

THE INCOME TAX APPELLATE TRIBUNAL
“F” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 1963/Mum/2021 (A.Y. 2015-16)

Varun Khandelwal Arunodaya, 23 New India Society, 11 th Road Juhu Scheme Mumbai-400 049. PAN : ADAPK8317M (Appellant)	Vs.	PCIT Room No. 344 3 rd Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Dr. K Shivram, Shri Shashi Bekal
Department by	Shri Achal Sharma
Date of Hearing	27.06.2022
Date of Pronouncement	30.06.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the revision order dated 31.3.2021 passed by learned Principal Commissioner of Income Tax (PCIT) for A.Y. 2015-16. The assessee is challenging the validity of the revision order passed by Ld PCIT.

2. Facts relating to the case are stated in brief. The assessee is an individual, having income from salary, business income and other sources income. The assessment in the hands of the assessee was completed under section 143(3) of the Act on 30.6.2017, wherein the Assessing Officer disallowed interest claim of Rs. 4,42,732/-. The facts relating thereto are that the assessee had availed loan of Rs. 1.35 crore from L&T Housing Finance and Rs. 1.05 crore from PNB Hosing Finance for the purpose of purchasing a house property. The assessee incurred interest expenditure of Rs.27.05 lakhs during the year under consideration on the above said loans. The assessee used a sum of Rs.38.70 lakhs only for giving advance to M/s Sai Sidhdhi Developers

for purchasing a house property. He gave loan of Rs.2.98 crores to a concern named M/s. Khandelwal Info Tech and received interest income of Rs. 23.00 lakhs from it. While computing total income, the assessee claimed entire interest expenditure of Rs. 27.05 lakhs as deduction against above said interest income.

3. It is stated by Ld A.R that the return of income filed by the assessee was taken up under limited scrutiny for the purpose of verifying the claim for deduction of interest expenditure. During the course of assessment proceedings the Assessing Officer took the view that the interest expenditure attributable to amount given to M/s Sai Sidhdhi Developers for purchase of property cannot be allowed as deduction. Accordingly, the AO disallowed interest expenditure to the extent of Rs. 4,42,732/-, being interest expenses attributable to amounts given to M/s. Sai Sidhdhi Developers for purchasing house property. He allowed deduction of remaining amount of interest expenditure against the interest income.

4. On examination of the assessment record, the learned PCIT took the view that the entire interest expenditure of Rs.27.05 lakh should have been disallowed by the Assessing Officer. The reasoning given by Ld PCIT is that the loans have been availed by the assessee for purchasing a house property and hence interest expenditure could be claimed against house property income only, i.e., loans have not been taken for giving advances to M/s. Khandelwal Infotech and hence interest expenditure cannot be considered as expenditure incurred for earning interest income. Accordingly, learned PCIT took the view that the assessment order passed by the AO is erroneous and prejudicial to the interests of revenue. Accordingly, he initiated revision proceedings under section 263 of the Act. After hearing the assessee, learned PCIT set aside the assessment order and directed the Assessing Officer to reframe the same after giving due opportunity to the assessee and also in the light of the discussion made by him in the revision order.

5. Aggrieved by the order passed by learned PCIT, the assessee has filed this appeal before us.

6. The Learned AR submitted that the return filed by the assessee was taken up for limited scrutiny specifically for the purpose of inquiring about the interest expenditure claimed by the assessee against interest income. The Learned AR submitted that the AO has made proper enquiries with regard to the claim of interest expenditure and the assessee has furnished various details, viz., details of loans taken, details of loan given to M/s Khandelwal Infotech Ltd., amount given to M/s Sai Sidhdhi Developers for purchase of property, details of interest income/expenditure. The assessee had earned interest income of Rs. 27.35 lakhs in aggregate, which included interest income of Rs. 23 lakhs received from Khandelwal Info Tech Ltd. The assessee had claimed entire interest expenditure of Rs. 27,15,223/- against above said interest income. After duly examining the details furnished by the assessee, the Assessing Officer has taken the view that the interest expenditure pertaining to amount given to Sai Siddhi Developers for purchasing house property is not allowable as deduction against interest income. The Learned AR further submitted that even though loans were availed by the assessee from L&T Housing Finance and PNB Housing Finance for the purpose of purchasing a house property, the same has been used for giving loan to Khandelwal Info Tech and hence there is direct nexus between the borrowed funds and loan given. Hence, the Assessing Officer has rightly allowed claim of interest expenditure relatable to loan given to Khandelwal Info Tech. Accordingly, the learned AR submitted that the Assessing Officer has made proper enquiries, duly applied his mind on this issue and has taken a possible view. Hence, the impugned revision order passed by learned PCIT should not be sustained, as the impugned assessment order cannot be termed as erroneous and prejudicial to the interests of revenue.

7. The Ld D.R, on the contrary, submitted the loans have been taken for the specific purpose of purchasing a house property and hence the interest

expenditure is allowable against house property income only. However, the assessee has used the loan funds for giving loans to a concern named M/s Khandelwal Infotech. Since the purpose of taking loan is not related to the giving of loan to another concern, the interest expenditure cannot be allowed as deduction. In support of this proposition, the Ld D.R. placed his reliance on the following case law:-

- (a) Akansha Ranju Pilani vs. ITO (2015)(53 taxmann.com 158)(Mum)
- (b) Continental Float glass Ltd vs. ACIT (1994)(51 ITD 322)(Delhi)
- (c) CIT vs. Dr. V.K. Gopinathan (2001)(116 Taxman 489)(SC)
- (d) Addl. CIT vs. Madras Fertilisers Ltd (1980)(122 ITR 139)(Mad).

