

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 392/Mum/2023 (A.Y.2016-17)

Atul Tulsidas Khimani,

Flat No. 903, Vastuddep 1,
Off Chandavarkar Lane,
Borivali (W)
Mumbai-400 092

PAN: AAHPK4534E

..... Appellant

Vs.

DCIT Cir 42(1)(1)

Earnest House, NCPA Marg
Nariman Point
Mumbai-400021

..... Respondent

Appellant by : Shri Mehul Shah
Respondent by : Shri Manoj Kumar Sinha, Sr. AR

Date of hearing : 19/04/2023
Date of pronouncement : 12/06/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 30.11.2022 u/s. 250 of the Income Tax

Act, 1961 (in short 'the Act') for A.Y. 2016-17. The assessee has raised the following grounds of appeal:-

1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making disallowance of Rs. 18,78,268/- being interest on partner's capital.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT (A) has erred in not allowing the deduction of Rs. 18, 78,268/- u/s. 57 of the Income Tax Act.

3. It is prayed that the assessment may please be quashed and/or disallowance made by the assessing officer and confirmed by CIT (A) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.

2. The brief facts of the case are that assessee is an individual filed its return of income on 15.10.2016 declaring total income at Rs. 53,23,100/-. Assessee shown income from salary, loss on business income from partnership firms, capital gains and income from other sources during the year. Case of the assessee was selected under CASS for **Limited Scrutiny** for the reason whether loss from partnership firm is admissible.

3. During the assessment proceedings it was observed that assessee claimed negative interest of Rs. 18, 78,268/- on debit balances with three partnership firms where he was partner against remuneration of Rs. 4, 40,000/- received from the same partnership firms. This resulted into a loss of Rs. 14, 38,268/-. It is further observed that in addition to remuneration assessee also received share of profit from these firms amounting to Rs.

14,97,322/- which is exempt u/s. 10(2A) of the Act. The AO was not agreed with the system of set off adopted by assessee i.e. remuneration set off against negative interest earning as partner in partnership firm and added back the same to the income of the assessee. Assessee being aggrieved with this order of AO prefers an appeal before the Ld. CIT (A), who in turn confirmed the order of AO.

4. Assessee being further aggrieved preferred this appeal before us. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee alongwith case laws relied upon. It is observed that the remuneration received by the assessee is in the capacity of working partner which must be duly provided in the partnership firm and nowhere connected with debit /credit balance of the assessee as partner. As far as share of profit received by the assessee from the partnership firm also does not have any connection with this figure or interest claimed by the assessee as the same is exempted u/s. 10(2A) of the Act.

5. It is further observed that assessee failed to prove that the debit balance in the books of partnership firms where he is liable to pay interest have any nexus for earning any income chargeable under the head 'income from other sources' may be in future years. In adjudicating this issue, we have considered the findings of the Ld. CIT (A) vide para 6 on page 11 of the Ld. CIT (A)'s order as under:-

"I have carefully considered the facts of the case as well as submissions filed by the appellant. The appellant had claimed an interest of Rs. 18, 78,268/- in the schedule BP against the remuneration of Rs. 4, 40,000/- earned from the three partnership

firms in which he is a partner. This was admittedly a mistake of the appellant. Admittedly, these expenses had no relation with the business income of the appellant. Accordingly, the AO disallowed the same and added this amount to the total Income of the Assessee, In the appellate proceedings, **the appellant has submitted that these expenses are actually related to the interest income of Rs. 64,33,392/-earned from M/s. Khimani Watch Co. Pvt. Ltd, to which he had advanced a loan. The appellant has pleaded that this loan was advanced by withdrawing capital from the above firms, and hence this amount of Rs. 18, 78,268/- is allowable u/s 57 of the Act.** The ledger account of the 3 firms and the company have been submitted. However, the Assessee has already claimed interest expenses amounting to Rs. 21, 74,277/- u/s. 57 against this Income. The copy of schedule BP clearly show that the interest expenses of Rs. 18,78,268/- have been shown against the remuneration of Rs. 4,40,000/- earned from the three firms. This has been rightly disallowed by AO and it has been accepted by the appellant that these expenses are not related to this income. Now the appellant has pleaded that if these expenses are disallowed under the head 'Business and profession', the same may be allowed u/s 57 under the head 'Income from other sources'. The plea of the appellant is not tenable at all. Just because the debit balances in the firms became credit balances does not prove conclusively that this money withdrawn has been used to make this investment in the company M/s. Khimani Watch Co. Pvt. Ltd. This investment has come from some other sources, for which interest of Rs. 21, 74,277/- has been separately claimed and allowed. Also, the deduction claimed and disallowed under one head cannot be allowed under some other head. This claim of the appellant is clearly an afterthought. The case laws referred to by the appellant have been considered and these are not applicable to the facts of the Assessee's case. Accordingly, the addition of Rs. 18, 78,268/- made by the AO to the business income of the appellant is hereby confirmed.”

6. We are agreed with the finding of Ld. CIT (A) that there is no nexus of remuneration earned with interest paid on debit balance with partnership firms, but as claimed by the assessee that he over withdrawn the capital to be given as loan to M/s. Khimani Watch Co. Pvt. Ltd. on which he earned a substantial amount of interest amounting to Rs. 64, 33,392/-. Although, he claimed certain expenses also against this income amounting to Rs. 21,74,277/-, but this fact of assessee is unverified that over withdrawn of amount was utilised for earning of interest from M/s. Khimani Watch Co. Pvt. Ltd. In view of this fact we deem it fit to restore the matter back to jurisdictional AO to verify this claim of assessee considering appropriate evidences adduced by the assessee after giving a proper opportunity of being heard. Assessee is directed to produce appropriate ledger and bank accounts before the AO to substantiate his claim that he over withdrawn the amount from partnership firms to provide loan to M/s. Khimani Watch Co. Pvt. Ltd.

7. In view of this, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th day of June, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 12/06/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.

3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai