

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DIVISION BENCH, "A", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &**  
**SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos. 5 to 7/CHD/2021

निर्धारण वर्ष / Assessment Years : 2015-16 to 2017-18

Late Sh. Ghansham Dass, Through L/H Sh. Davinder Singh, SCO 168-169, Sector 34, Chandigarh	बनाम	The DCIT, Central circle-1, Chandigarh
स्थायी लेखा सं./PAN NO: AANPD3889R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**Hearing though video Conferencing**

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Sh. Vivek Nangia, CIT DR

सुनवाई की तारीख/Date of Hearing : 15.12.2021

उदघोषणा की तारीख/Date of Pronouncement : 28.12 .2021

**आदेश/Order**

**Per Sudhanshu Srivastava, Judicial Member:**

These three appeals have been preferred by the assessee and pertain to assessment years 2015-16, 2016-17 and 2017-18, wherein, the assessee has challenged the common order of the Commissioner of Income Tax (Appeals)-3, Gurgaon which has been passed vide order dated 31.5.2019. Since these appeals involved an identical issue, they were heard together and are being disposed of through this common order.

2. Brief facts of the case are that the assessee (since expired) was one of the assessee covered under a search and seizure operation u/s

132 of the Income Tax Act, 1961 (in short 'the Act'), which was carried out at the business and residential premises of M/s Sham Jewellers group of cases. The said search took place on 15.09.2016. The original return of income had been filed declaring income at 'nil' for the assessment years 2015-16 and 2016-17. For the assessment year 2017-18, the return of income was filed reflecting income of Rs. 29,92,940/-. In response to notices issued u/s 153A of the Act, the assessee again returned the same income as in the original Income-tax returns. During the course of assessment proceedings, the Assessing officer noted that the assessee had declared interest expenditure of Rs. 68,89,504/- in assessment year 2015-16, interest expenditure of Rs. 65,57,340/- in assessment year 2016-17 and interest expenditure of Rs. 16,82,964/- in assessment year 2017-18. The Assessing officer confronted the assessee on the issue of interest expenditure and the assessee was asked to justify the reason for claiming interest expenditure which was paid to M/s Sham Fashion Mall in all the three years in which the assessee was a partner. It was the assessee's contention before the Assessing officer that the said expenditure of interest was on account of interest charged by the firm on account of debit balance of the partner in the capital of the firm. It was submitted by the assessee that the interest had to be paid due to excess borrowings by the assessee. The Assessing officer further noted that the amount withdrawn from the firm had been utilised for payment of advance tax / income tax and, therefore, as per the Assessing officer, the said amount was not an allowable expenditure as the payment of

income tax / advance tax was a personal liability of the assessee. The Assessing officer proceeded to disallow an amount of Rs. 12,86,361/- in assessment year 2015-16, an amount of Rs. 14,59,189/- in assessment year 2016-17 and amount of Rs. 17,04,380/- in assessment year 2017-18, being interest paid by the assessee on account of payment of income tax / advance tax.

2.1 Aggrieved, the assessee carried the matter to the First Appellate Authority challenging the addition / disallowance of interest. However, the contentions of the assessee did not find any favour with the First Appellate Authority and he confirmed the disallowance of interest in all the three years under consideration.

2.2 Aggrieved, the assessee is now before this Tribunal challenging the above such disallowance and the grounds raised by the assessee in the respective assessment years are as under:-

**ITA No. 5/Chd/2021**

- 1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the framing the assessment u/s 153A rws 143(3) of the Act without there being any incriminating material having been found during the course of search relating to the said year and as such the assessment framed is illegal, arbitrary & unjustified which merits to be quashed.*
- 2. That the Ld. Commissioner of Income Tax (Appeals) has failed to consider the decision of the Hon'ble Delhi High Court rendered in the case of Meeta Gutgutia reported in 395 ITR 526 and the SLP filed by the revenue against this decision which stands dismissed vide order reported in 96 [taxmann.com](http://taxmann.com) 468(SC) wherein it has been held that invocation of section 153A to re-open concluded assessments of assessment years earlier to search was not justified in absence of incriminating material found during search qua each such earlier*

*assessment year besides other decisions rendered in the case of Kabul Chawla reported in 380 ITR 573, Mala Builders of the jurisdictional IT AT and as such the assessment framed is illegal, arbitrary & unjustified*

3. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs. 12,86,361/- made on account of disallowance of interest paid to M/s Sham Fashion Mall which is not liable to be made in view of Ground No. land 2 since no incriminating material has been found during search in respect of the impugned addition and as such the assessment framed is illegal, arbitrary & unjustified*
4. *Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the disallowance of interest to the tune of Rs. 12,86,361/- paid on account of amount withdrawn for payment of taxes from M/s Sham Fashion Mall in utter disregard of the submissions made during the course of appellate proceedings which is arbitrary and unjustified.*
5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
6. *That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable*

**ITA No. 6/Chd/2021**

1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the framing the assessment u/s 153A rws 143(3) of the Act without there being any incriminating material having been found during the course of search relating to the said year and as such the assessment framed is illegal, arbitrary & unjustified which merits to be quashed.*
2. *That the Ld. Commissioner of Income Tax (Appeals) has failed to consider the decision of the Hon'ble Delhi High Court rendered in the case of Meeta Gutgutia reported in 395 ITR 526 and the SLP filed by the revenue against this decision which stands dismissed vide order reported in 96 [taxmann.com](http://taxmann.com) 468(SC) wherein it has been held that invocation of section 153A to re-open concluded assessments of assessment years earlier to search was not justified in absence of incriminating material found during search qua each such earlier assessment year besides other decisions rendered in the case of Kabul Chawla reported in 380 ITR 573, Mala Builders of the jurisdictional IT AT and as such the assessment framed is illegal, arbitrary & unjustified*

3. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs. 14,59,189/- made on account of disallowance of interest paid to M/s Sham Fashion Mall which is not liable to be made in view of Ground No. land 2 since no incriminating material has been found during search in respect of the impugned addition and as such the assessment framed is illegal, arbitrary & unjustified*
4. *Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the disallowance of interest to the tune of Rs. 14,59,189/- paid on account of amount withdrawn for payment of taxes from M/s Sham Fashion Mall in utter disregard of the submissions made during the course of appellate proceedings which is arbitrary and unjustified.*
5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
6. *That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable*

**ITA No. 7/Chd/2021**

1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the framing the assessment u/s 153A rws 143(3) of the Act without there being any incriminating material having been found during the course of search relating to the said year and as such the assessment framed is illegal, arbitrary & unjustified which merits to be quashed.*
2. *That the Ld. Commissioner of Income Tax (Appeals) has failed to consider the decision of the Hon'ble Delhi High Court rendered in the case of Meeta Gutgutia reported in 395 ITR 526 and the SLP filed by the revenue against this decision which stands dismissed vide order reported in 96 [taxmann.com](http://taxmann.com) 468(SC) wherein it has been held that invocation of section 153A to re-open concluded assessments of assessment years earlier to search was not justified in absence of incriminating material found during search qua each such earlier assessment year besides other decisions rendered in the case of Kabul Chawla reported in 380 ITR 573, Mala Builders of the jurisdictional IT AT and as such the assessment framed is illegal, arbitrary & unjustified*
3. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs. 17,04,380/- made on account of disallowance of interest paid to M/s Sham Fashion Mall which is not liable to be made in view of Ground No. land 2 since no*

*incriminating material has been found during search in respect of the impugned addition and as such the assessment framed is illegal, arbitrary & unjustified*

4. *Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the disallowance of interest to the tune of Rs. 17,04,380/- paid on account of amount withdrawn for payment of taxes from M/s Sham Fashion Mall in utter disregard of the submissions made during the course of appellate proceedings which is arbitrary and unjustified.*
5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
6. *That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable*

3.0 At the outset, the Ld. Authorised Representative (AR) submitted that only ground No.3 in all the three appeals was being pressed and that grounds Nos. 1, 2 and 4 were not being pressed. Accordingly, ground Nos. 1, 2 and 4 are dismissed as not pressed.

3.1 With respect to the only effective ground remaining, the Ld. AR submitted that the Assessing officer had made this disallowance on the reasoning that the impugned amounts have been withdrawn for the payment of income-tax. The Ld. AR submitted that undisputedly the assessee had withdrawn the amounts for the purpose of payment of tax and had claimed interest paid on the debit balance on account of excess borrowings, whereas, the firm had shown interest charged from the assessee as its income. It was submitted that it is also beyond any doubt that the amount of tax paid by the assessee was not being claimed as expenditure and it was only the interest paid on the borrowings which

was being claimed as expenditure. It was submitted that the said disallowance, as made by the Assessing officer and as upheld by the Ld. CIT(A), was both erroneous as well as illegal and was not sustainable in the eyes of law. It was submitted that the interest paid by the partner on his debit balance is always a deductible expenditure in the hands of the partner and since the firm had already shown this interest charged from the partner as income, there can be no double taxation of the same amount. It was further submitted that just as the assessee received interest on the credit balance lying with the firm in the same parlance, the partners also paid interest on the debit balance and there was nothing wrong with it. It was submitted that the impugned disallowance, being bad in law, should be deleted.

4.0. Per contra, the Ld. CIT DR submitted that the Ld. First Appellate Authority had rightly upheld the disallowance. The Ld. CIT DR supported the concurrent orders of the authorities below.

5.0 We have heard the rival submissions and have also perused the material on record. The facts of the case are not in dispute. The only reason for which the Assessing officer seems to have made the impugned disallowance in all the three years under consideration is that the assessee had made withdrawals for the purpose of payment of taxes and had claimed interest such paid as expenditure. We agree with the contention of the Ld. AR that since the assessee partner is entitled to interest received on the credit balance of capital, which becomes his

'income', similarly, the assessee / partner is also liable to pay interest on the debit balance / excess withdrawals from the partnership firm and by the same reasoning and logic it become as expenditure which is to be deducted while computing the taxable income of a partner of the firm. In our view too, once the partner has withdrawn an amount from the firm, it becomes immaterial as to what end it put to use. The amounts withdrawn may be utilised by the assessee / partner for the purpose of meeting house-hold expenses, making investments or even for the purpose of paying tax and it is not within the purview of the Income-tax authorities to determine and dictate as to how the funds so withdrawn are put to use by the assessee / partner.

5.1 Although, it is a settled proposition that the tax paid in respect of income is not a deductible expense, it is not the case here. Both the lower authorities below to have entirely misconstrued the factual matrix and have proceeded on an assumption that the assessee / partner was claiming expenditure in respect to income tax / advance tax paid, whereas, the assessee has only claimed expenditure in respect of interest on excess withdrawals made, which were utilised for the purpose of paying income tax / advance tax. Therefore, in our considered opinion, both the lower authorities have entirely missed the case in point and have made the impugned disallowance which cannot be sustained. Therefore, while setting aside the orders of the Ld.

CIT(A), we direct the Assessing officer to delete the impugned disallowance in all the three years under consideration.

6.0 In the final result, all the three appeals stand partly allowed.

Order pronounced on 28.12.2021.

Sd/-  
( N. K. SAINI)  
Vice President

Dated : 28.12.2021

“आर.के.”

Sd/-  
(SUDHANSHU SRIVASTAVA)  
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar