

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

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

I.T.A. No.118/Rjt/2022
(Assessment Year: 2017-18)

Asian Box Corporation Survey No. 492/1, Village: Mithirohar, Behind: Eicher Show Room, Gandhidham (Kutch) - 370201	Vs.	The Pr. CIT, Income Tax-1, Rajkot
[PAN No.AAKFA1696E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Vimal Desai, A.R.
Respondent by:	Shri Shramdeep Sinha, CIT DR
Date of Hearing	20.03.2023
Date of Pronouncement	22.03.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order passed by the Ld. PCIT(Appeals)-1, Rajkot in Order No. ITBA/REV/F/REV5/2021-22/1040253065(1) vide order dated 02.03.2022 passed for Assessment Year 2017-18.

2. The assessee has taken the following grounds of appeals:-

“1. *The order u/s. 263 of the Act is bad in law.*

2. *The learned Pr. CIT has erred in law as well as on facts in not considering the submissions of the appellant on the strength of which the assessment order was neither erroneous nor prejudicial to the*

- 2 -

interest of revenue and therefore, the provisions of Section 263 of the Act were not applicable to the case of the appellant.

3. *The learned Pr. CIT has erred in law as well as on facts in setting aside the assessment order passed by the ld. A.O. u/s. 143(3) of the Act and directing de-novo assessment regarding verification with regard to the allowability of claim of deduction u/s. 57(iii) of the Act.*

The appellant craves leave to add, alter, amend, delete or withdraw one or more grounds of appeal.”

3. The brief facts of the case are that the Pr. CIT observed that assessee had taken unsecured loans from various persons amounting to Rs. 6.59 crores out of which loan and advances were to the tune of Rs. 2.26 crores to earn interest income and Bank FD's were made to the tune of Rs. 98 lakhs. Therefore, the interest bearing funds utilized by the assessee to earn interest income on loans and deposits were to the extent of Rs. 3.25 crores only and the remaining portion of interest bearing loan of Rs. 3.34 crores was not utilized for the purpose of earning interest by the assessee. Hence, as per PCIT it is not clear what was the purpose for which interest bearing loan was taken and where the same was utilized. Further, the PCIT observed that the assessee has shown loss from other sources amounting to Rs. 46.30 lakhs, however, for purpose of claiming deduction under Section 57 of the Act, interest expenditure should be incurred wholly and exclusively for the purpose of making or earning income. However, in the instant case, the assessee has made expenditure of Rs. 85.40 lakhs as interest bearing funds

- 3 -

to earn income of Rs. 39.09 lakhs. Thus, the assessee has shown loss of Rs. 46.30 lakhs from other sources. Therefore, claim of assessee regarding interest expenditure should be limited to income earned during the year. Therefore, the PCIT held that since the assessee had not utilized the interest bearing unsecured loans to earn interest and proportionate interest expenditure on unutilized unsecured loan of Rs. 3.34 crores was required to be disallowed from the total interest expenditure of Rs. 85.40 lakhs, which comes to Rs. 43.31 lakhs. In view of the above discussion, the PCIT observed that during the course of assessment the Assessing Officer has simply accepted the submission of the assessee without going into the detailed verification and hence this amounted to a “lack of enquiry” by the Assessing Officer. Accordingly, the PCIT held that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of the Revenue.

4. The assessee is in appeal before us against the aforesaid order passed by the PCIT. Before us, the Counsel for the assessee drew our attention to Page 4 & 5 of the Paper Book (Copy of Show Cause Notice U/s. 263 of the Act). The Counsel for the assessee pointed out that notice under Section 263 of the Act was issued on the ground that the Assessing Officer has not verified the aspect of the “correct amount of interest expenditure which was claimed against interest income”. However, the Counsel for the assessee drew our attention to Page 56 of the Paper Book (Notice U/s. 142(1) dated 04.03.2019 issued by the Assessing Officer and drew our attention to item 11 of such notice which reads as under:

- 4 -

“11. You are further informed that, your case has been selected for Limited Scrutiny for the reason “**LARGE DEDUCTION CLAIMED U/S.57, HIGHER TURNOVER REPORTED IN SERVICE TAX RETURN AS COMPARED TO ITR**” you are requested to furnish the following details:

a) **LARGE DEDUCTION CLAIMED U/S.57:**

1. Please submit details regarding incomes from other sources in given format:
2. **Please provide the details of expenditure claimed under section 57 against the head income from other sources.**
3. Please provide the copy of ledgers of all such expenditures.
4. Please submit the supporting documents/proof of payments made.
5. Furnish details regarding TDS deducted for the expenses/payments on which TDS was applicable, in given format.”

