

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

**BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM**

आयकर अपील सं. / **ITA No.353/PUN/2020**
निर्धारण वर्ष / Assessment Year : 2010-11

ITO, Ward -14(3), Pune,

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Nagpal Properties,
Office No.613/314,
Sacred World,
South Tower,
Wanowrie,
Pune – 411 040

PAN : AAFFN1476N

.....प्रत्यर्थी / Respondent

Assessee by : Shri P.D. Kudwa
Revenue by : Shri Arvind Desai

सुनवाई की तारीख / Date of Hearing : 20.06.2022
घोषणा की तारीख / Date of Pronouncement : 04.08.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. This Revenue’s appeal for A.Y. 2010-11 is directed against the CIT(A) - 9, Pune’s order dated 05/12/2019 passed in case No. PN/CIT(A) 7-trf. from/CIT(A)-9 trf.In/10747/2017-18 involving proceedings u/s. 143 (3) r.w.s. 147 of the Income Tax Act, 1961 ; in short “the Act”.

Heard both the parties. Case file perused.

2. The Revenue raises the following substantive grounds in the instant appeal.

- “1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) was not justified in holding that the assessee satisfied all the conditions stipulated in the provisions of section 801B(10) of the Income tax Act, 1961 and therefore would be eligible to claim deduction.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s 801B(10) of the Income tax Act 1961 even though the part of failure is attributable to assessee itself.*
3. *On the facts and in the circumstances of the case, the Ld CIT(A) grossly erred in allowing proportionate deduction even after observing that the legislative intent read with clear provisions of the requisite sections do not permit any proportionate deduction.*
4. *On the facts and in the circumstances of the case, the Ld.CIT(A) grossly erred in deleting the interest income of Rs.22,11,019/- calculated @ 4% of net advance lent to the sister concern for the difference in lending and borrowing rate.”*

3. We note first of all the instant former issue of correctness of CIT(A)'s detailed discussion holding the assessee as eligible for section 80IB(10) deduction regarding its residential project “Dev Exotica” on proportionate basis is no more res-integra as he has placed reliance upon his findings in A.Y. 2011-12 against which the Revenue's appeal ITA No. 562/PUN/2018 stands rejected on 11.11.2021. Learned departmental representative could

hardly dispute absence of any distinction on facts or law in both these assessment years. Faced with this situation, we adopt judicial consistency to reject the Revenue's instant former substantive ground.

4. The factual position is not different regarding the latter issue of interest addition amounting to Rs.22,11,019/- wherein the CIT(A)'s has quoted the tribunal's order in assessee's favour as under.

"3.3 From the perusal of the reports, I find that the assessee had borrowed loans of Rs. 7,39,46,078/- and had incurred interest expenses of Rs. 1,17,43,813/- at interest varying from 10% to 15% at the same time the assessee had advanced loan to B.S. Nagpal Leasing and Finance Co. for an amount of Rs. 6,13,55,470/-. The assessee had also borrowed interest free' unsecured loans of Rs. 60,80,000/-. According to the Ld A.O., the assessee had made a net advance out of the borrowed fund to B.S. Nagpal Leasing and Finance Co. for Rs. 5,52,75,470/-. Since, the assessee had borrowed fund at the rate of interest of 10% and had advanced funds without charging any interest, the Ld A.O. made an addition of Rs. 22,11,019/- which was 4% of Rs. 5,52,75,470/- for 12 months. During the course of appellate proceedings, the Ld AR for the appellant has submitted before me the order of the Hon'ble ITAT, Pune in the assessee's own case for the A.Y. 2010-11. The Hon'ble Tribunal has decided the issue in favour of the appellant by holding as under:

4. The Ld. CIT(A) after considering the assessment order, facts of the case and submissions of the assessee held as follows:

"5.4 I have considered the material on record and submissions of the Appellant carefully. I tend to agree with the Appellant contentions. The Appellant in its written submission has stated that, the net expenses of Rs. 13,36,037/- on the interest paid and interest received has

been claimed as interest expenses in computing Profits and Gains of Business and Profession. The AO has not controverted the figures of the interest expenses in the Assessment Order. The AO

5. We adopt foregoing detailed reasoning mutatis mutandis to reject the Revenue's instant latter grievance as well.

No other ground has been pressed before us.

6. This Revenue's appeal is dismissed in above terms.

Order pronounced in the Open Court on this 04th day of August, 2022.

Sd/-

Sd/-

(DR.DIPAK P.RIPOTE)

(S.S. GODARA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 04th August, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-9, Pune.
4. The Pr.CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,
// True Copy //

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

S.No.	Details	Date	Initials
1	Draft dictated on	20.06.2022	
2	Draft placed before author	03.08.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		