He submitted that in all these case laws, the interest expenditure has been held to be not allowable against interest income.

8. The Ld A.R, in the rejoinder, submitted that in all the cases relied upon by Ld D.R, direct nexus between borrowed funds and loans given were not proved. However, in the instant case, direct nexus has been proved. He further submitted that the arguments of Ld DR are related to the merits of the issue. Since the present appeal challenges revision order passed u/s 263 of the Act, it is required to be seen as to whether the AO has taken a plausible view or not. He submitted that the AO has made proper enquiries and has taken a plausible view of the matter. Accordingly he submitted that the initiation of revision proceedings is bad in law. In this regard, he placed reliance on the following case law:-

- (a) CIT vs. Development credit bank Ltd (2010)(323 ITR 206)(Bom)
- (b) CIT vs. Sunbeam Auto Ltd (2011)(332 ITR 167)(Delhi)

9. We heard rival contentions and perused the record. The legal position with regard to the power of Learned CIT to invoke revision proceedings under section 263 of the Act. The scope of revision proceedings initiated under section 263 of the Act was considered by Hon'ble Bombay High Court, in the case of Grasim Industries Ltd. V CIT (321 ITR 92) by taking into account the

law laid down by the Hon'ble Supreme Court. The relevant observations are extracted below:

Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be "erroneous in so far as it is prejudicial to the interests of the Revenue". This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision "cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer" and "it is only when an order is erroneous that the section will be attracted". The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax. What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

"The phrase 'prejudicial to the interests of the Revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

The principle which has been laid down in *Malabar Industrial Co. Ltd.* [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in *CIT v. Max India Ltd.* [2007] 295 ITR 282."

The principles laid down by the courts are that the Learned CIT cannot invoke his powers of revision under section 263 if the Assessing Officer has conducted enquiries and applied his mind, even if there is no detailed discussion in the assessment order. If there was any enquiry, even inadequate would not by itself give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. The consideration of the Commissioner as to whether an order is erroneous in so far it is prejudicial to the interests of Revenue must be based on materials on record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded.

10. In the instant case, we noticed that the assessee has availed loans from two housing finance companies and used part of the loan funds for giving loan to M/s Khandelwal Infotech. There is no dispute that the assessee has received interest income from the loan so given to M/s Khandelwal Infotech. There is also no dispute that the source for giving loan is the amount borrowed from the two housing finance companies. We further notice that the Id A.R. submitted that the return of income furnished by the assessee was taken up for limited scrutiny specifically for verifying the claim of interest expenditure against interest income. From the paper book furnished by the assessee, we notice that the assessee has furnished various details called for by the AO. On examination of those details, the AO has come to the conclusion that the interest attributable to the amounts given to M/s Sai Sidhhi Developers cannot be allowed as deduction against interest income, since the amounts were given for purchasing house property and not for the purpose of earning interest income.

11. The view taken by Ld PCIT is that the interest expenditure is incurred on the loans taken from housing finance companies for the purpose of purchasing a house property and hence the said interest expenditure is not allowable as deduction u/s 57 of the Act. The Ld D.R also reiterated the said view by placing reliance on certain case laws. We have gone through those case laws. We notice that in the case of Akansha Raju Pilani (supra) and in the case of Dr. V.P Gopinathan (supra), the direct nexus between loan taken and loan given was not proved. In the case of Continental float glass Ltd (supra), the interest income was earned on temporary deposits made out of loan funds. In the case of Madras Fertilisers Ltd (supra), it was held that the nexus of earlier borrowing and payment of interest with the subsequent earning of interest. In effect, all these cases drive the point that the direct nexus between borrowed funds and loans given by the assessee should be proved. In the instant case, we notice that the assessee has proved existence of direct nexus. However, as contended by Ld A.R, these facts relate to the merits of the issue.

12. The present appeal relate to the revision order passed u/s 263 of the Act. The Hon'ble Supreme Court, in the case of Malabar Industrial Company Ltd (243 ITR 83)(SC) has expressed the view that the assessment order passed on incorrect assumption of fact or an incorrect application of law, an order passed in violation of the principles of natural justice or without application of mind would be termed as erroneous. The Hon'ble Supreme Court further held that where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.

13. In the instant case, the Ld PCIT's case is that there is incorrect application of law. He has further held that the AO has not made proper enquiries. However, we have noticed that the assessee has proved direct nexus between the borrowed funds and loans given before the AO. We have

also noticed that the assessee has furnished all the relevant details and the AO has disallowed a part of interest expenditure, meaning thereby, the AO has duly applied his mind and taken a possible view. In our view, it cannot be said that the AO has not made proper enquiries. Hence the assessment order, in our view, cannot be termed as erroneous and prejudicial to interests of revenue. Accordingly, we are of the view that the impugned revision order is not sustainable in law. Accordingly, we set aside the impugned revision order passed by Ld PCIT.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30.06.2022.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 30/06/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS