

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.158/SRT/2023 (AY 2013-14)

(Hearing in Physical Court)

Murlimanohar Ramkishan Mundhra, 301 to 308, Third Floor, Shree Krishna market, Near Metro Tower, Ring Road, Surat-395002 PAN No: AFLPM 6057 P	Vs	Income Tax Officer, Ward-1(2)(1), (old Ward- 1(2)(3)) Surat, Aayakar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Sudhir Surana, CA & Shri Om Prakash Soni, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	03.03.2023
सुनवाई की तारीख/Date of hearing	03.05.2023
उद्घोषणा की तारीख/Date of pronouncement	18.07.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] dated 13.01.2023 for assessment year 2013-14, which in turn arises from the addition made by the Assessing Officer in assessment order passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 30.11.2018. The assessee has raised the following ground of appeal:-

“1. Ld. CIT(A) erred in law and on facts confirming the reassessment proceeding initiated by the ld. AO, without properly appreciating the submission of the appellant.

2. Ld. CIT Appeal has erred in law and on facts of confirming disallowances of interest without properly appreciating the submission of the appellant.

3. Crave leave to add, amend, alter, vary, or withdraw any or all the grounds of appeal before or at the time of hearing of the appeal.”

2. Facts in brief are that assessee is an individual and engaged in trading and manufacturing of textile fabrics, filed his return of income on 11.10.2013 declaring income of Rs.4,68,140/- for the assessment year 2013-14. The assessment was completed under section 143(3) on 23.03.2016 at Rs.5,17,750/-. Subsequently, the Assessing Officer on perusal of record found that assessee has shown interest received of Rs. 20,773/- under the head “income from other sources” against which, the amount of Rs.6,49,951/- was claimed as deduction on account of interest paid to other parties. The assessee has already claimed interest of Rs.15.42 lakhs in profit and loss account for loan borrowed for its business. Thus, interest amount of Rs.6,49,951/- claimed for “income from other sources” was not justified, hence, deduction was not

justified. On the basis of such observation, the Assessing Officer was of the view that income of assessee to the extent of Rs.6,49,951/- as escaped assessment within the meaning of Section 147 of the Act. The Assessing Officer after recording the reasons of reopening issued notice under section 148 of the Act on 29.03.2018. In response to notice, the assessee filed his return of income on 28.04.2018. The Assessing Officer recorded that reasons recorded were provided to assessee. The Assessing Officer after serving notice under section 143(2) proceed for re-assessment. The Assessing Officer issued show cause notice on 23.10.2018 as to why the amount of Rs.6,49,951/- should not be treated as income under section 57 of the Act and added back to the income of assessee. The contents of show cause notice are recorded in para-4 of assessment order. The Assessing Officer recorded that the assessee filed his reply dated 16.11.2018. The contents of reply are recorded in para-4 of assessment order. The assessee in his reply, submitted that assessee was having a capital balance of Rs.41.80 lakhs, out of which, assessee has a fixed capital investment of Rs.22.05

lakhs and liquid capital of Rs.19.75 lakhs at the same time. The assessee has made investment in the firm of Rs.76.11 lakhs. The assessee borrowed money from his friends and relatives in his personal capacity and infused said fund in Rama International. The assessee made payment of interest of Rs.6,49,951/- on the borrowed fund and claimed deduction under section 57(iii) against the profit of the firm shown in the income from the business and profession. The assessee submitted that interest expenses were claimed for commercial expediency and money was borrowed to infuse fund in proprietary concern for purpose of earning income and expenses have been incurred wholly and exclusively for the purpose of earning interest income were not incurred for personal purposes nor the same was capital in nature. The expenses were incurred in the same accounting year also and there is direct nexus between expenditure incurred and the income earned and rightly claimed under section 57(iii) of the Act.

3. The reply of assessee was not accepted by Assessing Officer by taking view that assessee has shown income under the head "income from other sources" at Rs.20,773/- and

Rs.6,49,951/- were claimed as deduction on account of interest paid to other parties. The assessee has already claimed his profit and loss account as interest of Rs.15.42 lakh for loans borrowed for business purposes as per Section 57(iii) only those expenditures are allowable which was laid out wholly and exclusively for the purpose of earning income under the head "income from other sources" as per mandate of Section 57(iii) as the assessee has already claimed in profit and loss account of interest of Rs.15.42 lakh. Thus, same is not allowable expenses. The Assessing Officer disallowed expenditure of Rs.6,49,951/- in the assessment order dated 30.11.2018 under section 143(3) r.w.s. 147 of the Act.

