IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 577/DEL/2020
[Assessment Year: 2016-17]

ACIT, Circle-29(1), New Delhi.	Vs	Sh. Maneesh Bawa, S-322A, Panchsheel Park, Malviya Nagar, New Delhi-110017 PAN: AAEPB2768C
APPELLANT		**RESPONDENT**
Assessee represented by	Shri Salil Aggarwal, Sr. Adv. & Sh. Shailesh Gupta, CA & Sh. Madhur Aggarwal, Adv.	
Department represented by	Shri Jeetender Chand, Sr. DR	
Date of hearing	17.10.2022	
Date of pronouncement	17.10.2022	

O R D E R

PER KUL BHARAT, JM:

This appeal, by the Revenue, is directed against the order of the learned Commissioner of Income-tax (Appeals)-XXV, New Delhi, dated 18.11.2019, pertaining to the assessment year 2016-17. The Revenue has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.43,65,068/- made by the AO vide order u/s 143(3) of the IT Act, 1961 dated 17.12.2018 by disallowing interest paid on loans taken for the purchase of two properties by the assessee during the year under consideration.

2. The Ld. CIT(A) has quashed the order passed by AO without appreciating the facts and finding given in the assessment order that during the year 2014-15

after the demise of his father assessee was designated as Sole Proprietor of the proprietary concern M/s Bawa Maharaj Singh Distributing Company. Therefore, proprietorship firm do not have a separate identity other that of the individual and hence a person/individual cannot avail loan from himself and claim interest on the amount borrowed.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,80,98,593/- made by the AO vide order u/s 143(3) of the IT Act. 1961 dated 17.12.2018 by disallowing interest paid on loans taken for business purposes and completely ignoring the fact that assessee was in possession of sufficient amount of interest free funds making it unnecessary to borrow funds from different entities to run his business.

4. The Appellant reserves the right to raise any further and additional grounds of appeal at the item of hearing oral arguments including reliance on additional case laws.

2. Facts giving rise to the present appeal are that in this case assessee filed his return of income at Nil on 08.10.2016. The case of the assessee was picked up for scrutiny assessment and the assessment was framed u/s 143(3) of the Income-tax Act, 1961 (in short "the Act") vide order dated 17.12.2018. The Assessing Officer while framing the assessment declined the claim of deduction u/s 24(b) of the Act amounting to Rs. 43,55,068/-. Further, the AO noticed that during the year under consideration the assessee had disclosed secured and unsecured loans from different persons and Institutions outstanding loan of Rs. 35,20,01,216/- and outstanding secured loan of Rs. 15,74,79,661/- out of which secured loan of Rs. 31,14,44,282/- and unsecured loan of Rs. 4,72,86,986/- have been shown in proprietary firm of assessee M/s Bawa Maharaj Singh Distributing Company. The assessee claimed deduction of Rs. 2,80,98,593/- on account of interest paid during the year under consideration. The AO, however, considering the

submissions disallowed the claim of the assessee amounting to Rs. 2,80,98,593/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions allowed the appeal of the assessee and deleted the additions. Now the Revenue is in appeal before this tribunal.

3. Ground nos. 1 & 2 are interconnected and are against deleting the addition of Rs. 43,65,068/- made on account of disallowance of the claim made u/s 24(b) of the Act.

4. Learned DR vehemently argued that the learned CIT(Appeals) was not justified in deleting the addition. He submitted that the AO has clearly brought out that the loans were repaid to the proprietary concern of the assessee. Therefore, that tantamount the payment of interest to the self.

5. On the contrary, learned counsel for the assessee submitted that the AO failed to appreciate the fact in right perspective. The loan was obtained to repay the loan taken for the acquisition of the property. He, therefore, submitted that the learned CIT(Appeals) was justified in deleting the addition.

6. We find that the learned CIT(Appeals) has given a finding of fact by observing as under:-

> *"The appellant has two properties on rent in the relevant year under appeal which had been purchased through loans and on which interest paid has been claimed as a deduction u/s 24(b) of the income Tax Act, 1961. The details of the properties as submitted before the Assessing Officer and mentioned in the order are re-produced here-in-below:*

Particular of property	Amount	Year of purchase/registry	Remarks	
14/20, Vasant Vihar	93141778	2012-13	Loan taken from BMSDC for acquisition/construction of property	In 2014-15, outstanding loan taken from BMSDC for both the properties was repaid after taking loan from M/s Gaurav Sales Corporation and M/s Surender Modi.
O-213, Salcon-Office	9330195	2011-12	Initial payment made through Meet Builders Pvt. Ltd, in which the assessee was a shareholder director. Loan taken from Dhanlaxmi Bank in 2011-12 and repaid Meet Builders Pvt. Ltd. After taking loan from BMSDC in FY 2012-13, Dhanlaxmi Bank was paid off.	
Total	102471973			

It is for explicit consideration that during the FY 2012-13, when the loan was taken from the proprietary concern. M/s Bawa Maharaj Singh Distributing Company (BMSDC) was the proprietary concern of Sh.Randhir Singh Bhalla, the father of the appellant-assessee, deceased in May 2014 much after the loan was given to the appellant. The basis of loan based addition goes therefore. It has been shown that after the father's demise, the proprietary concern was taken over by Sh Maneesh Bawa after the consent of all the family members. A copy of the death certificate was also furnished for record. Besides, during the year under appeal, the appellant had taken loans for his business [inherited proprietary concern M/s. BMSDC] on which he had paid interest. The loan funds were used for business purposes and accordingly the interest paid was treated as expense in the business books. The appellant also had interest free funds available with him which had been given further as interest free loans. Having perused the submissions and the documents submitted by the appellant and the assessment order, it is clearly seen that the AO has overlooked the fact that when the appellant had taken the loan in the financial year 2012-13, M/s BMSDC was the proprietary concern of the assessee's father, Sh.Randhir Singh Bhalla, a distinct entity capable of transacting business with the appellant. The assessee had taken a loan from a separate

assessee and not from himself as observed by the AO, based on which the disallowance had been made. Further, the assessee had paid back the loan to M/s. BMSDC by taking fresh loans from M/s Surender Modi and M/s Gaurav Sales, the nexus of which has been established by the documents submitted. In view of the above, the disallowance of Rs.43,65,068/- is directed to be deleted."

7. From the finding of the learned CIT(Appeals) it is clear that the loan was taken from BMSDC for acquisition/construction in respect of properties situated at 14/20 Vasant Vihar in AY 2012-13. Further, n respect of another loan was related to property O-213, Salcon-Office. It is observed by the learned CIT(Appeals) that outstanding loan taken from BMSDC for both the properties was repaid after taking loan from m/s Gaurav Sales Corporation and m/s Surender Modi. This fact is not controverted by the Revenue. Therefore, we do not see any reason to interfere in the finding of learned CIT(Appeals) the same is hereby upheld.

8. Apropos ground no. 3 learned Sr. DR supported the order of the learned CIT(Appeals) and submitted that it is brought out by the AO that there was no need for the assessee to take loan as he himself was having sufficient funds. Moreover, the assessee could not prove business expediency for obtaining such loan. He submitted that the AO has also recorded that the assessee stated that interest free loan has been given out of his own funds and the assessee had also claimed the expenditure of interest amounting to Rs. 2,80,98,593/-.

9. Ld. Sr. Counsel for the assessee opposed the submissions and supported the order of the learned CIT(Appeals). He submitted that the AO misdirected himself. He further

submitted that the recording of this fact by the AO itself proves that the payment was made out of own funds. He further took us through the impugned order and submitted that there is no infirmity into the order of the learned CIT(Appeals) as the same is in accordance with law laid down by the Hon'ble Delhi High Court and the Hon'ble Supreme Court.

10. We have heard rival submissions. We find that the learned CIT(Appeals) has decided this issue by giving finding of fact as under:

> "*It has been vehemently contended by the Ld AR that the appellant had interest free funds available with him which he had further given free of interest mainly to his sister concerns and family. The assessee had borrowed funds for his business purposes on which it had paid interest and expensed the same in his business. The AO disallowed interest of Rs.2,80,98,593/- paid by him on loans taken for and used for business purposes on the basis that, the Sh Bawa should have used his interest free funds for his business purposes and should not have lent his interest free funds further as to his sister concerns, family or third parties free of interest. This premise per se is spurious as the appellant is best judge of his affairs. The AO has still disallowed the interest paid on the grounds that:*
>
> > *"In this regard it is highly important to note that no prudent businessman will give his own funds as Interest Free Loans to others and would incur the huge interest cost from loans taken from others. Thus, the argument of the assessee is not tenable and clearly against the basic principal of business''*
>
> *It is pertinent to note that the AO has not disputed the fact that the appellant had sufficient funds of own with characteristics of being interest free funds and from which it had further advanced interest free loans. The AO cannot coerce the appellant to go for linear maximisation of his profits by using his funds for business rather than using interest bearing funds. Submitting that it is a settled law that the assessing officer cannot step into the shoes of a businessman and neither can it ask the businessman to*

maximize his profits. Id. AR contended that the impugned disallowance is clearly an attempt by the assessing officer to step into the shoes of the businessman on what expense should or should not be incurred. The Ld AR placed reliance on the jurisprudence from Hon'ble Apex Court and Hon'ble High Court of Delhi that the AO cannot step into the shoes of the businessman and nor can the businessman be asked to maximize his profits. On the specific facts per the case, it is seen that the appellant has ***not used*** *any interest bearing funds to give interest free loans. The judgments relied are as below-*

1. Commissioner of Income-tax v. Dalmia Cement (P.) Ltd

High Court of Delhi, [2002] 121 Taxman 706 (Delhi)

"The jurisdiction of the revenue is confined to deciding reality of the expenditure, namely, whether the amount claimed as deduction has been factually expended or laid down and whether it has been wholly and exclusively for the purpose of the business. The reasonableness of the expenditure can be gone into only for the purpose of determining whether, in fact, the amount is spent. Once it is established that there is a nexus between the expenditure and the purpose of business, the revenue cannot justifiably claim to put itself in the armchair of a businessman or in the position of the board of directors and assume the said role to decide how much is a reasonable expenditure having regard to the circumstances of the case. There was no need to go into any hypothetical issue in this case in view of the accepted position that the factum of services rendered by CDL had not been refuted by the revenue. It needs no reiteration that the settled position in law is that no businessman can be compelled to maximize his profits. Thus, disallowance of the commission was not justified."

2. S.A. Builders Ltd. v. Commissioner of Income-tax (Appeals), Chandigarh Supreme Court of India, [2007] 158 Taxman 74 (SC)

"We agree with the view taken by the Delhi High Court in CIT v. Dalmia Cement (Bharat) Ltd. [20021 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the , Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the roleto decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit.''

3. Principal Commissioner of Income-tax v. Basti Sugar Mills Co. Ltd.

High Court of Delhi, [2018] 98 taxmann.com 401 (Delhi)

Clearly, the Assessing Officer had attempted to ascertain the source of funds of the amounts given as interest free loans to the sister concerns, in order to examine and apply the test of "commercial expediency". Unable to ascertain the details from the respondent-assessee, it was held that the test of commercial expediency was not satisfied. We would observe that the Assessing Officer had posed a wrong question and, therefore, his reasoning is infelicitous and contrary to law. S.A. Builders Ltd. (Supra) does not require the respondent-assessee to show that the borrowed funds had not been used for giving interest free advances or loans to the third party, including sister concerns. The issue "commercial expediency" is different. The Supreme Court in S.A. Builders Ltd. (Supra) had observed that Section 36(l)(iii) of the Act states that interest paid in respect of capital borrowed for the purpose of business or profession is to be allowed as a deduction in computing taxable income. The expression "for purposes of business or profession" occurring in Section 36(l)(iii) of the Act is wider in scope than the expression "for the purpose of earning income, profits or gains". Accordingly, expenditure voluntarily incurred on the test of commercial expediency is to be allowed as a deduction. It is immaterial if a third party also benefits by the said expenditure. The expression "commercial expediency" is again of wide import and includes such expenditure incurred for the purpose of business. Therefore, once it is established that there was a nexus between expenditure and purpose of business, which need not be the business of the assessee, deduction under Section 36(l)(iii) of the Act must be allowed. Revenue cannot assume the role and occupy armchair of a businessman to decide whether expenditure was reasonable.

Per the above rulings, it is clear that even where interest bearing funds have been extended interest free, if the commercial expediency can be established, the interest expense cannot be disallowed. In the instant appeal the assessee has sufficient interest free funds available from which the interest free advances/loans have been given.

Ld. AR also invited attention to the para 3.1 of the assessment order wherein the AO mentioned that an advance of Rs.46,03,00,596/- has been given to RSB Family. The appellant capital / share in the joint properties of the family is Rs. 46,03,00,596/-, which was submitted to the assessing officer as part of the Statement of Affairs of the appellant. This was erroneously considered to be an advance to the RSB Family overlooking fact that it was the share of the appellant in the said joint properties and is in no way an advance given. After perusing the submission of the appellant and the order of the AO, it is seen that the AO has not refuted or observed anything against the submission of the appellant that he had sufficient interest free funds available. The AO has disallowed the interest expense on the premise that the appellant should maximize his profits by using his funds for business rather than using interest bearing funds. The appellant has placed

reliance on Commissioner of Income-tax vs Dalmia Cement (P.) Ltd.,High Court of Delhi, [2002] 121 Taxman 706 (Delhi), S.A. Builders Ltd. vs Commissioner of Income-tax (Appeals), Chandigarh, Supreme Court of India, [2007] 158 Taxman 74 (SC), Principal Commissioner of Income-tax vs Basti Sugar Mills Co. Ltd., High Court of Delhi, [2018] 98 taxmann.com 401 (Delhi).

It is now an established law that the revenue cannot justifiably claim to put itself in the armchair of a businessman and assume the said role and no businessman can be compelled to maximize its profit. Further, once it is established that there was a nexus between expenditure and purpose of business, deduction under Section 36(l)(iii) of the Act must be allowed.

In view of the above findings the disallowance of Rs.2,80,98,593/- is directed to be deleted."

11. The above finding of fact is not rebutted by the Revenue by placing any contrary material before us. It is not the case of the AO that the assessee has given interest free loan out of interest bearing funds. Hence, in the absence of such finding and supporting evidences, we do not see any reason to disturb the finding of the learned CIT(Appeals). The same is hereby affirmed. Grounds raised in this appeal are dismissed.

12. The appeal of the Revenue is dismissed.

Order pronounced in open court during the course of hearing on 17.10.2022.

Sd/-	**Sd/-**
(NARENDRA KUMAR BILLAIYA)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MP
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI