

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM**

आयकर अपील सं./ITA Nos.331 & 332/SRT/2022  
(निर्धारणवर्ष / Assessment Years: (2017-18 & 2018-19)  
(Physical Court Hearing)

Hotel Skyline Pvt. Ltd. Skyline Building, Old N.H. No.8, Near Hotel Maharaja, Bharuch- 392001	<b>Vs.</b>	Income Tax Officer, Ward-1(1), Bharuch Income Tax Office, Station Road, Hari Kunj Building, Above Bank of Baroda, Bharuch-356069
स्थायीलेखासं/.जीआइआरसं/.PAN/GIR No.: <b>AAACH 5317 A</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Rasesh Shah, C.A

राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr.-DR

सुनवाईकीतारीख /Date of Hearing : 07/06/2023

घोषणाकीतारीख/Date of Pronouncement: 26/06/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned two appeals filed by the assessee, pertaining to Assessment Years 2017-18 and 2018-19, are directed against the separate orders passed by the National Faceless Appeal Centre, Delhi [in short “NFAC/ld. CIT(A)”] dated 16.09.2022, which in turn arise out of separate assessment orders passed by the Assessing Officer (‘AO’ for short) under section 143(3) r.w.s 143(3A) r/w.s 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’), vide order dated 06.12.2019 and 16.03.2021 respectively.

2. Since, the issues involved in both the appeals are common and identical except variance of amount; therefore, both appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA

No.331/SRT/2022 for assessment year 2017-18, have been taken into consideration for deciding these two appeals *en masse*.

3. Grounds of appeal raised by the assessee in “*lead*” case in ITA No.331/SRT/202, are as follows:-

*“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 addition of Rs.24,19,035/- on account of disallowance of deduction of interest and bank charges claimed u/s 57.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in not following the orders passed in favour of the assessee for AY 2013-14 by Income Tax Appellate Tribunal, Surat and for AY 2014-15 by CIT(A) NFAC by wrongly distinguishing the above decisions.*

*3. It is therefore prayed that addition made by 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.”*

4. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the order dated 07.03.2022, passed by the Division Bench of this Tribunal in assessee’s own case in ITA No.690 & 691 /AHD/2017 for the Assessment Years 2012-13 and 2013-14 whereby the issue of relating to addition on account of disallowance of deduction of interest and bank charges claimed u/s 57 of the Act were discussed and adjudicated in favour of assessee. Learned counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

5. Learned Departmental Representative relied upon the orders of the authorities below.

6. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee’s own case vide

order dated 07.03.2022. In this order, the Tribunal has *inter alia* observed as follows:

“8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that it is not disputed by the assessing officer that interest expenses has not been incurred by the assessee. The assessee had filed its return of income for the year under consideration on 23.11.2012 declaring total income at Rs. 10,58,040/-. The said return was processed u/s 143(1) of the Act accepting the returned income by CPC. Thereafter, this case was selected for scrutiny under CASS. During the year under consideration, the assessee company has earned rental income. Besides, it has earned interest on Income Tax refund. In the computation of total income of assessment year 2012-13, assessee claimed expenses of Rs.23,77,158/- against the interest on income tax refund of Rs.19,490/-. For assessment year 2013-14, assessee claimed expenses of Rs.24,72,208/- against interest income at Rs. Nil. The expenses of Rs.23,77,158/- included the interest expenses of Rs. 14,74,654/- and other expenses of Rs.9,02,504/- for assessment year 2012-13. The expenses of Rs.24,72,208/- included the interest expenses of Rs.13,96,831/- and other expenses of Rs.10,75,377/- for assessment year 2013-14. In the course of assessment proceedings, assessee submitted that the fund borrowed from bank was utilized for investment in Affem Rolling Pvt. Ltd. This investment in Affem Rolling Pvt Ltd, was by way of share application/share capital and advances. In the audited accounts, the investment in Affem Rolling Pvt Ltd is reflected as under for both the years:

<i>Non-current investment :</i>	
<u><i>Investment in Equity Instruments</i></u>	
<i>Affem Rolling Pvt. Ltd. Share</i>	75,00,000
<i>Affem Share Application</i>	22,80,000
<i>Long Term Loans &amp;Advances :</i>	
<u><i>Loans &amp; Advances to Related Parties</i></u>	
<i>Affem Rolling Pvt. Ltd.</i>	88,45,000

9. From the above table, it is clear that assessee made investment in equity shares of Affem Rolling Pvt. Ltd. and also has given the advance. The investment in the Affem Rolling Pvt Ltd was out of the loan taken from Bank of Baroda. The Affem Rolling Pvt Ltd is the sister concern of the assessee and it did not commence the business operations, as it was under the development stage. The assessee company therefore did not receive any dividend and interest income from the said company. The assessee also incurred the expenses in form of director's remuneration and other expenses in the form of accounting charges, audit charges etc. The assessee has incurred these expenses to manage the funds invested in the said company and controlling the interest in the company i.e. Affem Rolling Pvt. Ltd. The assessing officer disallowed the interest expenses and the other expenses incurred by the assessee on the ground that it is not allowable u/s 57 of the Act, as assessee has already claimed the expenses u/s 24 of the Act against the rent income.

10. We note that assessee made the investment in Affem Rolling Pvt Ltd out of the amounts borrowed from Bank of Baroda on which assessee incurred the interest expenses. The assessee has proved complete nexus between the amount borrowed and amount invested. We note that assessing officer has not pointed out that the fund borrowed was not diverted for the purpose of making investment with Affem Rolling Pvt Ltd. We note that before lower authorities, the assessee claimed both alternatives that interest expenses is allowable u/s 36(1)(iii) or u/s 57(iii) of the Act. However, we note that assessee has not derived any business income. Therefore, assessee's claim u/s 36(1)(iii) of the Act should not be allowed, and interest expense should be allowed under section 57(iii) of the Act. We note that assessing officer has erred in holding that assessee claimed such expenses u/s 24 of the Act. It is to be noted that assessee claimed only the standard deduction @ 30% u/s 24(a) of the Act however the assessee did not claim any interest expenses u/s 24(b) of the Act. Based on the above facts, we note that interest expense is allowable u/s 57(iii) of the Act.

11. We also note that assessee has not claimed the interest expenses against the interest on refund received from the income tax department. Interest on refund has been shown in the computation of total income only for disclosure purposes and not for the purpose of set off. This is because the assessee has not lent the money to the income tax department. The assessee in fact claimed the interest expenses against the Nil return on investment made in Affem Rolling Pvt. Ltd. We note that such interest expense is allowable under section 57(iii) the Act, for that reliance can be placed on the decision of the Hon`ble Supreme Court in the case of Rajendra Prasad Moody 115 ITR 519 (SC), wherein it was held as follows:

*"The determination of the question before us turns on the true interpretation of section 57(iii) and it would, therefore, be convenient to refer to that section, but before we do so, we may point out that section 57(iii) occurs in a fasciculus of sections under the heading 'F- Income From Other Sources'. Section 56 which is the first in this group of sections enacts in sub-section (1) that income of every kind which is not chargeable to tax under any of the heads specified in section 14, Items A to E shall be chargeable to tax under the head 'Income From Other Sources' and sub-section (2) includes in such income various items one of which is 'dividends'. Dividend on shares is thus income chargeable under the head '**Income From Other Sources**'. Section 57 provides for certain deductions to be made in computing the income chargeable under the head "**Income From Other Sources**" and one of such deductions is that set out in clause (iii) which reads as follows:*

*"Any other expenditure (not being in the nature of capital expenditure) laid down or expended wholly and exclusively for the purpose of making or earning such income".*

*The expenditure to be deductible under section 57(iii) must be laid out or expended wholly and exclusively for the purpose of making or earning such income. The argument of the Revenue was that unless the expenditure sought to be deducted resulted in the making or earning of income, it could not be said to be laid out or expended for the purpose of making or earning such income. The making or earning of income, said the Revenue, was a sine qua non to the admissibility of the expenditure under section*

57(iii) and, therefore, if in a particular assessment year there was no income, the expenditure would not be deductible under that section. The Revenue relied strongly on the language of section 37(1) and contrasting the phraseology employed in section 57(iii) with that in section 37(1), pointed out that the Legislature had deliberately used words of narrower import in granting the deduction under section 57(iii). Section 37(1) provided for deduction of expenditure laid out or expended wholly and exclusively for the purpose of the business or profession in computing the income chargeable under the head 'Profits or gains of business or profession'. The language used in section 37(1) was "laid out or expended-for the purpose of the business or profession" and not "laid out or expended-for the purpose of making or earning such income" as set out in section 57(iii). The words in section 57(iii) being narrower, contended the Revenue, they cannot be given the same wide meaning as the words in section 37(1) and hence no deduction of expenditure could be claimed under section 57(iii) unless it was productive of income in the assessment year in question. This contention of the Revenue undoubtedly found favour with two High Courts but we do not think we can accept it. Our reasons for saying so are as follows.

What section 57 (iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that, is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. Section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. It may be pointed out that an identical view was taken by this Court in *Eastern Investments Ltd. v. Commissioner of Income tax*, where interpreting the corresponding provision in section 12(2) of the Income Tax Act, 1922 which was *ipsissima verba* in the same terms as section 57(iii), Bose, J., speaking on behalf of the Court observed: "It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned". It is indeed difficult to see how, after this observation of the Court, there can be any scope for controversy in regard to the interpretation of section 57(iii).