4. Aggrieved by the re-assessment as well as addition in the assessment order, the assessee filed appeal before Ld. CIT(A). The case of assessee migrated before NFAC/Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee challenged the validity of re-opening under section 147 r.w.s. 148 of the Act and addition of interest expenses. Both the grounds raised before NFAC/Ld. CIT(A) the assessee filed his detailed written submission. The submission of assessee

recorded in para-4 of the order of NFAC/Ld. CIT(A). On the validity of re-opening, assessee submitted that re-opening was not justified as the assessment in case of assessee completed under section 143(3) of the Act. During the original assessment proceedings, the Assessing Officer vide order-sheet entry dated 10.03.2016 called for explanation for admissibility of interest expenses. The assessee vide order sheet entry dated 23.03.2016 submitted detailed explanation regarding allowability of said expenses under section 57(iii) and after considering the said submission, assessment order was passed. Thus, re-opening assessment order nothing but change of opinion. Furthermore, the Assessing Officer while recording the reasons, himself recorded "*it was seen from the records that as per the assessee that said amount of expenditure of Rs.6,49,951/- was incurred on loan obtained which was invested in business*", Hence, reasons recorded itself proved that facts were well within the knowledge of Assessing Officer during original assessment. Hence, re-assessment proceeding is nothing but change of opinion. To support such submission, assessee relied upon the decision of

Hon'ble Apex Court in the case of ITO Vs Tech Span (P.) Ltd. (2018) 404 ITR 10 (SC). On the merits of addition on account of disallowance of interest expenses, the assessee made similar submission as made before Assessing Officer. To support his submission, he relied upon the decision of Hon'ble Apex Court in the case of Commissioner of Income-tax vs. Rajendra Prasad Moody (1978) 115 ITR 519 (SC), and decision of Hon'ble jurisdictional High Court in the case of Micro Inks Ltd., vs. PCIT (2017) 85 taxmann.com 310 (Guj) and various other case law.

5. The Ld. CIT(A) after considering the submission of assessee on validity of re-opening held that Assessing Officer in para-8 of reasons recorded for re-opening of the case that four years of end of relevant assessment year has not expired in this case. Thus, the requirement of having reason to believe that income has escaped assessment have been duly recorded. The Assessing Officer has obtained due sanction. The assessee has not filed revised return of income to revise his claim and the case law relied by assessee is also different from the facts of the present case and confirmed / upheld the action of Assessing Officer. On

the addition on account of disallowance of interest expenses, the ld. CIT(A) held that claim of interest expense is personal account have incurred for the purpose of business has not been proved by assessee and the reliance on the decision of Tribunal is misplaced. The interest expenses are not claimed as business expense under section 36(1)(iii) in the return of income and no revised return was filed within the prescribed time, if the assessee claimed expenses for the purpose of business then no such return was filed. Thus, confirmed the action of AO. Further aggrieved assessee has filed present appeal before NFAC/Ld. CIT(A).

6. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and have gone through the order of lower authorities carefully. Ground No.1 relates to validity of re-opening. The Ld. AR for the assessee submits that in the business of trading and manufacturing textile fabric, the assessee claimed interest expense of Rs.6,49,951/- under section 57(iii) and interest payment made against the unsecured

loan. During original assessment, Assessing Officer called for explanation of admissibility of interest expenses claimed by assessee under section 57(iii) and assessee furnished detailed submission regarding allowability of said expenses vide order-sheet dated 20.03.2016. The Assessing Officer after considering the said submission passed assessment order on 23.03.2016. Notice under section 148 of the Act was issued assessee on 02.03.2018. In response to such notice, assessee submitted that original return filed on 1.10.2013 to be treated as return of income in response to notice under section 148 and prayed for reasons recorded. The reasons recorded was provided to assessee by Assessing Officer which was discussed by a speaking order on 03.07.2018. The Assessing Officer passed assessment order by disallowing interest expense of Rs.6,49,951/- claimed by assessee under section 57(iii).

