

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.9476/Del/2019
(ASSESSMENT YEAR 2013-14)**

**ITA No.9477/Del/2019
(ASSESSMENT YEAR 2014-15)**

**ITA No.9478/Del/2019
(ASSESSMENT YEAR 2015-16)**

Mr. Ashok Kaushik B-3, J-Block, Western Avenue, W-14 Lane Sainik Complex New Delhi-110 062 PAN-ARVPK 5674N	Vs.	Asst. CIT Circle-31(1) New Delhi
(Appellant)		(Respondent)

Appellant by	D R Anthwal, Advocate
Respondent by	Mr. Kanv Bali, SR-DR

Date of Hearing	13/04/2023
Date of Pronouncement	19/04/2023

ORDER

PER M. BALAGANESH AM:

These appeals of the assessee arise out of the common orders of the Learned Commissioner of Income Tax (Appeals)-11, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeals No.79/17-18, 305/16-17, 134/17-18 dated 26/09/2019 against the orders passed by Ld. Asst. CIT, Circle-32(1), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 23/02/2016, 30/12/2016 and 07/12/2017 for the Assessment Years 2013-14, 2014-15 and 2015-16 respectively.

2. The facts of the case are identical in all the issues and grounds raised thereon are also identical. Hence, these appeals are taken up together and disposed of by this common order for the sake of convenience.

3. Let us take up the appeal of the assessee for AY 2013-14 first.

The assessee has raised the following grounds of appeal:

“On the facts and in the circumstances of the case the learned CIT(A) has erred in confirming interest of Rs.27,18,524/- claimed as expenditure against the interest paid on loan taken from ICICI Home Finance. The

interest claimed as expenses only up to the interest earned on FDR made out of the loan taken. The interest has not claimed other source of income, but claimed upto the income earned and allowed in A.Y.2009-10 completed U/s 143(3).

On the facts and in the circumstances of the case the learned CIT(A) has erred in confirming the loss of Rs.9,29,941/- claimed by the assessee in his Income Return on the ground that the business premises on which the business was being carried on was let out to the tenant whereas the shed was in the possession of the assessee and clauses was the part of agreement. The fact was accepted in A.Y.2014-15 by completing assessment U/s 143(3).”

4. We have heard the rival submissions and perused the materials available on record. We find that the assessee is an individual and derives income from house property, income from business and income from other sources. The assessee availed loan from ICICI Home Finance Ltd in 2008 for construction of additional floor at D-233, Sector-63, Noida. Since, permission was not allowed for the said construction by the competent authority, the assessee had deployed the funds in fixed deposits and earned interest income thereon. Since the loan was already borrowed, the assessee had to pay interest on the said loans. The assessee claimed expenses on account of interest u/s 57 (iii) of the Act. Though the assessee paid interest on its loan higher than the interest income, the assessee restricted the claim of deduction of interest payment only to the extent of interest income u/s 57(iii) of

the Act. There is no dispute that assessee is carrying on the business of manufacturing of corrugated boxes under the name and style of M/s A.K. Industries (proprietary concern) at D-233, Sector-63, Noida. This premises was owned by the assessee. There is no dispute that during the year under consideration, the assessee was not well and could not concentrate on its business. Accordingly, he had let out the front portion in which he was running business to the tenant and shifted his business to back portion of the same premises i.e., in the shed which was also in the possession of the assessee. The assessee duly submitted the rent agreement entered into with the tenant before the Ld. AO. The Ld. AO came to the conclusion that no business was carried on by the assessee during the year ignoring the fact that the business of the assessee continued to be carried on in the shed at the back portion of the same premises from the shed. Accordingly, the Ld. AO disallowed the business loss of Rs.9,29,941/- claimed by the assessee. Further, the Ld. AO disallowed the claim of interest in the sum of Rs.27,18,524/- on the ground that the same would not be allowable u/s 57 of the Act. The ld. AO observed that the interest income on deposit would be taxable under the head

'income from other sources' in view of the decision of Hon'ble Supreme Court in the case of *Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT*, reported in 227 ITR 172 (SC) .

5. It is not in dispute that in the assessment proceedings, the assessee had furnished the loan certificate from bank along with explanation for claiming deduction of interest paid u/s 57 of the act. It is not in dispute that the loan taken from ICICI Home Finance Ltd was utilized by the assessee for construction of additional floor in the property owned by the assessee. The assessee furnished the entire details of interest paid on loan as well interest income earned on deposits. The assessee received interest income on FDRs kept with ICICI Bank @ 9.17% and State Bank of Patiala @ 10.05%. The assessee paid interest on its loan @ 13% on its borrowings. This action of the ld. AO was upheld by the ld. CIT(A).

6. As stated earlier, it is not in dispute that the borrowing made from ICICI Home Finance Ltd was meant to be utilized for construction of the additional floor in the property already owned

by the assessee. It is not in dispute that the assessee could not obtain the requisite permission from the competent authority for proceeding with the additional floor construction. Since, the loan amounts were lying idle with the assessee, the assessee thought it fit to use the said loan funds by making investment in fixed deposits with ICICI Bank and State Bank of Patiala. Hence, it is crystal clear that loan funds received by the assessee were directly utilized for making investment in fixed deposits. Admittedly, the interest income earned on fixed deposit is taxed under the head of interest income u/s 56 of the Act. The provisions of section 57(iii) of the Act categorically provide for allowability of deduction of interest expenditure that has been incurred for the purpose of earning exempt income. When the claim has been in accordance with the statutory allowable provision by the assessee, the action of the lower authorities dismissing the plea thereon without even considering the provisions of the Act cannot be sustained. Hence, we direct the Ld. AO to allow the interest claimed by the assessee in the sum of Rs.27,18,524/- u/s 57(iii) of the Act.

7. With regard to allowability of business loss of Rs.9,29,941/- is concerned, we find that the Ld. AO had disbelieved the fact that the assessee had not carried on any business and, accordingly, the entire business expenditure were disallowed. In this regard, we find that the assessee had categorically stated that the front portion of the property from where business was previously carried on was given on rent to a tenant and the business of the assessee stood transferred and continued in the shed located in the back portion of the said property. The assessee had also shown business income of Rs.5,250/- during the year. The assessee had also obtained a confirmation from the tenant HCL Services Limited which proves the fact that the shed which was already in possession of the assessee was never leased out to the tenant. The confirmation from tenant in this regard vide letter dated 12/07/2016 is enclosed at page 32 of the Paper Book. The lease agreement entered with the tenant also categorically proved that existing vacant storage space (shed) is only for the use of the Lessor and Lessee is not allowed to use it for any purpose. The rental income derived from the front portion of the property were offered to tax under the head 'income from house property'. On perusal of the profit and loss account of

the assessee, we find that there is no dispute that the business expenditure carried on by the assessee in the form of stock damage, professional charges, accountancy charges, salaries, printing and stationery, repair and maintenance etc. are to be incurred even if the business during the year was not conducted in a full fledged manner. Moreover, we find from the assessment order of AY 2014-15 in the case of the assessee u/s 143(3) of the Act dated 30/12/2016, we find that the Ld. AO himself while disallowing certain business expenditure on *ad hoc* basis partially, had practically conceded to the fact of assessee carrying on the business. In other words, the Ld.AO made *ad hoc* disallowance of driver salary, labour charges, manager salary, Security Guard etc. @ 60% in AY 2014-15, which goes to prove that remaining 40% of the very same expenditure would be allowable as business expenditure. This clearly proves that the Ld. AO himself in AY 2014-15 had accepted the fact that assessee was indeed carrying on business. The reasons for business not being conducted in full fledged manner in AY 2013-14 was also clearly explained by the assessee that he was not well during the year under consideration i.e., AY 2013-14. The business of the assessee was never closed.

Hence, once the business is continued, there is absolutely no justifiable reasons for the Ld. AO to disallow the business loss entered thereon. Accordingly, we direct the Ld. AO to allow the business loss of Rs.9,29,941/- claimed for AY 2013-14.

8. Accordingly, grounds raised by the assessee for AY 2013-14 are allowed.

9. The only ground raised by the assessee for AY 2014-15 is challenging the disallowance of interest paid on loan taken from ICICI Home Finance Ltd. This is identical to ground No.1 disposed of by us in AY 2013-14, hence, decision rendered by us in AY 2013-14 shall apply *mutatis mutandis* for AY 2014-15 also, except with variance in figures. Accordingly, the ground raised by the assessee for AY 2014-15 is allowed.

10. The grounds raised by the assessee for AY 2015-16 are identical to the grounds raised in AY 2013-14. Hence, the decision rendered by us in AY 2013-14 supra shall apply *mutatis mutandis*

for AY 2015-16 also. Accordingly, the grounds raised by the assessee for AY 2015-16 are allowed.

11. In the result, all the appeals of the assessee are allowed.

Order pronounced in open court on 19/04/2023.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 19/04/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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