

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.5807/Mum./2019

(Assessment Year : 2014-15)

Amit Mahendra Shah
Aman Chambers, 501, 5th Floor
113, New Queens Road, Opera House
Mumbai 400 004 PAN – AADOS8824P

..... Appellant

v/s

Income Tax Officer
Ward-18(1)(1), Mumbai

.....Respondent

Assessee by : Ms. Radha Halbe

Revenue by : Smt. Smita Nair

Date of Hearing – 20/06/2022

Date of Order – 15/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 14/06/2019, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals)-53, Mumbai, [*learned CIT(A)*], for the assessment year 2014-15.

2. In this appeal, the assessee has raised following grounds:

"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the Assessing Officer of disallowing interest expenditure of Rs.5,37,438."

3. The only grievance of the assessee is against disallowance of interest expenditure of Rs. 5,37,438.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and has filed his return of income, for the year under consideration, on 28/11/2014, declaring total income of Rs. 13,36,840. The return filed by the assessee was selected for scrutiny and statutory notice under section 143(2) of the Act was issued. Thereafter, notice issued under section 142(1) of the Act along with questionnaire was served on the assessee calling for specific details. During the course of assessment proceedings, it was observed that the assessee has paid interest amounting to Rs. 26,05,403, which has resulted in loss of Rs. 15,76,055 under the head '*income from other sources*'. This loss is set off against income from business of Rs. 30,59,279, comprising of remuneration and interest from firm in which the assessee is partner. During the course of assessment proceedings, the assessee was asked to submit the details of party-wise interest paid and was also asked to prove its nexus with the interest income earned. During the course of assessment proceedings, it was also observed that assessee has not received any interest from loan of Rs. 1,40,00,000, advance to Splendour Relator Private Limited and on Rs. 1,54,99,055, advance to Pattani Venture Private Limited. In reply, assessee submitted that the loan to Pattani Venture Private Limited is loan given from own funds. The assessee also submitted that the borrowed capital has been invested as capital in partnership firm from where assessee earned interest

chargeable as business income and therefore excess interest expenditure claimed under section 57 is partly related to this income. However, during the course of assessment proceedings, the Authorised Representative appearing for the assessee admitted that interest paid of Rs. 5,37,438, resulting in loss under the head '*income from other sources*' does not fit into the conditions of section 57(iii) or under section 36(1)(iii) of the Act and agreed for disallowance of the aforesaid sum. Accordingly, the Assessing Officer vide order dated 08/12/2016, passed under section 143(3) of the Act made an addition of Rs. 537,438, under the head '*income from other sources*'. In appeal, learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, assessee is in appeal before us.

5. During the course of hearing, learned Authorised Representative ('learned AR') submitted that interest-free loans was received as well as given by the assessee. Further, assessee's own funds and interest free loans available with the assessee are more than the loans on which interest was paid by the assessee. The learned AR placed reliance upon the decision of Hon'ble jurisdictional High Court in CIT vs Reliance Utilities and Power Ltd, in ITA No. 1398 of 2008, decided on 09/01/2009, in support of his submission that if there are funds available both interest free and overdraft and/or other loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the assessee, if interest free funds were sufficient to meet the investments.

6. On the other hand, learned Departmental Representative submitted that assessee has agreed to the disallowance during the course of assessment proceedings. In a short rebuttal, learned AR submitted that the addition was not agreed and same was challenged by the assessee before the learned CIT(A).

7. We have considered the rival submissions and perused the material available on record. In the present case, the assessee has earned income from business, which comprises of remuneration and interest from the firm in which the assessee is a partner. Further, the assessee has also earned interest which is taxable under the head 'income from other sources'. However, since the interest paid by the assessee during the year was more than the interest earned under this head, income from other sources was declared at loss of Rs. 15,76,055. We find that during the course of assessment proceedings, the Authorised Representative for the assessee admitted that the net excess interest paid of Rs. 5,37,438, resulting in loss under the head income from other sources does not fit into the conditions of section 57(iii) or section 36(1)(iii) and agreed for disallowance of Rs. 5,37,438, while computing income from other sources. It is the plea of the assessee that the assessee has not accepted the aforesaid disallowance and the same was challenged before the learned CIT(A). From the perusal of the impugned order we find that the learned CIT(A) has noted that the assessee has filed different balance sheets at different times, which are contradictory in nature. The relevant findings of learned CIT(A) vide impugned order are as under:

"4.4. I have considered the facts on record and submissions filed carefully. It is noted that in the return of income, under the head income from other sources, Interest on loans and advances is shown at Rs 10,20,586 against which interest expenses of Rs 26,05,403 is claimed. The appellant has also reflected under business income, remuneration and interest from firm Styl Rite Optical Industries (25% share) interest on capital at Rs 1047379. No interest expenses is claimed here. Clearly when direct nexus is not shown, interest expenses cannot be allowed under the head Income from Other sources. The appellant has filed different balance sheets at different times which are contradictory and does not inspire confidence. For instance the balance sheet as on 31.3.2014 filed in submissions on 28.12.2018, shows balance of assets at Rs 732,96,950. This includes loans and advances at Rs 116,50,298. In a subsequent filing, the total assets is shown at Rs11,31,90,075 which includes loans and advances at Rs 660,76,259/- There is yet another balance sheet filed as per which the assets are Rs 635,29,416 which includes loans and advances at Rs164,15,600/- In computation of income, interest from firm Styl Rite Optical Industries (25% share) as interest on capital is shown at at Rs 1047379, but none of the balance sheets filed show any amount invested as capital in this firm. The fact remains that the appellant has not demonstrated that the interest paid is on borrowings which is incurred for earning interest income shown under the head income from other sources. Further, the disallowance was accepted in the assessment proceedings. In this fact matrix, the disallowance is upheld and ground of appeal dismissed."

8. Further, the assessee has claimed that no interest was received on certain loans given by it, and at the same time assessee has also not paid interest on borrowings from certain parties. The assessee has claimed that its own funds and interest free loans are more than loans on which interest has been paid. However, no details were furnished either before the lower authorities or before us, during the course of hearing, in support of the aforesaid claim. Further, even though the assessee has claimed that it has not accepted the disallowance of Rs. 5,37,438, however, nothing has been brought on record to prove that said net excess interest paid fit into the conditions of section 57(iii) or section 36(1)(iii) of the Act. Therefore in view of the aforesaid findings, we find no infirmity in the impugned order. As a result, the sole ground raised by the assessee is dismissed.

9. In the result, appeal by the assessee is dismissed.

Order pronounced in the open Court on 15/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 15/09/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai