

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" B " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.92/AHD/2021
निर्धारण वर्ष/Asstt. Year: 2017-2018

Mahesh Bikhchand Karda, Block No.24/A, Sindhi Colony, Nr. Airport Road, Sardarnagar, Ahmedabad. PAN: ACWPK4480A	Vs.	The A.C.I.T., Circle-7(2), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Ms Urvashi Shodhan, with Shri Parin Shah, A.Rs
Revenue by :	Shri Rakesh Jha, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **17/11/2022**
घोषणा की तारीख /**Date of Pronouncement**: **07/12/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Ahmedabad, dated 03/05/2021/National Faceless Appeal Centre, Delhi arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-18.

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

In upholding addition of Rs.15,28,077/- out of interest expenses relatable to interest free loans and advances given to various parties u/s.36(1)(iii) of the Act, though the appellant is having interest free funds of Rs.15,53,24,787/- in the form of proprietor's capital, which is far in excess of (i) advances of Rs.1,90,00,000/- given to Kishorebhai Babubhai Sakhvala for purchase of land, (ii) repayment of interest free unsecured loans and interest free advances of Rs.10,50,000/- (iii) advance of Rs.20,00,000/- given to Tribhuvan Owners Association for purchase of land and (iv) unsecured loans of Rs.6,07,74,960/- given to relatives and associated aggregating to Rs.8,28,24,960/- and as such, there is no diversion of interest-bearing funds for non business purpose.

3. The interconnected issue raised by the assessee is that the learned CIT-A erred in confirming the disallowance made by the AO for ₹ 12,37,978/-, ₹ 93,932 and ₹1,96,167 only representing the element of interest on account of diversion of interest-bearing fund for non-commercial purposes.

4. The facts in brief are that the assessee in the present case is an individual and engaged in the business of developing and building of residential and commercial projects under the name and style of proprietary concern as M/s Neelkanth Developers. The AO during the year found that the assessee has claimed interest expenses on the money borrowed which was utilized for non-commercial purposes. As per the AO, the assessee has utilized the borrowed fund in the manner as detailed below:

S. Nos.	Particulars	Amount
1.	Investment in the land	₹ 1,80,00,000/-
2.	Interest free loans	₹ 7,00,000/-
3	advances for the future stock	₹ 20,00,000/-

5. According to the AO, the amount of interest attributable on such investment as discussed above was not incurred for the purpose of the business. Thus, the AO worked out the amount of interest for ₹ 12,37,978/-, Rs. 93,932/- and Rs. 1,96,167/- as attributable to the impugned non-business transaction aggregating to

Rs. 13,91,680/- and disallowed the same by adding to the total income of the assessee.

6. Aggrieved assessee preferred an appeal to the learned CIT-A

7. The assessee before the learned CIT-A contended that he has own interest free fund available with him amounting to Rs. 15,53,24,787/- plus advances from the customers amounting to Rs. 1,67,09,000/-. Therefore, a presumption can be drawn that the alleged amount was advanced by the assessee out of his own fund and not out of the borrowed fund. Accordingly, the assessee contended that there cannot be any disallowance of any interest expense claimed by him.

8. However, the learned CIT(A) disagreed with the contention of the assessee on the reasoning that there was a direct nexus between the borrowed fund and the utilization of such fund. As such, the assessee has utilized the borrowed fund for non-commercial purposes. Accordingly, he was of the view that the assessee cannot be given the benefit of the presumption as held by various Hon'ble courts to hold that in the event the own fund of the assessee exceeds the amount of advances given for non-commercial purposes, then there cannot be any disallowance of interest expense. According to the learned CIT-A in those cases there was common fund used by the assessee and therefore a presumption was drawn whereas, in the case on hand there was direct evidence suggesting that the borrowed fund has been used for the purpose of investment in the land, interest free loans and advances and advances for the future stock.

9. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

10. The learned AR before us filed a paper book running from pages 1 to 172 and contended that the own fund of the assessee exceeds the amount of alleged

investment which can be verified based on the financial statements placed on pages 1-62 of the paper book. Thus, a presumption can be drawn that the investment has been made out of the own fund of the assessee. The learned AR in support of his contention has relied on the judgment of Hon'ble Supreme Court in case of CIT vs. Reliance Industries Ltd reported in 102 taxmann.com 52.

11. On the other hand the learned DR before us vehemently supported the order of the authorities below.

12. We have heard the rival contention of both the parties and perused the materials available on record. The fact of the case has been elaborated in previous paragraph. Therefore, for the sake brevity and convenience, we are not inclined to repeat the same. On perusal of the financial statements of the Assessee we observe that there was sufficient capital Balance as on 31.03.2016 and 31-03-2017 amounting to Rs. 14,26,68,846.53 and Rs. 15,53,24,787.00 respectively. This implies that this amount of money i.e. owned fund was utilized by the assessee for the alleged investment and no interest cost was incurred by the assessee on it. It is also important to note that the nexus established by the AO is not correct. If there are interest -free funds available to an assessee which is sufficient to meet its investments and at the same time the assessee had raised a loan, it can be presumed that the investments were made from the interest-free funds available. We would like to clarify it through an example. Suppose the assessee has Rs. 1000 interest free fund as capital. He uses this fund for business purposes to buy a piece of land say worth of Rs. 500 only. Now the assessee wants to use the capital for his personal purposes amounting to Rs 700 only. The assessee has two option either he should sell out the piece of land used for the business purpose and utilize this fund as his own fund or borrows a loan for business purposes then again buy the same piece of land to use it for the business and the interest on the loan will be allowed as the business expense. This is not feasible. So to avoid this confusion, the

Hon'ble Apex Court in case of Reliance Industries reported in 410 ITR 466 held as under:

Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question.

12.1 In view of the above, we hold that there cannot be any disallowance of the interest expense on account of diversion of fund as alleged by the authorities below. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 07/12/2022 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
07/12/2022
Manish