आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No. 254/RPR/2022
निर्धारण वर्ष /Assessment Year: 2017-18

Sunil Bardia C/o. Bardia Niwas, Sadar Bazar, Rajnandgaon (C.G.)-491 441	Vs	Income Tax Officer Ward-1, Rajnandgaon
PAN: ADFPB7851A		
(**अपीलार्थी /Appellant**)	..	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri R.B Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / **Date of Hearing**	:	26/09/2023
घोषणा की तारीख/**Date of Pronouncement**	:	10 /10/2023

आदेश / O R D E R

Per Arun Khodpia, AM :

The captioned appeal is filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi, dated 19.10.2022 which in turn arises from the order by Ld. Assessing Officer u/s. 143(3) dated 19.12.2019 for A.Y.2017-18. The grounds of the appeal raised by the assessee are as under:

> "1. The learned AO erred in disallowing part of interest expense claimed under section 57 amounting to Rs.5,58,088 and the learned CIT(A) erred in upholding the same.
>
> 2. The learned CIT(A) erred in not appreciating the submissions made by the assessee in respect of disallowance of interest of Rs.5,58,088.
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> 3. The learned CIT(A) erred in not providing cogent reasons while upholding the disallowance made by the learned AO of Rs.5,58,088.
>
> 4. The learned CIT(A) although allowed the ground of appeal as partly allowed however, no relief was granted by the learned CIT(A).

5. The Appellant prays leave of the Hon'ble Tribunal to add, amend, alter any of the Grounds of Appeal."

2. Brief facts in this case are that the assessee is an individual derives income under the head income from house property and profit and gains of business income from other sources, had filed return of income for A.Y.2017-18 on 30.03.2018 declaring total income at Rs.4,78,990/-. Subsequently the case of the assessee was selected for scrutiny assessment through CASS to examine the issue "large deduction claimed u/s.57". Proceedings were initiated after issuing statutory notices and calling for details. From assessment records, the A.O had observed that the assessee had received interest income and also paid interest to different entities, for which, deduction was claimed u/s.57 of the Act. On verification of the submissions filed by the assessee, it was observed by the A.O that the assessee had received interest income of Rs.23,88,078/- and bank interest of Rs.60,978/- against which interest payment of Rs.26,41,032/- were claimed as expenditure u/s.57 of the Act and thereby showed loss of Rs.1,91,976/- under the head "income from other sources". The assessee was requested to furnish details of interest paid account containing details for each party to which the assessee has furnished details of interest received. On perusal of these details, it is observed that interest @15% was received from all advances given and interest ranging from 15% to 16.8% as paid to various lenders. When chart of interest received and ledger accounts of the advances were further examined by the A.O, he observed that information furnished by the assessee was not fully correct and in following cases interest received was @9%, 9.7% and 14% instead of 15%. A chart of such interest received from the party was reproduced in the assessment order and the same is extracted as under:

Name	Rate of Interest	Interest	Balance as on 31.03.2017
Bardia Jewellers Pvt. Ltd.	14%	67488	1007272
Yugantar Educational Society	9%	171040	2054376
Youth Foundation of India	9.70%	652388	7359663

With such observations, the A.O in the cases of two parties from whom the assessee had received interest of 9%, 9.7% had disallowed difference by reducing the said rates from 16% and the disallowance was proposed for Rs.5,58,088/-. The details of the said addition are as under:

> "1. Youth Foundation of India Op. Balance Rs.6752513/- Interest @6.3 % (16-9.70) Rs.4,25,4081- added to the total income of the assessee.
>
> 2. Yugantar Education society Op. Balance Rs.1895440/- Interest @7 % (16-9) Rs.1,32,680/- added to the total income of the assessee."

Certain additions were also made by the A.O with respect to disallowance of expenditure and unexplained cash deposits u/s.69A of the Act, since such additions were deleted by the CIT(Appeals), therefore the same are not subject matter for consideration before us.

3. With respect to the addition pertains to receipt of interest at a lower rates for Rs.5,58,088/-, the assessee has challenged the order of the A.O before the CIT(Appeals), NFAC, however, the contention of the assessee did not find favour

with the CIT(Appeals), therefore, the addition made on this count was confirmed by the CIT(Appeals).

