

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री डॉ एम एल मीना, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI Dr. M.L. MEENA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3297/Chny/2018
निर्धारण वर्ष /Assessment Year: 2015-16

Smt. Minatchy,
No.117, Mudaliar Street,
Muthialpet,
Pondicherry-605 003.
[PAN: AEUPM 2912H]
(अपीलार्थी/**Appellant**)

The Income Tax Officer,
Vs. Ward-4,
Pondicherry.
(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Shri S. Sridhar, Advocate &
Shri N. Arjunraj, C.A

प्रत्यर्थी की ओर से /Respondent by

: Shri AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 07.03.2022

घोषणा की तारीख /Date of Pronouncement

: 08.03.2022

आदेश / ORDER

Per Bench:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals), Puducherry, in ITA No.87/CIT(A)-PDY/2017-18 dated 28.09.2018. The Assessment was framed by Income Tax Officer, Ward-4, Puducherry for the relevant A.Y. 2015-16 vide order dated 29.12.2017 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

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2. The only issue in this appeal of assessee is regards the order of Ld. CIT(A) confirming the action of the Assessing Officer (A.O) in disallowing the claim of deduction of interest expenses incurred while computing business income amounting to Rs. 33,90,871/-.

3. The brief facts of the case are that the assessee is an individual and partner in the firms namely Muthu Gold House, Muthu Silk Plaza and Muthukaruppan & Sons, from where she is receiving remunerations. She is receiving remunerations from Muthu Gold House at Rs. 9.00 Lakhs and Muthukaruppan & Sons at Rs. 1.00 Lakh totaling to Rs. 10.00 Lakhs and interest of Rs. 1.00 Lakh from Muthukaruppan & Sons. Thereby it earned total Rs. 11.00 Lakhs. The assessee before A.O claimed that she has availed loan from Kotak Mahindra Bank Ltd. and LIC and paid interest and claimed the expenses of Rs. 33,90,871/- for the reason that the assessee has earned remunerations and interest from partnership firms. According to assessee, the remunerations and interest from partnership firm is assessable under the head 'income from business' u/s. 28(v) of the Act. The A.O during the course of assessment proceedings noted that the assessee has availed loan from Kotak Mahindra Bank Ltd. as well as LIC for and on behalf of partnership firm and this loan was invested in these firms i.e., Muthu Gold House, Muthu Silk Plaza and Muthukaruppan & Sons from where the assessee is receiving

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remunerations and interest. The A.O noted that the interest claimed by assessee, which was actually utilized by these three firms above named, and assessee has not utilized these loans but claimed interest against remunerations and interest received from these firms. The A.O was of the view that the loan is availed by the firm and not by the individual and if at all the interest is to be allowed in the hands of the firm. Thereby, the A.O disallowed the same by observing as under:

“In view of these reasons detailed in the earlier paragraphs, the assessee, in the first place, failed to prove that the loans were taken by her and even if availed by her, amount of interest paid and claimed as expenditure in respect of capital borrowed is utilized for the purpose of investment by her in particular businesses wherein she is a partner. The assessee has also failed to explain as to how the interest to LIC is allowable as a deduction. In view of this reason, the expenses of Rs.33.90 lakhs claimed against the head Income from business is disallowed and the income of Rs.11.00 lakhs received towards Remuneration and interest from the partnership firms is assessed under the head income from business u/s 28(v) of the Act.”

4. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) rejected the same and stated that the assessee could not prove the nature of loan obtained and the nature of the utilization of this loan. He noted that the assessee has taken loans from Kotak Mahindra Bank Ltd. as well as LIC and claimed the interest expenses from the income received from the firm but he noted that there is no evidence indicating that the loans were utilized by the individual. Hence, he confirmed the action of the A.O. Aggrieved, the assessee is in second appeal before the Tribunal.

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5. Now before us, the Id. counsel for the assessee Shri S. Sridhar, Advocate stated that the remunerations and interests received from the above firms are declared by assessee as business income and even A.O has assessed the same as business income. According to him, this fact is undisputed. Even the Ld. CIT(A) has not doubted the loans taken by the assessee but he on different reasoning that the nature of utilization of the loan is not explained and he further went on that the loan actually taken by the firm and not by individual, confirmed the action of the A.O. He argued that the assessee now is filing the documentary evidences, which will prove the nexus of this loan with that of the assessee's utilization, he filed the following details:

- i. *Additional Deed of Partnership entered into by the Appellant.*
- ii. *Memorandum of Deposit of Title Deeds executed by the Appellant in favour of Kotak Mahindra Bank Ltd.*
- iii. *Kotak Mahindra Bank statement from 01.03.2013 to 30.04.2013.*
- iv. *Ledger of S. Minatchy current account in the books of Muthu Gold House from 01.04.2015 to 31.03,2015.*
- v. *Ledger of Interest to Partners in the books of Muthu Gold House from 01.04.2015 J to 31.03.2015.*
- vi. *Income tax return and Statement of Income of the Appellant for the above assessment year.*

6. These were confronted by Ld. Sr. D.R he stated that these evidences were not filed either before the A.O or Ld. CIT(A) and are being filed for the first time before the Tribunal. To this effect, the Id. counsel for the assessee also conceded. However, the Id. counsel stated that in any event the mater can go back to the file of A.O for proving the nexus and explaining the nature of utilization of this loan.

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We noted that the plea of the above is quite reasonable as the above mentioned documents for proving nexus of this loan whether the same is for the individual assessee's purpose or for utilization of the firm are being filed for the first time. We have no mechanism to verify these documents or go into the details for adjudication, hence we set aside the orders of the lower authorities and remit this issue back to the file of the A.O for fresh adjudication. The A.O will go into these documents first and try to find out nexus between the loan obtained and utilization whether by individual or by firm and accordingly, decide the issue. Needless to say that he will provide opportunity of being heard in terms of the above. Hence, this appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 08th day of March, 2022 in Chennai.

Sd/-
(डॉ एम एल मीना)
(Dr. M.L. Meena)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 08th March, 2022.

EDN/-

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF