

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 3076/MUM/2019
(ASSESSMENT YEAR: 2015-16)

Amardeep Constructions,
07/08, Patidar Complex,
Kannamwar Nagar, Vikroli (East),
Mumbai - 400083
[PAN: AAUFA3513A]

..... Appellant

Vs

Assistant Commissioner of Income Tax,
Circle 29(1), Mumbai,
Room No. 108, 1st Floor, C-10,
Pratyaksha Kar Bhawan,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400051

Respondent

.....

Appearances

For the Respondent/ Assessee : Shri Subodh Ratnaparkhi
For the Appellant/Department : Shri Mehul Jain

Date of conclusion of hearing : 17.02.2022
Date of pronouncement of order : 28.04.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 12.02.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as 'the CIT(A)] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as, 'the Act'] in appeal [CIT(A)-40/IT-10308/17-18] for the Assessment Year 2013-14, whereby the CIT(A) had dismissed the appeal filed by the Assessee against the Assessment Order, dated 29.12.2017, passed under section 143(3) of the Act.
2. The assessee has raised the following grounds of appeal:

- “1. The Hon. CIT (A) erred in confirming the addition of Rs.3,08,51,324/- made by the Id AO by disallowing interest expenditure claimed as deduction u/s 57(iii) of the IT Act 1961, for the reason that appellant had utilized interest bearing secured loans for advancing interest bearing loans to third parties, which being not as per the terms of bank sanction letter, the deduction of interest expenditure was denied.*
- 2. The Hon. CIT (A) erred in dismissing without any discussion, the alternative ground against reduction of closing work in progress as on 31.3.2015 by a sum of Rs. 94,49,445/- on account of loans and advances given, which did not bear interest in the year under appeal, not appreciating that the interest earned on such loans and advances given, was reduced from the work in progress in the subsequent of asst. year on actual receipt of such interest and therefore any downward modification of closing work in progress as on 31.03.2015 was not warranted.”*
3. Brief facts of the case are that the Appellant is partnership firm engaged real estate business. The Appellant filed return of income on 18.01.2016 declaring total income of INR 68,36,330/-. The Appellant had incurred interest expenses of INR 10,78,14,917/- during the relevant previous year. Out of the aforesaid interest expenses INR 7,69,63,593/- were transferred to the work-in-progress account whereas interest expenses of INR 3,08,51,324/- were claimed as deduction under Section 57(iii) of the Act and net interest income of INR 67,60,577/- was offered to tax as income from other sources after setting-off the aforesaid interest expenditure.
4. The case of the Appellant was selected for scrutiny. During the assessment proceedings, Appellant was asked to show cause why the interest expenses of INR 3,08,51,324/- claimed as deduction under

Section 57(iii) of the Act should not be disallowed. In response to the same, the Appellant filed detailed submissions and workings. However, the Assessing Officer disallowed interest expenses of INR 3,08,51,324/- under Section 57(iii) of the Act on the ground that the borrowed funds were utilized in contravention of the terms and conditions of the sanction letter issued by the Abhyudaya Bank. The relevant extract of the assessment order read as under:

"It is important to note that according to the point no (viii) of terms and conditions laid down by the Abhyudaya bank as per loan sanction letter, "... You will not utilize the funds from Term Loan account for trading in shares, Investment in Real Estate or any other investments or purpose other than your business activities for which the finance is being availed from the bank."

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On the contrary, assessee vide his submission on 27 Dec 2017 is trying to establish the nexus of loans given, from loans taken from Abhyudaya bank. The assessee as per the terms and conditions laid out in the loan sanction letter clearly cannot give loans from the amounts received as term loan from Abhyudaya bank.

The advancing of loans from the borrowed funds which are prohibited to be used for any other purpose is unacceptable. Thus, the interest expenses accrued on the loan amount cannot be given as deduction as the nexus of principal amount received and advanced as loan cannot be accepted.

In view of the above, after considering all facts in this case the amount of Rs. 3,08,51,324/- is disallowed as deduction under section 57(iii) under the head of income from other sources as per provision of the Income Tax Act. Further, the same amount is

*taken as business expense and is allowed to be carried to the Work In Progress for the relevant FY by the assessee firm.”
(Emphasis Supplied)*

5. The CIT(A), in appeal preferred by the Appellant, also declined grant any relief to the Appellant and dismissed the appeal. Being aggrieved, the Appellant has filed the present appeal.