7. On the validity of re-opening, the Ld. AR for the assessee submits that re-opening was nothing but a change of opinion. In the original assessment deduction was allowed on the same set of fact and even in the excess deduction was allowed will be changed of opinion. Therefore, re-

assessment was held to be bad-in-law as has been held in the case of Tech Span (P.) Ltd. (supra). The Ld. AR for the assessee further submits that the Assessing Officer has no power to review but to re-assess the assessment was based on fulfilled of certain conditions, if the concept of change of opinion is removed then in the grab of re-opening assessment, review would take place as has been held in CIT, Delhi vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC). On the merit of addition, the Ld. AR for the assessee retreated that assessee has claimed interest expense of Rs.6,49,951/- under section 57(iii) as assessee borrowed money of his personal capacity and infused the said fund in his proprietorship Firm Rama International and claimed deduction under section 57(iii) for interest expenses. The Ld. AR for the assessee repeated in all submission as made before NFAC/Ld. CIT(A).

8. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities and submits that on the validity of re-opening the assessee raised objection. The objection of assessee was duly disposed of in a speaking order. In the order of disposing, the Assessing Officer

specifically recorded that Hon'ble Apex Court in the case of Phool Chand Bajrang Lal Vs ITO (199) 203 ITR 456 (SC), it was clearly held that Assessing Officer acquired jurisdiction to re-open the assessment under section 147 if on the basis of information coming to his possession subsequently, he has reasoned, which he must record to believe that reason of omission or failure on the part of assessee to make a true and fully disclosed or material fact for re-assessment during the concluded assessment proceedings any part of his income profit or gain chargeable to tax as escaped assessment. He may start re-assessment proceeding either from fresh facts came to light or disclosed with regard to the fact disclosed came to his possession. The assessee wrongly claimed the deduction under section 57(iii) to the extent of Rs.6,49,951/-, which was not allowable expenditure. The re-opening was made within four years from the end of relevant assessment year and only requirement to initiate the re-assessment proceeding under section 147 is reasons to believe that assessee still claiming deduction under section 57(iii) though at the same time the assessee is claiming all borrowed fund against which

interest expenses were claimed was infused for the purpose of business and not for the purpose of earning “income from other sources”. On the merit of addition, Ld. Sr-DR for the Revenue submits that interest expense of Rs.6,49,951/- was not expended wholly and exclusively for the purpose of earning income as required under section 57(iii).

9. I have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. I have also deliberated on various case law relied upon by both the parties. I find that Ground No.1 relates to validity of re-opening, initially the assessment in case of assessee was completed under section 143(3) and Assessing Officer recorded reasons on the basis of information available on record, which is apparent on the reasons recorded. The copy of reasons recorded is available at pages 79 to 80 of assessee's paper book, *wherein* the Assessing Officer recorded reasons recorded that on perusal of case record noted that assessee shown interest received of Rs. 20,773/- under the head “income from other sources” against which assessee has claimed deduction of

interest of Rs.6,49,951/- and paid to other parties. The assessee has claimed interest expense of Rs.15.42 lakh in his profit and loss account. Thus, further amount of Rs.6,49,951/- was not justified. I find that all such facts and figures were available at the time of original assessment, on the basis of which, Assessing Officer recorded reasons of re-opening. No addition was made by the assessing officer during original assessment initiated and completed under section 143(3). The assessing officer has not recorded that any new or tangible material came to his notice or that escapement of such income was result of not disclosing all the material fully and truly at the time of assessment.

10.The Hon'ble Supreme Court in ITO Vs Tech Span India (P) Limited (supra) held that the language of section 147 makes it clear that the assessing Officer certainly has the power to re-assess any income which has escaped assessment for any assessment year subject to the provisions of sections 148 to 153. However, the use of this power is conditional upon the fact that the Assessing Officer has some reason to believe that the income has

escaped assessment. The use of the words 'reason to believe' in section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the Assessing Officer who may even initiate such re-assessment proceedings merely on his change of opinion on the basis of same facts and circumstances which have already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the Assessing Authorities to re-assess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order. It was further held that section 147 does not allow the re-assessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the

Assessing Officer the power of review and section 147 confers the power to re-assess and not the power to review. Thus, in view of the above factual and legal discussions, I find that the reopening under section 147 is nothing but based on changed of opinion on same set of facts, which is not valid. Thus, the action of reopening of assessment is set aside. In the result, ground No. 1 of the appeal is allowed.

11. Considering the facts that I have allowed the legal ground which relates to reopening, therefore, adjudication on merit, which is raised in ground No.2, have become academic.

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

Order pronounced on 18/07/2023 in open court.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 18/07/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

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Senior Private Secretary/ Private
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Surat