

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC "A" BENCH : BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 572 to 574/Bang/2023
Assessment years : 2013-14 to 2015-16

Sohanlal Kawar, C/o. Myco Textiles, B.H. Road, Bhadravati – 556 016. <b>PAN: ALEPK 4741P</b>	Vs.	The Income Tax Officer, Ward 1, Shimoga.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sudheendra B.R., Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	25.09.2023
Date of Pronouncement	:	25.09.2023

**ORDER**

These three appeals by the assessee are against the SEPARATE orders of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], DIN & Order No. No.ITBA/NFAC/S/250/2023-24/1053817670(1) dated 20.06.2023 for AY 2013-14, DIN & Order No. No.ITBA/NFAC/S/250/2023-24/1053833260(1) dated 21.06.2023 for AY 2014-15 and DIN & Order No. No.ITBA/NFAC/S/250/2023-24/1054569195(1) dated 25.07.2023 for AY 2015-16 respectively,

2. For all the years ground Nos.1 & 4 are general and ground No.3 is regarding interest u/s.234A/234B/234D which is consequential.

Ground No.2 regarding disallowance of interest u/s. 57(iii)/ 36(1)(iii) of the Act is similar for all the years which is reproduced below:-

“AY 2013-14

2. Disallowance of interest expenditure under section 57(iii)
  - 2.1 The learned CIT(A) has erred in confirming the disallowance of interest expenditure of Rs. 4,74,301/- under section 57(iii) of the IT Act, 1961 (hereinafter referred to as the Act) made by the learned assessing officer.
  - 2.2 The learned CIT(A) has erred in confirming the addition of interest made by the AO of Rs. 4,74,301/- on the grounds that interest expenditure claimed under section 57(iii) would be restricted to the extent of actual amount of interest received and the excess as interest paid would be disallowed and added to the total income.
  - 2.3 On facts and circumstances of the case and law applicable, the entire basis of making addition under section 57(iii) is bad in law and liable to be quashed.”

AY 2014-15

- “2. Addition under section 36(1)(iii)/57(iii)
  - 2.1 The learned CIT(A) has erred in confirming the addition of Rs. 19,76,537/- pertaining to interest and bank charges under section 36(i)(iii)/57(iii) of the IT Act, 1961 made by the learned assessing officer.
  - 2.2 The learned CIT(A) has erred in confirming the proportionate disallowance made by the AO of Rs. 19,76,537/- relating to interest and bank charges paid, on the grounds that only 34.65% of the borrowed funds were used for business purposes and the rest 65.35% were used for personal purposes.
  - 2.3 On facts and circumstances of the case and law applicable, the entire basis of making addition under section

36(1)(iii)/57(iii) amounting to Rs.19,76,537 is bad in law and liable to be quashed.”

AY 2015-16

“2. Addition under section 36(1)(iii)

2.1 The learned CIT(A) has erred in confirming the addition of Rs. 30,53,935/- pertaining to interest and bank charges under section 36(i)(iii) of the IT Act, 1961 made by the learned assessing officer.

2.2 The learned CIT(A) has erred in confirming the proportionate disallowance made by the AO of Rs. 30,53,935/- in relation to interest expenditure, on the grounds that 37.11% of the borrowed funds were used for business purposes of Salawas Metals and therefore 37.11% interest is allowable against business income of Salawas Metals.

2.3 On facts and circumstances of the case and law applicable, the entire basis of making addition under section 36(1)(iii)/57(iii) amounting to Rs. 30,53,935/- is bad in law and liable to be quashed.”

3. From the above grounds, it is clear that the issue involved in these appeals is regarding disallowance of interest u/s. 57(iii) which is common for AYs 2013-14 & 2014-15 and disallowance u/s. 36(1)(iii) common for AYs 2014-15 & 2015-16 on the loan taken by the assessee on interest paid thereon.

4. I take up appeal for AY 2013-14 first. The brief facts of the case are that the assessee is engaged in manufacturing and trading of steel. He filed return of income on 30.9.2013 declaring income of Rs.10,76,603 after setting of loss under the head income from other sources towards interest loss of Rs.4,74,301. The case was selected for

scrutiny and statutory notices were issued to the assessee. The AO noted that the assessee has offered interest income of Rs.2,39,233 and claimed expenditure of Rs.7,13,535 under the head income from other sources, resultantly there was a loss of Rs.4,74,301. In this regard, the assessee was asked to furnish the details of expenses claimed towards interest. Accordingly the assessee filed letter dated 21.3.2016 stating that the assessee received interest of Rs.2,13,233 against loan given to M/s. Salavas Metals P. Ltd. and paid interest of Rs.7,13,534 against loan taken for investment in Salavas Metals P. Ltd. towards loan and share capital account and it was set off as per section 71 of the Act. The AO noted that the assessee had taken loan from Kotak Mahindra Bank Ltd. and interest paid thereon, according the AO the excess amount of interest of Rs. 4,74,301/- is not allowable as per the provision of the I. T. act., it was brought to the notice of the Id. AR of the assessee that interest expenditure claimed u/s. 57 should be restricted to the extent of actual amount of interest received and the excess interest paid has to be disallowed for which the Id. AR of the assessee agreed. Accordingly, difference of Rs.4,74,301 was disallowed and added to the total income of the assessee. Aggrieved, the assessee filed appeal before the CIT(Appeals) which was dismissed. Aggrieved, the assessee is in appeal before the Income Tax Appellate Tribunal.

5. The Id. AR submitted that the Id. AR of the assessee before the AO agreed for addition of Rs.4,74,301 without taking consent of the assessee which is incorrect and against the addition, the assessee filed

appeal before the CIT(Appeals), which clearly shows that there is no estoppel under the Income-tax Act. He further submitted that the loan was given to Salavas Metals P. Ltd. for business expediency in which the assessee is a director and loan has been utilized by the recipient for the purpose for which it was taken. He also submitted that loan was taken in earlier assessment years and the assessee is paying interest on such loan which was advanced to Salavas Metals P. Ltd. and no disallowance has been made by the AO in earlier years. The ld. AR relied on the following judgments in support of his arguments:-

- (i) R.T. Balasubramaniam v. ITO, [1994] 50 ITD 512 (MAD)(SMC)
- (ii) CIT v. Anand Technology Resource Park (P) Ltd. [2011] 15 taxman.com 4 (Kar)
- (iii) CIT v. Rajendra Prasad Moody [1978] 115 ITR 519 (SC)
- (iv) CIT v. Sridev Enterprises [1991] 192 ITR 165 (Kar)
- (v) S.A. Builders Ltd. v. CIT, Appeal (Civil) 5811 of 2006 dated 14.12.2006.

6. On the other hand, the ld. DR relied on the order of lower authorities and submitted that loan was taken in personal capacity which cannot be compensated over and above the interest received on the loan advanced which is personal expenditure of assessee. He further submitted that the ld. AR agreed before the AO for the addition over and above the interest paid to the bank, accordingly the AO was prevented from making further enquiry on the issue. Therefore, the agreed addition cannot be challenged by the assessee before the appellate authority.

7. Considering the rival submissions, I note that the assessee had taken loan originally from HDFC Bank of Rs.51 lakhs which is clear from pg. 53 of PB. Further from page 61, it is noted that the loan has been taken for personal finance vide agreement dated 31.10.2011 from Kotak Mahindra Bank Ltd. and the assessee has paid interest thereon. During the course of assessment proceedings, the AO has disallowed expenditure of Rs.4,74,301 over and above the interest paid to Kotak Mahindra Bank, which was agreed by the Id. AR of the assessee during the assessment proceedings. Accordingly, the AO was prevented from making further enquiry. During the course of hearing before me, the Id. AR of the assessee submitted that he has no objection if the matter is sent back to the AO for further investigation. The Id. AR has relied on the decision of the ITAT Madras Bench in the case of R.T. Balasubramaniam (supra) in which case also during the assessment proceedings the AR of the assessee agreed for addition and CIT(Appeals) dismissed the appeal of the assessee and the Madras Bench of the ITAT has remitted the issue to the AO for fresh assessment as per law as per para 10 of the decision. Following this decision, I remit this issue also to the Assessing Officer for fresh consideration and decision as per law, after giving reasonable opportunity of being heard to the assessee. The assessee is directed not to seek unnecessary adjournment and assessee is also at liberty to file necessary evidence for substantiating its case. Accordingly, this issue is allowed for statistical purposes.

8. Since the decision of the AO on this issue of loan taken/advanced by the assessee in AY 2013-14 will have impact in subsequent AYs 2014-15 & 2015-16 also, therefore the appeals for AYs 2014-15 & 2015-16 are also remitted to the AO for fresh consideration and decision in the same terms as directed in AY 2013-14.

9. In the result, all the appeals are allowed for statistical purposes.

Pronounced in the open court on this 25<sup>th</sup> day of September, 2023.

Sd/-

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 25<sup>th</sup> September, 2023.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.