Accordingly, the Counsel for the assessee submitted that the assessee has examined the aspect of the claim of interest expenditure against interest income earned by the assessee and therefore, PCIT has erred in holding that the aspect was not examined / verified by the Assessing Officer during the course of assessment proceedings. Further, the Counsel for the assessee drew our attention to Page 59 of the Paper Book and submitted that by way of the reply dated 24.06.2019, the assessee had filed detailed reply in

response to this query wherein the assessee had submitted that the assessee incurred interest expenditure of Rs. 85.40 lakhs on unsecured loans during the year under consideration. The said unsecured loans were utilized for the purpose of meeting with the day-to-day working capital requirements of the business and other business purposes. Therefore, the said interest expenditure is allowable under Section 36(1)(iii) of the Act. However, in the return of income the assessee has inadvertently claimed interest of Rs. 85.40 lakhs on unsecured loans under the head “income from other sources” under Section 57 of the Act. He further submitted that similar claim was also made by the assessee in the immediately preceding year and after carrying out due verification, the Ld. AO allowed the claim of deduction of interest on unsecured loans under Section 36(1)(iii) of the Act. Accordingly, the Counsel for the assessee had submitted before the A.O. that though the interest expenditure of Rs. 85.40 lakhs was claimed against interest income, the same was allowable against business income for the assessee under Section 36(1)(iii) of the Act. Accordingly, the Counsel for the assessee submitted that in instant set of facts there is no prejudice whatsoever which has been caused to Department for the following reasons:

- (i) The issue has been examined by the Ld. A.O. in detail during the course of assessment proceedings to which the assessee has also filed detailed reply and
- (ii) The assessee had inadvertently claimed interest expenditure of Rs. 85.40 lakhs against interest income but which was allowable to the assessee against business income under Section 36(1)(iii) of the Act.

Accordingly, in light of the above facts the Ld. A.O. has correctly allowed the claimed of the assessee and the order passed by the A.O. is not liable to be set-aside in revisionary proceedings under Section 263 of the Act.

5. In response, the Ld. D.R. relied upon the observation made by the PCIT in the 263 order.

6. We have heard the rival contention and perused the material available on record. We are of the considered view that in the instant set of facts the order passed by the Ld. AO is not erroneous and prejudicial to the interest of Revenue. We observe that the assessment of the assessee was taken up under “limited scrutiny” under CASS for verifying the following CASS reasons “large deduction claimed under Section 57, higher turnover reported in Service Tax Return as compared to ITR”. Accordingly, the very purpose of initiating assessment proceedings under “limited scrutiny assessment” was with a view to examine large deduction claimed under Section 57 of the Act. We further observe that notice was issued by the Ld. AO on 04.03.2019 under Section 142(1) of the Act in which a specific query was put forth to the assessee regarding the claim of deduction under Section 57 of the Act, asking for details of expenditure claimed under Section 57 against the head “income from other sources”. In response thereto, the assessee had filed reply dated 24.06.2019 in which he had given details of interest expenditure claimed by the assessee during the year under consideration. Therefore, in the instant facts, it cannot be stated that there was any lack of enquiry or non-application of mind by the Ld. AO in respect of justification for expenses claimed by the assessee under Section

- 7 -

57 of the Act. Further, we also observe that in the immediate preceding year similar claim of interest deduction was allowed to the assessee under Section 36(1)(iii) of the Act and hence taking into consideration the above fact the Ld. AO did not make any addition on this aspect. Therefore, looking to the facts of the instant case, we are of the considered view that there is neither any lack of enquiry by the A.O. during the course of assessment proceeding and nor there is any prejudice which has been caused to the Department looking into the instant set of facts. Accordingly, in light of the above observations, we are directing that the 263 order passed by the Ld. PCIT is liable to be set-aside.

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

This Order pronounced in Open Court on	22/03/2023
---	-------------------

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 22/03/2023

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot