

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.309/Del./2020
(ASSESSMENT YEAR : 2016-17)**

Gulshan Malik,
T-236, DB Gupta Road, Paharganj,
New Delhi – 110 055.

vs. ACIT, Circle 62 (1),
New Delhi.

(PAN : AAFPM8991D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri Rajendra Jha, Sr. DR

Date of Hearing : 07.11.2022
Date of Order : 09.11.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT
(Appeals)-20, New Delhi for the assessment year 2016-17.

2. The grounds of appeal read as under :-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeal) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount Rs.21,49,924/- on account of expenditure claimed by the assessee under section 57 of the Income Tax Act.

3. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the disallowance despite the fact that the interest expenditure has direct nexus with the earning of interest income.

4. On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the disallowance by arbitrarily rejecting the explanation and evidence brought on record by the assessee in this regard.”

3. Brief facts of the case are that during the year under consideration, the assessee has earned income from house property, business of timber, capital gains and interest income from various sources. The assessee has declared loss of Rs.52,206/- on total sales of Rs.1,17,054/-. During the year under consideration, the assessee has declared Income from Other Sources at Rs.36,32,290/-. The income is from FDRs and loans given to M/s Vatika and IBMS. The assessee has claimed deduction of Rs.35,39,699/- on account of interest paid on loan taken. The net income under the head Income from Other Sources is declared at Rs.90,591/-. During the course of assessment proceedings, the assessee was asked to file details of interest received and paid. Further, the assessee was asked to state how the expenses claimed under section 57 at Rs.35,39,699/- are related to income earned under the head, "Income from Other Sources". However, the assessee has not filed any detail. Therefore, a show cause notice was issued to the assessee on 19.12.2018 and he was to respond as to why claim of Rs.35,39,699/- should not be disallowed.

4. The assessee's response was noted by the AO as under :-

“Note on deduction u/s 57 – Rs.35,39,699/-

During the year under assessment, the assessee has earned interest to the tune of Rs.36,30,290/- disclosed under the head "Income from

Other Sources". Against the said interest income, the assessee has claimed interest expenses to the tune of Rs. 35,99,699/- u/s 57 of the Act being expenses relating to earning of interest income. FDR'S on which interest to the tune of Rs. 13,89,775/- was earned, were made out of loans Rs. 4.72 cr. taken from Capital First on which interest @ 13.75% was paid. Copy of sanction letter is enclosed.

As far as interest income from ISMS & Vatika is concerned, investments were made in earlier years by taking loan from Future Money/ Capital First on which interest is being paid regularly as is evident from detail of interest paid submitted on 13.12.2018 alongwith interest certificates. So, the deduction u/s 57 has been rightly claimed by the assessee.”

5. From the assessee's response, AO gathered that assessee has obtained loan from bank for buying some property but has deposited the same and earned interest from FDRs. AO was of the opinion that this is contrary to normal prudence as loan was sanctioned @ 13.75% and FDR was made for earning interest @ 8%. Similarly, as regards interest income from M/s. Vatika and IBMS of Rs.21,58,530/-, AO noted that assessee has admitted that investments made was out of loan taken from Future Money/Capital First and that these loans were for purchase/ construction of property, Hence, AO was of the opinion that these expenditure were not related to earning of income.

6. Against the above order, assessee filed an appeal before the Id.CIT(A) who has confirmed the action of the AO.

7. Against the above order, assessee is in appeal before the ITAT. We have heard Id. DR for the Revenue and perused the records. None appeared on behalf of the assessee despite notices. Hence, we proceeded to decide the appeal after hearing the Id. DR for the Revenue and perusing the records.

8. We find that the sole reason taken by the authorities below for disallowing the interest expenditure claimed is that the FDR interest against which these interest expenditure are being adjusted, were taken for purchase of property at higher rate of interest and in the opinion of the authorities below, it is beyond prudence that loan taken for house construction etc. at a higher rate would be invested to earn FDR interest at a lower rate. We find that it is settled law that Revenue should not sit in the shoes of businessman and decide upon the prudence of the transaction. There is no case that transactions of the assessee are bogus and no findings are also there in this regard. If the assessee has obtained loan at a higher rate for purchase/construction of property but in the meanwhile he has invested the same for earning interest, there is no reason to deny the adjustment thereof. Hence, in our considered opinion, the findings of authorities below are not sustainable. Accordingly, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

9. In the result, this appeal by the assessee is allowed.

Order pronounced in the open court on this 9th day of November, 2022.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 9th day of November, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-20, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.