

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

441/Jodh/2018
(ASSESSMENT YEAR- 2014-15)

Udaipur Sahakari Upbhokta Thok Bhandar Ltd. Ist Floor, Shastri Circle, Udaipur	Vs	The ACIT Circle-2 Uddaipur
(Appellant)		(Respondent)
PAN NO. AAAAU 0159 K		

Assessee By	Shri Arun Chordia, CA
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	20/03/2023
Date of Pronouncement	22/03/2023

ORDER

PER: SHRI MANISH BORAD, AM

This is an appeal filed by the assessee against the order of the Id.
CIT(A)-1, Udaipur dated 26-07-2018 for the assessment year 2014-15
raising therein following grounds of appeal.

“1. On the facts and in the circumstances of the case the learned appellate authority has erred in sustaining disallowances of interest to the extent of Rs.4,33,408/- on the ground that the loans have been granted for construction of new godown and extension of existing stores and as such the same is not allowable.

2. On the facts and in the circumstances of the case the disallowance of interest of Rs.4,33,408/- is bad in law as the loans have been utilized for the purpose of business and as such the interest was allowable u/s 36(1)(iii) of the I.T. Act.”

2.1 Brief facts of the case are that the assessee furnished its e-return on 28-11-2014 declaring total income at Rs.79,80,300/-. The case of the assessee was selected for scrutiny through CASS for which the AO issued notice u/s 143(2) dated 3-09-2015 and served upon the same by fixing the case for hearing on 09-09-2015. The ld. AR of the assessee attended hearing from time to time and furnished requisite details and documents before the AO. The AO noted from the records that the assessee is a consumer cooperative store dealing in various goods of daily use. The AO further noted that the assessee had debited interest on loans received from Integral Cooperative Development Project (ICDP) which has been sanctioned by ICDP for the following specific purpose.

S.N.	Date	Amount	Purpose	Interest paid
1.	10-07-2021	1,50,000/-	Godown Repairs	19,500/-
2.	14-08-2012	8,75,000/-	Construction of godown at Pratapnagar	1,13,750
3.	2209102013	1,00,00,000/-	Extension of super market building at Pratapnagar`	1,30,000/-
4.	11-04-2013	15,00,000	Extension of super market building at Shastri Circle & HO	1,89,658/-
	Total			4,52,908

The AO required the assessee to justify allowability of interest on the above loans for which the assessee submitted that the loan was not used for the purpose it was sanctioned but for regular expenditure and was therefore allowable u/s 36(1)(iii) of the Act. The AO thus noted that the assessee had failed to show that the loan was not used for the purpose it was sanctioned. The AO further noted that unless the assessee had utilized the first instalment of loan for the purpose the loan was sanctioned, the subsequent instalment would not have been sanctioned. Therefore, the AO concluded that the loan was utilized as sanctioned i.e. for the purpose of Godown repair/ construction of godown/ extension of super market which had enduring benefits and since a capital asset was being formed, interest expenses incurred on such loan did not qualify to be debited as revenue expenses and thus the AO disallowed claim of interest of Rs.4,52,908/-.

2.2 In first appeal, the ld. CIT(A), partly disallowed interest of Rs.4,33,408/- by observing as under:-

“10 I have considered the submission of the appellant and the relevant findings of the AO.

10.1 The loans on which interest has been claimed by the assessee have been sanctioned by ICDP for specific purpose details of which are as under:-

S.N.	Date	Amount	Purpose	Interest paid
1.	10-07-2021	1,50,000/-	Godown Repairs	19,500/-
2.	14-08-2012	8,75,000/-	Construction of godown at Pratapnagar	1,13,750
3.	2209102013	1,00,00,000/-	Extension of super market building at Pratapnagar`	1,30,000/-
4.	11-04-2013	15,00,000	Extension of super market building at Shastri Circle & HO	1,89,658/-
	Total			4,52,908

Although the assessee contended that the loan was not used for the purpose for which it was sanctioned but was instead used for regular business expenditure, the assessee has failed to establish with actual fund flow the utilization of loan sanctioned by ICDP. Therefore, there is no reason to believe the apparent, that loan was not utilized for the purpose for which it was sanctioned, as real. Particularly, considering that unless the assessee had utilized the first instalment of loan for the purpose for which loan was sanctioned, subsequent instalments would not have been sanctioned.

10.2 The proviso to section 36(1)(iii), as applicable in the year under appeal, reads as under:-

“Provided that any amount of the instalment paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the assets till the date on which asset was first put to use shall not be allowed as deduction.”

Thus, as per the above proviso to section 36(1)(iii), the interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession, is not allowable. The interest of Rs.19,500/- paid by the assessee on loan used for godown repairs is not hit by the above proviso. However, the remaining interest of Rs.4,33,408/- paid on loans taken for construction of new godown, extension of existing store, are hit by the above proviso, as these loans have been taken for extension of the existing business and hence not allowable. Accordingly, out of disallowance of interest of Rs.4,52,908/- made by the AO, disallowance of Rs.4,33,408/- is upheld. The ground of appeal is thus partly allowed.”

2.3 During the course of hearing, the ld. AR of the assessee submitted that the loan obtained by the assessee society has been exclusively utilized in the regular business and consequently the claim of interest of Rs.4,33,408/- thereon is also spent wholly and exclusively for the purpose of business and thus the ld. AR further submitted that the assessee society has completely satisfied all the

conditions laid down for allowability of an expenditure i.e. interest of Rs.4,33,408/- in the instant case which should be allowed.

2.4 On the other hand, the ld. DR supported the order of the ld.CIT(A).

2.5 We have heard both the parties and perused the materials available on record. The crux of the issue as to disallowance of interest amount of Rs.4,52,908/- by the AO on the ground that the loan was received by the assessee for the purpose of specific project and the assessee has not complied with the conditions of the loan for the purpose it was sanctioned by the ICDP which in first appeal was reduced to Rs.4,33,408 by the ld. CIT(A) by holding as under:-.

‘...Thus, as per the above proviso to section 36(1)(iii), the interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession, is not allowable. The interest of Rs.19,500/- paid by the assessee on loan used for godown repairs is not hit by the above proviso. However, the remaining interest of Rs.4,33,408/- paid on loans taken for construction of new godown, extension of existing store, are hit by the above proviso, as these loans have been taken for extension of the existing business and hence not allowable. Accordingly, out of disallowance of interest of Rs.4,52,908/- made by the AO, disallowance of Rs.4,33,408/- is upheld. The ground of appeal is thus partly allowed.’

However, during the course of hearing, the ld. AR prayed that the loan obtained by the assessee society had been exclusively utilized in

the regular is spent wholly and exclusively for the purpose of business which should be allowed. The Bench feels that in the interest of equity and justice the issue in question is restored to the file of the AO to decide it afresh by providing adequate opportunity of being heard to the assessee and the assessee is also directed to submit the papers / written submission before the AO for adjudication. Thus the appeal of the assessee is allowed for statistical purposes.

3.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 22 /03/2023.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Dated : 22/03/2023

**Mishra*

Copy to:

1. The Appellant`
2. The Respondent
3. The CIT
4. The DR
5. Guard File

Assistant Registrar
Jodhpur Bench