4. Dissatisfied with the order of the CIT(Appeals) the assessee has assailed the same before us.

5. At the very outset, the Ld. AR of the assessee submitted that interest received from different parties was offered as income from other sources and deduction in respect of interest payable on unsecured loan was taken against such interest income, the same were reflected in the computation of income of the assessee which is placed at Page 18 to 20 of paper book. It was the argument of the Ld. AR that the A.O himself allowed the interest up to 9% / 9.7%, therefore, there was no allegation by the A.O that such expenditure was not related to interest income. With respect to the allowability of deduction u/s.57(iii) of the Act which deals with the income from other sources, it was submitted by the Ld. AR that deduction of expenditure laid out for earning relevant income, is not doubted by the A.O, therefore, interest expenditure being related to earning interest income or not was never disputed by the revenue, thus, no disallowance is called for. There was no finding of the A.O that interest payment was excessive or unreasonable. The Ld. AR further submitted that Section 58 of the Act provides as to what all expenditures will not be allowed. This section has specific reference to Section 40A & 40(a)(ia) & (iia), 44AD etc, therefore, anything which was not covered by the provisions of Section 58 cannot be disallowed. The Ld. AR further submitted that interest paid to the parties are unrelated parties. It is the argument of the Ld. AR that partial interest expenditure could not be disallowed in absence of there being any specific provision in the Act and merely because interest received was at lower rate than rate at which interest was paid, no disallowance

could have been made. The Ld. AR in support of his aforesaid contention relied upon the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Rajendra Prasad Moody, (1978) 115 ITR 519 (SC) wherein the Hon'ble Apex Court had held as under:

> "4. 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).
>
> 5. 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."

6. The Ld. AR further submitted that similar issue was dealt with by the Co-ordinate Bench of the ITAT, Raipur in the case of Shri Pankaj Surana Vs. ITO, Ward-2(2), Durg, ITA No.153/RPR/2018 dated 23.05.2022 wherein the Tribunal on the issue in hand had observed as under:

> "6. We have heard the ld. Departmental Representative ("DR", for short), perused the orders of the lower authorities and the material available on record. After deliberating at length on the issue in hand we are unable to persuade ourselves to subscribe to the view taken by the lower authorities. As per Section 57(iii) of the Act, any expenditure not being in the nature of a capital expenditure, laid out or expended wholly and exclusively for the purpose of making or earning income under the head 'income from other sources' is to be allowed as a deduction. As the interest-bearing unsecured loans were raised by the assessee with a purpose, intent, and motive of earning interest income by advancing the same to third parties and, have actually been so utilized, therefore, the interest expenditure so borne by him could safely, or in fact, inescapably, be held to have been incurred wholly and exclusively for the purpose of earning of interest income. In the backdrop of our aforesaid deliberations, we are of a strong conviction that the deduction of interest expenditure of Rs.6,45,531/-, as claimed by the assessee, and rightly so, was duly allowable as a deduction u/s.57(iii) of the Act. We, thus, in terms of our aforesaid observations not finding favor with the view taken by the lower authorities set-aside the order of the CIT(Appeals) and vacate the disallowance of Rs. 6,45,531/- made by the A.O. Thus, the Grounds of appeal No.(s) 1 & 2 raised in appeal by the assessee are allowed in terms of our aforesaid observations."

With the aforesaid submissions, it was claim of the Ld. AR that the addition made by the A.O and confirmed by the CIT(Appeals) are totally under misinterpretation of the provisions of the Act, therefore, the same needs to be reversed.

7. Contrary to the aforesaid submissions of the Ld. AR, Ld. Sr. DR vehemently supported the orders of the lower authorities.

8. We have heard the rival contentions and perused the material available on record as well as case laws placed before us for our consideration. Having considered the factual matrix of the present case, it is emanating that the assessee had interest income as well as interest expenditure and such transactions of income and expenditure were revealed by the assessee under the head income from other sources. Since the issue pertaining to the allowability of expenditure u/s.57(iii) was dealt with by the Co-ordinate Bench of the ITAT, Raipur and also the issue is squarely covered by the order of the Hon'ble Apex Court in the case of CIT Vs. Rajendra Prasad Moody (supra) wherein it is specifically held that 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 of 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. In view of the aforesaid principle of law laid down by the Hon'ble Apex Court, we respectfully following the same, since, in the present case there was income earned by the assessee by way of interest, however, the same was not equal to the percentage of interest in terms of interest expenditure incurred but the same could not be a reason to disqualify certain expenditure within the provision of Section 57(iii) of the Act, when the Hon'ble Apex Court, in an deficient situation than in the present case, has held that the expenditure could not be denied merely because there was no income earned during the relevant A.Y. In such circumstances, we are of the considered view that expenditure incurred by the assessee, genuineness of which was not disputed by the A.O are allowable expenditure in terms of

provisions of Section 57(iii), thus, addition made by the A.O and confirmed by the CIT(Appeals) are not sustainable.

9. We, thus, in terms of our aforesaid observation, set aside the order of Ld CIT(A) and direct the A.O to delete the addition made u/s.57(iii) of the Act. Thus, grounds of appeal raised by the assessee are allowed in terms of our aforesaid observations.

10. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 10 /10/2023.

Sd/-	**Sd/-**
(RAVISH SOOD)	**(ARUN KHODPIA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

रायपुर/Raipur; दिनांक Dated 10/10/2023

SB

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur