

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3683/Del./2019
(ASSESSMENT YEAR : 2015-16)**

Kanwal Raj Singh Kanwar,
B – 42, Sarvodya Enclave,
Delhi – 110 017.

(PAN : AAMPK7906K)

(APPELLANT)

vs. ACIT, Circle 61(1),
New Delhi.

(RESPONDENT)

ASSEESSEE BY : Shri B.P. Anthwal, Advocate
REVENUE BY : Shri Toufel Tahir, Sr. DR

Date of Hearing : 02.03.2023

Date of Order : 07.03.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-38, Delhi dated 15.03.2019 pertaining to the Assessment Year 2015-16.

2. The grounds of appeal taken by the assessee read as under :-

“1. That the assessment order is bad in Law and Facts of the Case.

2. That the assessment order is contradictory in itself, as assessing officer is accepting one side that the assessee has filed the reply on 01/12/2017 and other side assessing officer is disallowing the same. Whereas the assessee had filed all the relevant documents at the time of assessment proceedings along

with documentary evidence which she is stating in para 3 of her assessment order, addition in assets was not questioned by the assessing officer at that time. The addition in fixed assets are already reflecting in the balance sheet for the AY. 2014-15 and 2015-16 also. Which is bad in the law and facts of the case.

3. That the AO. one side admitting, that the counsel for the assessee had filed documents, but no proper documents provided regarding the sanction of loan or the purpose for which it was taken. The AO is totally lying, the counsel for the assessee had file copies of loan statements with explaining the purpose of loan vide his letter dated 01/12/2017 along with the Name of Bank, purpose of loan, date of sanction of loan and detail of sanction of loan and details of interest paid on each loan. Which is bad in the law and facts of the case.

4. That the assessing officer has disallowed interest paid on loan utilized for the expansion of his clinic as well as interest paid on car loan. The assessing officer had disallowed the same in hurry without going in details of utilization of funds taken on loans. All the relevant documents were filed and placed on record. Which is bad in the law and facts of the.”

3. Brief facts of the case are that the assessee is a Doctor by profession and derived income from business or profession and income from other sources. During the course of assessment Assessing Officer wanted the assessee to produce loan sanction papers to specify nature/purpose of loans taken and reasons for claiming interest expenses to the tune of Rs.16,56,036.92. Assessee responded that loan was availed by the assessee in preceding years for the expansion of his clinic/reconstruction etc. and the details of the same were enclosed. It was submitted that the reason for claiming expenses was business expenses and funds were used for expansion and reconstruction of the clinic of the

assessee. AO held that no proper documentation was provided regarding the sanction of loans or the purpose for which it was taken. AO proceeded to hold that there is no way to verify as to how loan was utilized for business purpose and the entire amount which was paid as interest expenses to the tune of Rs.16,56,036.32 was added back to the assessee's income.

4. Before the Id. CIT (A), assessee gave following submissions :-

“The appellant most respectfully submit as under:

1. That the assessee is engaged in medical profession and running medical centre at B-42, Sarvodaya Enclave, New Delhi.

2. That the case of the aforesaid assessee was selected under "Limited Scrutiny" in "CASS" for the year mentioned above.

3. That the reason for scrutiny was high interest claimed by the assessee for the period under consideration. In this regard t would like to point out that the assessee had made constructions at his Medical centre premises during the F.Y. 2013-14 & 2014-15 and availed loan facility form financial institutions for the constructions/ expansion of his clinic. The assessee had also filed all the relevant records i.e. loan statements of the said financial institutions with all the details during the assessment proceedings and also are being attached the same herewith for your reference and records.

4. That the Assessing Officer is admitting the submission of reply of the counsel of the assessee during the assessment proceedings and disallowing the interest claimed by the assessee due to non providing the proof of the same and capitalised the expenses incurred by the assessee on interest paid loan for the funds availed for constructions / renovation of his clinic. The AR of the assessee had also submitted and explained the nature of expenses incurred for construction/

renovation of the clinic during the F.Y. 2013-14 and 2014-15 and same was never questioned by the assessing office at the time of assessment proceedings for disallowing of the said expenses.

That the AR of the assessee had also informed the Assessing Officer at the time of assessment proceedings that the funds availed by the assessee for the purpose of construction/ renewal of the clinic and same was added by the assessee in his assets and same can be verified from Balance sheet of the assessee, in which the additions is clearly being shown from time to time.

5. The assessee had also availed car loan in previous year and claimed interest on car loan which was also added by the Assessing Officer in his income without considering the submission and details filed by the AR of the assessee during the assessment proceedings.”

5. Ld. CIT (A) confirmed the AO's order that no evidence was furnished for the utilization of the loan and the bank papers were not provided. Hence, he dismissed the assessee's appeal.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee reiterated that the assessee is running a medical centre and the loan taken was utilized for the same. Hence, he pleaded that loans taken for renovation and construction are actually revenue expenditure and hence, same should be allowed. In this regard, ld. Counsel of the assessee submitted a chart of the construction activity taken in the past, the loan amount taken and interest paid thereon. Further, ld. Counsel placed reliance on various decisions including that of

Hon'ble Supreme Court in the case of India Cement Ltd. vs. CIT, Madras 1966 SCR (2) 944. In this decision, it was held that if loan taken for construction then the interest thereon would qualify as revenue expenses. Further, Id. Counsel of the assessee placed reliance upon the decision of Hon'ble Delhi High Court in the case of CIT vs. Orissa Cement Ltd. in ITA No.242 of 2022. He further relied upon the decision of Hon'ble Allahabad High Court in the case of CIT-II vs. U.P. Asbestos Ltd. in ITA No.105 of 2007. In this case, it was held that interest paid on borrowed funds for expansion of existing business is revenue in nature and hence allowable u/s 36(1)(iii) of the Income-tax Act, 1961 (for short 'the Act').

8. Upon careful consideration, we note that assessee has utilized the loan for expansion of its medical facility and loan has been taken in the past and interest paid for the same purpose. In the light of the above said case laws, there is no reason to disallow the interest expenditure in this regard. Hence, we set aside the orders of the authorities below and decide the case in favour of the assessee.

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

Order pronounced in the open court on this 7th day of March, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

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

Dated the 7th day of March, 2023/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-38, Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.