

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1110/Ahd/2019  
Assessment Year: 2015-16**

Shri Mitesh Sankalchand Patel, vs. Income Tax Officer,  
5, Ramkutir Bunglows, Ward – 1(2)(3), Ahmedabad.  
Vasant Vihar Tower,  
Shahibaug,  
Ahmedabad – 380 004.  
[PAN – AJCPP 7745 E]  
(Appellant) (Respondent)

Assessee by : Shri S.N. Divatia, AR &  
Shri Samir Vora, A.R.  
Respondent by : Shri Mukesh Sharma, Sr. DR

Date of hearing : 14.11.2022  
Date of pronouncement : 25.11.2022

**ORDER**

This appeal is filed by the Assessee against the order dated 30.04.2019 passed by the CIT(A)-10, Ahmedabad for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal :-

*“1. The order passed u/s.250 on 30.04.2019 for A.Y. 2014-15 by CIT(A)-10, Abad upholding the disallowance of interest of Rs.21,57,962/- is wholly illegal, unlawful and against the principles of natural justice.*

*2. The Ld. CIT(A) has grievously erred in law and/or on facts in misinterpreting the provisions of section 36(1)(iii) and confirming the disallowance of interest expenditure of Rs.21,57,962/-.*

*3. The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowance.*

*4. Without prejudice to the above submissions, it is submitted that the whole of the interest expenditure is allowable as business expenditure u/s.36(1)(iii).*

*Considering all the above submissions, your good self is requested to delete the said disallowance of interest of Rs.21,57,962/- and oblige.”*

3. The assessee is an individual and derived income as share in profit, remuneration and interest on capital from partnership firm as well as interest and dividend income. The assessee filed return of income on 29.09.2015 declaring total income at Rs.12,34,360/-. The assessee also declared agricultural income of Rs.1,91,240/-. The Assessing Officer observed that the assessee claimed deduction of interest expenses of Rs.26,58,136/- as business expenses. The Assessing Officer held that the interest expenses incurred on loans obtained cannot be treated as business expenditure under Section 57 of the Income Tax Act, 1961 and the same cannot be allowable out of the income derived from partnership firm as there is no nexus between additions, in income and expenditures as no loans have been invested into a partnership firm as capital as stated by the assessee. Thus, the Assessing Officer made disallowance of Rs.26,58,136/- towards interest expenses. The Assessing Officer also made addition of Rs.2,057/- related to interest received on refund under Section 244A which was not offered to tax.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessee in respect of Profit & Loss Account has pointed out that all the borrowings and unsecured loans on which total interest of Rs.26,58,136/- has been paid was utilised wholly and exclusively for the purpose of business. Therefore, the said borrowings are only for conducting normal course of business. Interest income of Rs.5,00,174/- was earned from various loans and advances and the assessee is following accounting policy by maintaining the books of account thereby showing Profit & Loss, interest income earned and land trading as business income. Ld. AR further submitted that the Assessing Officer wrongly calculated interest on at 4.36% as the interest earned is always on time period of loans and advances given to the respective persons hence calculating the interest with the closing outstanding is a loan method. In the present case rate of interest earned is at 6% per annum from the respective period of loans given and the

outstanding of such loan at the year end was Rs.1,14,52,340/-. Similarly, the assessee also borrowed loan at 6% during the year and the outstanding of such loan borrowed at the year end is Rs.2,42,65,216/-. Similarly, the assessee also charged loan at 0% during the year and the outstanding of such loan borrowed at the year end is Rs.2,42,65,216/-. Similarly, there are 0% return of income on borrowing of unsecured loan, outstanding of which at the year end is Rs.56,09,043/-. As regards the loans given, there is no single case of non charging of interest or interest free loans given. Thus, the imaginary conclusion reached by the Assessing Officer about the rate of interest on various outstanding and non establishment of money lending is totally wrong and without looking into the facts of the case and without proper application of mind. The assessee is into the business of trading of land and even during the F.Y. 2013-14, the said business was conducted and the loans were sold from the opening stocks. However, for the year under consideration because of the bad economic and market conditions the assessee was not able to sell any land even though after making huge efforts to sell the land. Thus, on land trading the assessee incurred expenses which are related to business expenses. Ld. AR further submitted that without prejudice to the earlier submissions the Assessing Officer also has mistaken in his observations that the outstanding borrowed funds of Rs.4,21,25,540/- are higher than the value of trading stock. As out of the borrowed fund of Rs.4,21,25,540, the secured loan of Rs.6,05,877/- was specifically and directly utilised for the purpose of purchase of car, and Rs.56,09,043/- was interest free unsecured loans and hence unsecured loan of Rs.3,59,10,620/- on which interest was paid during the year under consideration were utilised for the purpose of business of land trading and money lending. As against outstanding interest-bearing borrowed funds of Rs.3,59,10,620/- there is outstanding of interest-bearing of loans and advances of Rs.1,14,52,340/- and hence the net outstanding interest-bearing borrowed funds are Rs.2,44,58,280/-. As against the same, the closing stock of land is Rs.2,86,27,278/- and hence total business assets in form of closing stock of lands and loans & advances are totalling to Rs.4,00,79,618/- which is higher than the interest-bearing borrowed fund of Rs.3,59,10,620/-. Hence business asset are higher than the interest-bearing borrowed funds. Thus, the Ld. AR submitted that the Assessing Officer as well as the CIT(A) was not just in making the addition.

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has taken charging interest at 4.36% as compared to the interest charged at 6% on loans to friends and families as observed in paragraph no.4 of the order but the assessee before us has demonstrated that rate of interest earned at 6% per annum for the time period of loans and advances is for particular set up of loans and advances. Similarly borrowed loan at 6% was also there in the relevant A.Y. There was 0% return of income on borrowing of unsecured loan and the same was detailed before the Assessing officer as well as CIT(A). Thus, there was not a single case of non-charging interest or interest free loans while giving the loans by the assessee. Therefore, the Assessing Officer as well as the CIT(A) has made the addition on presumptive and assumptive percentage of charging of interest. The expenditure incurred was wholly and exclusively for the purpose of business of land trading and the same was also explained by the assessee in respect of lands sold reflected in the opening stock and land which was not sold at the closing stock and various unsecured loans borrowed were utilised during the course of normal business of land trading and financial business. Thus, the Assessing Officer and the CIT(A) was not right in disallowing the interest of Rs.21,57,962/- and has not taken proper cognisance of the provisions of Section 36(1)(iii) of the Act. Thus, ground nos.1 & 2 are allowed.

8. As regards ground nos.3 & 4, the same are without prejudice and related to evidences produced by the assessee which does not require adjudication at this juncture. Hence, appeal of the assessee is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 25<sup>th</sup> day of November, 2022.

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 25<sup>th</sup> day of November, 2022**

**PBN/\***

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*