y. 2014-15.

Therefore, our finding given in ITA No. 233/JP/2020 shall apply mutatis mutandis in this appeal also.

24. Finally, in the result, both these appeals of the assessee are allowed.

Order pronounced in the open court on 23<sup>rd</sup> November, 2021.

**Sd/-**

(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

**Sd/-**

(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23/11/2021

\*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Rajesh Natani, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-4(5), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 233 & 234/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar