

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI SIDDHARATHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1351/AHD/2019  
निर्धारण वर्ष/Asstt. Year: 2016-2017

Asitkumar Chimanlal Patel, Bungalow no.10, Vrundavan-7, Shyam Residency, Thaltej, Ahmedabad.  <b>PAN: AFAPP9300D</b>	Vs.	I.T.O., Ward-6(1)(4), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Vartik Chokshi, with Shri Biren Shah, A.Rs
Revenue by :	Shri Purushottam Kumar, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **19/05/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **31/05/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-6, Ahmedabad, dated 26/07/2019 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-2017.

2. The 1<sup>st</sup> issue raised by the assessee is that the learned CIT-A erred in confirming the disallowance of interest expenses of ₹ 18,00,448/- claimed against the interest income of ₹19,51,695 only.

3. The facts in brief are that the assessee in the present case is an individual and claimed to have borrowed money from the firm in which he is a partner. On such borrowing the assessee has incurred interest cost of ₹ 18,20,448.00 only. The money was borrowed by the assessee for the purpose of purchasing the residential property. At the same time the assessee has also made deposits in a company known as Lubgraf Synoils Pvt. Ltd. on which he was earning interest income. As such the assessee in the year under consideration has claimed to have earned interest income for an amount of ₹ 19,51,695 only. The assessee has adjusted the amount of interest expenses against the interest income.

4. However, the AO was not satisfied with the adjustment made by the assessee against the interest income. According to the AO the fund borrowed from the partnership firm was utilized for the purpose of acquiring the residential property which is a personal asset. Therefore, the impugned interest expense being personal in nature cannot be adjusted against the income earned by way of interest on the deposits made with the company. The AO besides the above also found that the assessee has not furnished the necessary details to establish the fact that the money was actually borrowed from the partnership firm. According to the AO, if the amount has not been borrowed from the partnership firm, then the question of claiming the interest expense does not arise. Based on these reasons, the AO disallowed the claim of the assessee of the interest expenses of ₹ 18,20,448.00 and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT-A.

6. The assessee before the learned CIT-A contended that all the evidences with respect to the borrowing of the funds from the partnership firm were duly filed before the AO during the assessment proceedings. Furthermore the partnership firm has offered the impugned interest income received from the assessee to tax in its income tax return. Therefore, it cannot be said that details of the interest expenses were not furnished during the assessment proceedings.

6.1 The assessee further submitted that the amount which was deposited with the company on which he was earning the interest income, was not repaid by the company at the relevant point of time on account of lack of liquidity in its hands. Thus, in such a scenario, the assessee had to borrow the money from the partnership firm and incurred the interest expenses. In other words, had the assessee being able to get the money back which was deposited with the company, the same would have been utilized for the purpose of acquiring the residential property instead of borrowing the money from the partnership firm. Thus in such a situation, there would not have been incurred any interest expenses and generated any interest income. Accordingly, there would not have been any question of showing interest income as well as claiming the interest expenses. In view of the above, the assessee prayed to the learned CIT-A to delete the addition made by the AO.

7. However the learned CIT-A was not satisfied with the contention of the assessee on the reasoning that the money borrowed from the partnership firm on interest was utilized for the personal purposes i.e. purchase of residential property. Therefore, the interest expenses being personal in nature cannot be allowed as deduction.

8. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

9. The learned AR before us reiterated the contentions made before the learned CIT-A. On the other hand the learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions and have carefully considered the materials available on record. The facts of the case on hand are not in dispute. Therefore, we are not inclined to repeat the same for the sake of brevity and convenience. The 1<sup>st</sup> allegation of the Revenue was that the necessary documents were not furnished by the assessee with respect to the interest expenses incurred by him during the assessment proceedings. However, we disagree with the contention of the revenue on the reasoning that the assessee before the learned CIT-A has claimed to have furnished the necessary details to establish the genuineness of the interest expenses and this contention of the assessee was not controverted by the learned CIT-A. Accordingly we can safely infer that all the details relating to the interest expenses were available before the AO during the assessment proceedings. Besides the above we have referred the paper book filed by the learned AR running into pages 1 to 82 and note that the assessee has filed the capital account maintained in the partnership firm which is placed on pages 43 to 45 of the paper book. The learned DR at the time of hearing has also not brought anything on record contrary to the arguments advanced by the learned AR for the assessee. Thus, we hold that the expense shown by the assessee in the form of interest to the partnership firm is genuine.

11.1 The 2<sup>nd</sup> controversy arises whether the interest expense can be adjusted against the interest income. Admittedly, the borrowed fund was utilized for the purchase of essential property which was not used for the purpose of the business. Therefore, such interest expenses, generally should not be allowed as deduction. However, the facts of the case on hand are different and bit peculiar. It is for the reason that there were certain deposits made by the assessee in a company but the assessee failed to take back the same deposits from the company on account of

lack of liquidity available in the hands of the company. Thus there were compelling circumstances for borrowing the money from the partnership firm. As such the assessee had to borrow the money for the reason that he failed to recover the deposits from the company. Had the assessee been in a position to recover the money from the company, then there was no reason for borrowing the money from the partnership firm on interest. In such a situation, there would not have been any source of income in the hands of the assessee on the deposits made in the company. Likewise, there would not have been any interest expenses. Thus the question of disallowing the interest expenses would not have been arising.

11.2 The ITAT in the case of Raj Kumar Aggarwal Vs. DCIT reported in 47 taxmann.com 88 has observed as under:

*"On these facts, in order to protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so incurred is wholly and exclusively to earn the fixed deposit interest income. The authorities below were apparently swayed by the fact that the borrowings were triggered by assessee's financial needs for personal purposes and, by that logic, the borrowing cannot be said to be wholly and exclusively for the purposes of earning interest income, but what this approach overlooks is whether the expenditure is incurred for directly contributing to the beginning of or triggering the source of income or whether the expenditure is for protecting, and thus keeping alive, that source of income, in either case it is expenditure incurred wholly and exclusively for the purpose of earning that income."*

11.3 The facts of the case on hand are identical to the facts of the case discussed in the aforesaid case. Accordingly, we hold that the principles laid down by the tribunal in the case as discussed above are squarely applicable to the present facts of the case. Therefore, we hold that the interest expense was incurred by the assessee on the money borrowed from the partnership firm as he failed to recover the deposits from the company. Thus, in our considered view the interest expenses are directly connected to the interest income which the assessee has received on the deposits from the company and thus eligible for deduction. In view of the above the ground of appeal of the assessee is allowed.

11.4 The assessee has raised alternate contention in the 2<sup>nd</sup> ground of appeal, but the same is not required to be adjudicated for the reason that the assessee has succeeded in the primary contention raised by him that the interest expense is eligible for deduction against the interest income. Accordingly, we do not find any reason to adjudicate the alternate contention/ground of appeal raised by the assessee in the memo of appeal. As such the alternate ground raised by the assessee becomes infructuous and thus we dismiss the same.

12. In the result, the appeal filed by the assessee is **partly allowed**.

**Order pronounced in the Court on 31/05/2022 at Ahmedabad.**

**Sd/-  
(SIDDHARATHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
31/05/2022  
*Manish*