

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH 'B' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1537/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Swaransingh Gyansingh Sohal 604, San Mahu Complex, 5 Bund Garden, Opp. Poona Club, Camp, Pune – 411001 PAN: AGHPS9850P	Vs.	ITO, Ward 2(2) Pune
Appellant		Respondent

Assessee by Smt. Deepa Khare
Revenue by Shri M.G. Jasnani
Date of hearing 02-05-2022
Date of pronouncement 04-05-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A), Pune-5, Pune on 20.02.2017 in relation to the A.Y. 2011-12.

2. The first issue is against the confirmation of disallowance of interest of Rs.78,56,948. Briefly stated, the facts of the case are that the assessee is running proprietorship concerns, namely, M/s. Sohal Construction for construction contracts and M/s. Sohal sand supplier for trading in building materials. In addition, the assessee

is partner in several firms. Some interest income was credited and interest expenditure was debited in the Profit & loss account of M/s. Sohal Construction. On verification, the Assessing Officer (AO) observed that the assessee had withdrawn certain amounts through journal entries from the firms in which deduction under section 80IB of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was claimed, which were invested, again through journal entries, to the firms in which no deduction u/s 80IB was available. The assessee had made transfers by withdrawal of Rs.17,04,15,052 from a firm M/s. Eisha Properties (eligible for section 80IB deduction) on different dates during the year and the same was transferred to firms Eisha Realtors; Eisha Vastu Construction; Eisha Asset Developers; and Eisha Concord Realtors etc. (none eligible for deduction u/s 80IB). The firm Eisha Properties claimed deduction u/s 80IB of the Act and did not offer any income chargeable to tax, though it showed to have earned interest of Rs.1,13,69,634 from the assessee on the transfers by withdrawal. Corresponding deposits through transfer entries were made in the firms in which deduction u/s 80IB was not available, but the amount of interest received from them on such amounts was Rs.35,12,686.

The AO opined that the interest earned from the firms and paid to the firms was arranged in such a manner that loss of Rs.78,56,948 (Interest paid of Rs.1,13,69,634 minus Interest received of Rs.35,12,686) was created in the hands of the assessee without there being any commercial connection or corresponding liability in the hands of the firms to pay tax thereon. Since such excess amount was not loss in the real sense but because of adjustments made by the assessee in the Capital accounts of various firms, the AO held that the loss of interest of Rs.78,56,948 could not be allowed. He, therefore, made addition for the said sum. The Id. CIT(A) echoed the same. Aggrieved thereby, the assessee has preferred appeal before the Tribunal.

3. We have heard the rival contentions and gone through the relevant material on record. This case came up for hearing on earlier occasions as well, when the Id. AR was directed to file copy of accounts of such firms in the books of the assessee having transfer entries of withdrawals and deposit entries. Such details have been placed by the Id. AR in paper book from page 1 to 46. Account of Eisha Arihant Build Con LLP is available at page 6 of paper book, which shows two journal debit entries totalling

Rs.37.00 lakh with credit to Eisha Properties account. This shows that the assessee in his books (Proprietorship concern Sohal Construction) debited Eisha Arihant Build Con LLP with sum of Rs.37 lakhs and credited Eisha Properties with equal amount. Page 7 is the account of Eisha Asset Developers in the books of the assessee. There are several debit entries in this account with corresponding credit to Eisha Properties. This also shows that the assessee debited Eisha Asset Developers and credited Eisha Properties. Similar is the position regarding other accounts. This transpires that the assessee passed transfer entries by crediting Eisha Properties (the firm claiming deduction u/s 80IB) and debiting other firms (not having the benefit of deduction u/s 80IB). In this way, payment of interest by the assessee amounting to Rs.1.13 crore created income in the hands of Eisha Properties and expenditure in the hands of the assessee. In the like manner, the assessee received interest amounting to Rs.35,12,686 from various firms not having benefit of deduction u/s 80IB. By doing this exercise, interest income was created in the hands of Eisha Properties whose income was otherwise eligible for deduction u/s 80IB. This is how, the assessee created excess debit interest of Rs.78.56 lakhs in his hands

for adjusting the same with the income earned from construction work in his proprietorship concern, M/s. Sohal Construction. As the transactions of withdrawals and investments were routed through transfer entries, there was a direct nexus between the amounts transferred from Eisha Properties through journal entries to other firms, such as, Eisha Asset Developers. The journal entries were passed with a view to create loss in the hands of the assessee by means of excess payment of interest without any corresponding liability of paying tax on interest in the hands of Eisha Properties. It is not even a case of mixed pool of funds in the hands of the assessee. Rather it is a straight transfer from one firm's account to another thereby ingraining direct nexus between the two. Obviously, such an amount of interest paid for extra commercial considerations cannot be allowed as deduction.

4. The ld. AR, without prejudice to main argument of the deletion of entire addition, submitted that the calculation of excess interest of Rs.78.56 lakhs made by the AO was incorrect. On an earlier occasion, a report was called for from the concerned AO on the correct amount of excess interest. Such report dated 23.02.2022 has been placed on record, in which the AO has tabulated the amount of

interest received at Rs.66,31,094 from certain concerns and interest paid at Rs.1.13 crore with differential excess amount of interest at Rs.47,38,541. We, therefore, uphold the disallowance at Rs.47,38,541 as against Rs.78.56 lakhs confirmed in the first appeal. This ground is partly allowed.

5. The only other issue that survives is against making of addition of Rs.2,95,996 u/s 14A of the Act. No addition was made by the AO u/s 14A in the assessment order. The Id. CIT(A) observed that the assessee had not offered any disallowance u/s 14A despite having exempt income. He issued an enhancement notice. After taking into consideration the entire gamut of material, he made disallowance at Rs.2,95,996 under rule 8D(2)(iii) of the Income-tax Rules, 1962 (hereinafter referred to as 'the Rules') read with section 14A of the Act at 0.5% of average investments.

6. After considering the rival submissions and perusing the relevant material on record, it is seen as an admitted position that the assessee was having exempt income and no disallowance was offered u/s 14A. The Id. CIT(A) was reasonable in making disallowance at 0.5% of average investments under rule 8D(2)(iii).

Such a disallowance, being, in conformity with the relevant provision, is hereby confirmed.

7. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 04th May, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 04th May, 2022
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A), Pune-5, Pune
4. The PCIT, Pune-4, Pune
5. DR, ITAT, 'B' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	02-05-2022	Sr.PS
2.	Draft placed before author	04-05-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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