It is also interesting to note that, according to the Revenue, the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year, but if there is some income, howsoever small or meagre, the expenditure would be eligible for deduction. This means that in a case where the expenditure is Rs. 1000/-, if there is income of even Re. 1/-, the expenditure would be deductible and there would be resulting loss of Rs. 999/- under the head '**Income From Other Sources**'. But if there is no income, then, on the argument of the Revenue, the expenditure would have to be ignored as it would not be

*liable to be deducted. This would indeed be a strange and highly anomalous result and it is difficult to believe that the Legislature could have ever intended to produce such illogicality. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, X or Y or nil, would be credited. And the ultimate profit or loss would be found. We fail to appreciate how expenditure which is otherwise a proper expenditure can cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of section 57(iii) cannot be different. The deduction of the expenditure cannot, in the circumstances, be held to be conditional upon the making or earning of the income.*

*It is true that the language of section 37(1) is a little wider than that of section 57(iii), but we do not see how that can make any difference in the true interpretation of section 57(iii). The language of section 57(iii) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that section 57(iii) should be given a narrow and constricted meaning not warranted by the language of the section and in fact, contrary to such language.*

*This view which we are taking is clearly supported by the observations of Lord Thankerton in Hughes v. Bank of New Zealand where the learned Law Lord said: "Expenditure in the course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense." We find that the same view has been taken by the Madras High Court in Appa Rao v. Commissioner of Income tax, and Mohamed Ghouse v. Commissioner of Income-tax, the Bombay High Court in Ormerods (India) Private Ltd. v. Commissioner of Income-tax, the Allahabad High Court in Chhail Beharilal v. Commissioner of Income-tax, the Madhya Pradesh High Court in Commissioner of Income-tax v. Dr. Fida Hussain G. Abhasi, the Kerala High Court in M. N. Ramaswamy Iyer v. Commissioner of Income-tax and the Orissa High Court in Commissioner of Income-tax v. Gopal Chand Patnaik. This view is eminently correct as it is not only justified by the language of section 57(iii) but it also accords with the principles of commercial accounting. The contrary view taken by the Patna High Court in Maharajadhiraj Sir Kameshwar Singh v. Commissioner of Income-tax and the Calcutta High Court in Madanlal Sohanlal v. Commissioner of Income-tax must in the circumstances be held to be incorrect.*

*We accordingly answer the question referred to us for our opinion in each of these two references in favour of the assessee and against the Revenue.”*

7. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in assessee`s own case and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding judgment of the Coordinate Bench in assessee`s own case we should allow both these appeals of the assessee.

8. However, Id Counsel for the assessee fairly agreed that there should be proportionate disallowance of interest out of total interest for assessment year 2017-18 and assessment year 2018-19(proportionate disallowance of interest in respect of F R Bhamwala). The chart of proportionate disallowance interest for both assessment year, as submitted by Id Counsel, is reproduced below:

Chart for ITA No.331/SRT/2022 for Assessment year 2017-18

Particulars	2017-18
Investment in Equity Instruments Investment in Affem Rolliing Pvt. Ltd. Affem Share Application (a)	Rs.75,00,000 <u>Rs.22,80,000</u> Rs.97,80,000
Long Term Loans and Advances Affem Rolling Pvt. Ltd. F.R. Bhamwala (b) (c)	Rs.1,72,45,000 <u>Rs. 72,06,449</u> Rs.2,44,51,449
Total (a) + (c) = (d)	Rs.3,42,31,449 =====
Total interest disallowance (e)	Rs,24,19,035 =====
Proportionate disallowance in respect of F R Bhamwala (e) *(b)/(d)	Rs. 5,09,258

Chart for ITA No.332/SRT/2022 for Assessment year 2018-19

Particulars	2018-19
Investment in Equity Instruments Investment in Affem Rolling Pvt. Ltd. Affem Share Application (a)	Rs.75,00,000 <u>Rs.22,80,000</u> Rs.97,80,000
Long Term Loans and Advances Affem Rolling Pvt.Ltd. F.R. Bhamwala (b) Escrow Account Affem Rolling Pvt. Ltd (c)	Rs.1,72,45,000 Rs. 72,06,449 <u>Rs. 78,25,458</u> Rs.3,22,76,907
Total (a) + (c) = (d)	Rs.4,20,56,907 =====
Total interest disallowance (e)	Rs,21,40,716 =====
Proportionate disallowance in respect of F R Bhamwala (e) *(b)/(d)	Rs. 3,66,812

9. Therefore, we direct the Assessing Officer to make disallowance of interest for assessment year 2017-18 at Rs.5,09,258/- (in ITA No.331/SRT/22) and we also direct the assessing officer to make disallowance of interest for assessment year 2018-19 at Rs.3,66,812 /- (in ITA No.332/SRT/22), in respect of interest belongs to F.R.Bhamwala. Except to these two disallowances, the rest matter is squarely covered by the judgment of the Division Bench of this Tribunal in assessee's own case in ITA No.690 & 691/AHD/2017 for the Assessment Years 2012-13 and 2013-14. Hence, both the appeals filed by the assessee are partly allowed.

10. In the combined result, both appeals filed by the assessee (ITA No.331/SRT/2022 & ITA No.332/SRT/2022) are partly allowed to the extent indicated above.

A copy of the instant common order be placed in the respective case file(s).

Order pronounced on 26/06/2023 by placing the result on the notice board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

सूत /Surat/दिनांक/ Date: 26/06/2023

Dkp Outsourcing Sr.P.S.

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

Senior Private Secretary/Private  
Secretary/Assistant Registrar, ITAT,  
Surat