6. The Ld. Authorised Representative for the Appellant appearing before us made the following submissions. The Appellant, during the year consideration, had claimed deduction of interest expenditure of INR.3,08,51,324/- under Section 57(iii) of the Act, against interest income of INR.3,76,11,901/- earned from interest bearing loans and advances given. During the relevant previous year the Appellant was developing two real estate projects at Bhiwandi and Mulund, and had raised funds for development of real estate projects from the following three sources being capital brought in by the partners at the rate of 12% p.a., secured loan from Abhyudaya Bank at the rate of 15.5% p.a. and unsecured loans from various parties at interest rates ranging from 12 to 18%. Both the projects were at initial stage as there was a delay in obtaining necessary approvals. The Appellant was unable to invest the entire borrowed funds in the projects and therefore, to reduce the burden of heavy interest cost, the Appellant advance a part of idle interest-bearing borrowed funds to third party on interest. Details and workings showing direct nexus between the interest-bearing borrowed funds and the funds advanced to third parties on interest was filed during the assessment proceedings which included statements showing nexus between loan & advances and the borrowed funds for AY 2013-14, 2014-15 and 2015-16, as well as loan sanction letter from Abhyudaya Bank. Further, copy of assessment order for assessment years 2012-13 and 2013-14 passed under Section 143(3) of the Act were also furnished to show no such disallowance of interest claimed

under Section 57 of the Act was made in the scrutiny assessments for the preceding assessment years. In this regard, the Ld. Authorised Representative relied upon the judgment of Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (1192) 193 ITR 321 (SC). He further submitted that the Assessing Officer did not dispute the actual nexus between borrowed funds and interest-bearing funds advanced to third parties for earning interest income, and has disallowed interest expenditure claimed as deduction under Section 57(iii) of the Act on the sole ground that in terms of sanction letter issued by Abhuyadaya Bank, the Appellant could have utilized the sanctioned loan amount only for the purpose of construction of project at Bhiwandi. The Ld. Authorised Representative referred to provisions of Section 57(iii) of the Act to contend that once nexus between expenditure incurred and earning of income is established, the deduction for expenditure should be allowed provided the expenditure is not capital in nature and has been incurred wholly and exclusively for the earning interest income. He further submitted that the claim made by the Appellant is bonafide as the Appellant had claimed interest expenses at the rate of 12% as against interest expenses cost incurred at the varying rates from 12% to 18% since the Appellant could lend the funds to earn interest income at an average rate of 12.17% approximately. The primary objective of the Appellant was to subsidize the interest cost on idle interest-bearing funds borrowed from real estate projects. The appeal filed before CIT(A) has also been disposed of without even discussing the merits of the arguments made by the Appellant.

7. We have considered the rival submissions and perused the record. The Appellant had filed details/workings before the Assessing Officer to establish nexus between the funds borrowed and the funds advanced. The lower authorities have not disputed the said details/working establishing nexus but have summarily rejected the same by relying upon the terms of sanction issued by the Abhuyadaya Bank which

provided that the sanction amount could only be used for the purpose of construction of project at Bhiwandi. Having examined the aforesaid details/workings forming part of paper-book, we are of the view that the Appellant has been able to establish nexus between interest-bearing funds borrowed which were utilized for granting loans/advances to third parties for earning interest income to reduce the idle interest cost. Thus, the interest expenses claimed as deduction have been incurred for the purpose of earning interest income. It is not the case of the Revenue that the interest expenses are capital in nature. Accordingly, the interest expenses are allowable as deduction under Section 57(iii) of the Act. The Appellant has provided bonafide reasons for departing from the terms of the sanction. The idle interest-bearing borrowed funds have been used to earn interest income to off-set high interest cost. The Assessing Officer has not disputed the fact that the interest income has been earned by the Appellant and the same has also been offered to tax. In the assessment framed on the Appellant under Section 143(3) of the Act for the Assessment Years 2012-13 and 2013-14 deduction claimed under Section 57(iii) of the Act has been allowed *(except for a partial disallowance made under Section 40A(2)(b) of the Act for Assessment Year 2013-14)*. There is no change in the policy followed by the Appellant in the year under consideration and therefore, as the judgment of Hon'ble Supreme Court in the case of Radhasoami Satsang (supra) deduction claimed by the Appellant should be allowed applying the principle of consistency.

8. In view of the above, interest expenses of INR 3,08,51,324/- claimed as deduction under Section 57(iii) of the Act are allowed and disallowance/addition made by the Assessing Officer which was confirmed by CIT(A) is deleted. Ground No. 1 of the appeal is allowed.
9. The Ground No. 2 pertaining to reduction of closing work in progress as on 31.03.2015 by INR 94,49,445/- proposed by the Assessing Officer as

'Alternative Scenario'. On perusal of assessment order, it is seen the Assessing Officer had disallowed interest expenses of INR 3,08,51,324/- and had, therefore, chosen not to proceed on the basis of 'Alternative Scenario'. Accordingly, Ground No. 2, raised by the Appellant as a matter of caution, is disposed-off as being infructuous.

In result, appeal of the Appellant is allowed.

Order pronounced on 28.04.2022.

Sd/-
(Pranod Kumar)
Vice President

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28/04/2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार //(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai