

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 396/Rjt/2017
Assessment Year 2014-15**

Shri Rohitbhai Bhikhabhai Kiyada Alka Park, Street No. 2, Kuvadava Road, Nr. Ranchhod Das Ashram Road, Nr. Pedak Road, Nr. Pedak Road, Rajkot- 360001 PAN No. AQCPK0095K (Appellant)	Vs	The ITO, Ward 2(1)(5), Rajkot (Respondent)
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**Appellant by : Shri Kamal Bhambhani, A.R.
Respondent by : Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 22-06-2022
Date of pronouncement : 29-06-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-2, Rajkot, (in short referred to as CIT(A)), dated 14-08-2017, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2014-15.

2. The only effective ground read as under:

“ The Commissioner of Income Tax (Appeals)-2, Rajkot, (hereinafter referred to as the "Ld. CIT(A)") erred on facts as also in law in disallowing interest expenditure of 3,90,243/- as non-business expenditure on account of differential rate between interest paid and interest received. The order of the Ld. CIT(A) in disallowing interest expenditure of 3,90,243/- as non-business expenditure is baseless and totally unwarranted.”

2.1. As is evident, the solitary issue involved in the present appeal relates to disallowance of interest expenses incurred by the assessee.

3. As transpires from the orders of the authorities below, the A.O. had noted that the assessee was having job work income and being a partner in firm M/s. Shantam Developers and derived income there from by way of interest on capital and share of profit from firm. The assessee had shown business income to the tune of Rs. 4,05,322/-. The A.O. noted that the assessee had claimed interest expenses of Rs. 9,91,853/- which the assessee stated had been paid to his father on account of a bank loan taken by him of Rs. 1,10,03,256/-. The A.O. verified the said information and found that the loan was in the name of his father Shri Bhikhabhai Jivrajbhai Kiyada from Dewan Housing Finance Corporation Ltd. and the assessee had debited interest relating to the same as his business expenditure. He held that the same had no relation with the business of the assessee and therefore were not allowable. He further noted that the assessee had earned exempt income by way of agricultural income of Rs. 5,02,763/- and share from firm Rs. 69,211/- and holding the interest expenses to be related to earning of exempt income, he held the same to be disallowable. Thus the entire interest expense of Rs. 9,91,853/- was disallowed for being related to earning of

exempt income and also for not having been wholly and exclusively incurred for the business of the assessee.

4. Before the Ld. CIT(A) the assessee demonstrated that the interest related to loan of Rs. 50,50,000/- given by his father to him which the assessee had invested as capital in the partnership firm M/s. Shantam Developers. He contended that he had earned taxable interest income from the firm on account of the said investment and therefore there was no reason to disallow the interest expenses so incurred, since they were incurred wholly for the business of the assessee and not in relation to the earning of any exempt income. The Id. CIT(A) after considering all the facts and circumstances of the case found that the assessee had paid more interest on the amount advanced by his father as opposed to the interest earned when the said amount was invested as capital in his partnership firm. Finding no justification for the differential interest he held the same amounting to Rs. 3,90,243/- to be in the nature of non-business expenditure and confirmed disallowance of the same. The relevant portion of the Id. CIT(A) at page 9 of the order as under:

“Having considered facts and circumstances of the case I find that the assessee has paid interest to his father at a higher rate than he earned from the firm. There is no justification for the differential in Interest rates. Besides the remuneration earned by assessee has no relation to this expenditure. Profit earned is also too meagre. Therefore I hold that the interest expenditure of Rs. 390243 (Rs. 991853 - Rs. 601610) is non-business expenditure which is the difference between interest paid and interest received owing to rate differential. Disallowance of Rs, 390243 is therefore confirmed & balance is deleted. Assessee succeeds partly on this ground.”

5. Aggrieved by the same, assessee come up in appeal before us.

6. We have heard both the parties. The solitary grievance before us is against the confirmation of disallowance of interest claimed by the assessee as business expenditure to the tune of Rs. 3,90,243/- out of an amount of Rs. 9,91,853/- claimed by the assessee.

7. A perusal of the order of the Id. CIT(A) reveals that the fact that interest so paid related to the loan of Rs. 50,50,000/- taken by the assessee from his father and invested further as capital in a partnership firm ,has been accepted by the Id. CIT(A). This is evident from his findings to the effect “that the assessee had paid interest to his father at a higher rate than he earned from the firm “. The only reason for restricting the disallowance of Rs. 3,90,243/- by the Id. CIT(A) is that there was no justification for paying a higher rate of interest by the assessee to his father on the loan taken as against what that earned by way of interest from the bank.

8. We do not find any substance in this reasoning of the Id. CIT(A). Having accepted the fact that the assessee had paid interest on loan taken from his father which was advanced as his capital in a partnership firm wherein he had earned interest income, the Id. CIT(A) cannot sit in judgment over the quantum of interest which the assessee paid or earned in the transaction. Why differential rate of interest should be disallowed and under which provision of the Act it is to be disallowed is not clear to us. As long as the genuineness of the transaction is not doubted there is no reason why the assessee should justify the higher rate of interest paid on loan taken for being eligible for claiming the said expense. No specific provision under the Act has been invoked for the Id.CIT(A) while doing so. Further having accepted the portion of the interest paid by the assessee which was commensurate with that earned, the Id. CIT(A) has practically held a

portion of the interest expenses incurred as relatable to business and rejected the balance as not relatable merely for the reason that the excess was higher than the amount of interest earned. This is no basis for arriving at the conclusion that the interest expenses were not incurred for the purpose of business.

9. In view of the same, we do not find any justification/ merit in the order of the Id. CIT(A) upholding the disallowance of interest to the extent of Rs. 3,90,243/. We accordingly direct the A.O. to allow the entire interest expenses.

10. Appeal of the assessee is allowed.

11. In effect, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29 -06-2022

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER *True Copy*
Ahmedabad : Dated 29/06/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट