IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI

BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.3082/Del/2018
(ASSESSMENT YEAR-2013-14)

Raj Kumar Sharma 157, DDA Office Complex Jhandewalan Extn., New Delhi-110 055 PAN-AQCPS 9052J	Vs.	ACIT Circle-61(1) New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sh. Ved Jain, Adv. & Ms. Supriya Mehta, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of Hearing	10/10/2023
Date of Pronouncement	12/10/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-20, New Delhi ["Ld. CIT(A)", for short], dated 31/03/2018 for Assessment Year 2013-14. Grounds taken in this appeal are as under:

> *"1. On the facts and circumstances of the case, the order passed by the learned Commissioner Income Tax (Appeals){CIT(A)) is bad, both in the eye of law and on the facts.*
>
> *2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the disallowance to*

the extent of Rs 24,96,935/- made by AO on account of expenditure claimed by the assessee under section 36(1)(ii) of the Act.
(ii) That the above said disallowance has been confirmed despite the fact that the expenditure was incurred wholly and exclusively for the purpose of business and profession.

(iii) That the above said disallowance has been confirmed rejecting the detailed explanation and evidences furnished by the assessee.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in holding that amount borrowed by the assessee was not utilized for the purpose of business or profession.

4. Without Prejudice to the above, in the alternative, Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the expenditure incurred by the assessee is otherwise eligible for deduction under section 57(i) of the Income Tax Act.

5. The appellant craves leave to add, amend or alter any of the grounds of appeal."

2. The brief facts of the case are that the return of income was filed by the assessee declaring a total income of Rs.33,33,054/-. The case was selected for scrutiny and the assessment order u/s 143(3) of the Act came to be passed on 24/02/2016 by disallowing of Rs.28,11,463/- representing expenditure incurred on interest.

3. Aggrieved by the disallowance, the assessee preferred an appeal before the Ld. CIT(A), the Ld. CIT(A) vide order dated 31/03/2018 sustained the disallowance to the extent of Rs.24,96,935/- made by the AO on account of expenditure claimed by the assessee u/s 36(1)(iii) of the Act.

4. Aggrieved by the order of the Ld. CIT(A) dated 31/03/2018, the assessee preferred the present appeal on the grounds mentioned above. The Ld. Counsel for the assessee submitted that the disallowance in dispute has been sustained by the Ld. CIT(A) despite the fact that the expenditure was incurred wholly and conclusively for the purpose of business and profession. Further submitted that, the Ld. CIT(A) confirmed the disallowance rejecting the details explanation and evidence furnished by the assessee and with the wrong finding that the amount borrowed by the assessee was not utilized for the purposes of business or profession. The Ld. Counsel for the assessee submitted that regarding the similar disallowance which was made for AY 2014-15 and the Ld. CIT(A) vide common order dated 31/03/2018 confirmed the said disallowance which has been deleted by the Tribunal in Assessee's own case vide order dated 16/10/2019 in ITA No.3083/Del/2018 for AY 2014-15 and submitted that the issue involved in the present appeal is covered in Assessee's own case.

5. Per contra, the Ld. DR submitted that the interest on loan and the bank charges debited to P&L Account do not have direct relationship with the profession of the assessee, since, the loan taken by the assessee against which he has claimed interest expenses was not utilized for his profession, the interest on loan and the bank charges have been rightly disallowed by the lower authorities. By relying on the findings and conclusion of the assessment order and the order of the Ld. CIT(A), Ld. Departmental Representative submitted that the appeal of the assessee devoid of the merit.

6. We have heard both the parties and perused the materials available on record. The similar issue has been considered by the Co-ordinate Bench of the Tribunal in ITA No.3083/Del/2018 for AY 2014-15 vide order dated 16/10/2019, the orders of the lower authorities have been set aside by deleting the addition made by the AO which was sustained by the Ld. CIT(A) in following manners:-

> *"4. I have heard both the parties and perused the records especially the orders of the authorities below, paper book; synopsis and case law relied upon by the assessee's counsel. I find that in this case the CIT(A) vide its order dated 31.03.2018 has upheld the actionof AO for disallowing interest expense of Rs. 14,48,731/- by alleging that the interest on loan and bank charges have no direct nexus withthe profession of the assessee. I find considerable cogency in the contention of the Ld. Counsel for the assessee that the loan obtained by the assessee was to be used for the purpose of expanding the business by purchasing a bigger office premise. The assessee also submitted a declaration from the broker which clearly indicates that the assessee was on a continuous lookout for a suitable office premise. It is also noted that nowhere in the section 36(1)(iii) of theAct it is specified that the loan obtained by the assessee has to be invested on the date of borrowing. The section only specifies that thepurpose for which the funds are being used is business purpose only,i.e., the amount has to be invested in the business only. It is on the assessee's discretion when to invest the borrowed funds, provided it is invested for the business purpose. This view is fortified by the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Anand Technology Resource*

Park Pvt. Ltd., ITA Nos. 625 to 627 of 2006, order dated 30.08.2011, wherein it was held as under:

> *"14. A reading of the aforesaid provision makes it clear the amount of interest paid in respect ofcapital borrowed for the purpose of business or profession is allowable as deduction in computing the income under Section 28. In other words, the assessee has to invest the money so borrowed in business or profession. There is no indication in thesaid provision that the amount is to be invested in the business which he is carrying on, on the date ofborrowing. The amount is to be invested in his business, business which he is carrying on or a business which he intends commencing. But, the test is, it should be a business. Therefore, the contention of the revenue that unless the amount borrowed is invested in the existing business, he isnot entitled to deduction under Section 36(1)(iii) isnot tenable. May be in a case where such borrowing is invested in acquiring shares, the intention of acquiring shares is to be ascertained. If the intention is to get only dividend it cannot be construed as an investment in business or profession. On the other hand if the investment in shares is made with the intention of carrying on business and the receipt of dividend is only incidental or ancillary, then Section 36(1)(iii) is attracted."*

4.1. Since the assessee intended to purchase a business premise from the funds borrowed, it can be very well concluded that the purpose for which these loans were obtained were business purpose only. It is noted that assessee could not find any suitable office, he invested these idle funds into FDRs to reduce the burden of interest cost to be borne on the borrowed funds and the funds are readily available to the assessee as when a suitable office is found for investment.

4.2 It is a well settled law that revenue cannot sit in the armchair of a businessman to decide the reasonableness of a decision taken by abusinessman. Here, in this case also, the AO has alleged that the borrowed funds were not for a business purpose while the assessee has clearly established the nexus between the purpose of business and the expenditure incurred. To support this view, I rely upon the judgment of the Hon'ble Supreme Court of India in the case of S.A. Builders vs. CIT(A) Civil appeal No. 5811 of 2006 with 5812 of 2006,wherein it was held as under:-

> *"35. We agree with the view taken by the Delhi High Court in ClT vs. Dalmia Cement (B.) Ltd. [2002J 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose ofthe business (which need not necessarily be the business of the assessee*

itself), the Revenue cannotjustifiably claim to put itself in the arm-chair of thebusinessman or in the position of the board ofdirectors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

4.3 After reading the aforesaid judicial pronouncement it is clear that the AO has wrongly disallowed the expenditure claimed by theassessee u/s 36(1)(iii) of the Act, by alleging that the interestexpenditure were not directly related to the business of the assessee. Even otherwise, if the said expenditure is not allowable as a businessexpenditure, then the interest expenditure is allowable as a deduction u/s 57(iii) of the Act. During the year under consideration, theassessee had earned interest on FDR amounting to Rs. 13,41,303/- and a total expenditure on interest on loan and bank interestamounting to Rs. 14,90,125/- As per the language of section 57(iii) of the Act, the expenditure which is wholly and exclusively incurred for the purpose of earning income chargeable under the head income from other sources, is allowed as deduction from the said income of the assessee. Thus, it can be concluded that there is a direct nexus between the income earned and the expenditure incurred which should allowable as a deduction u/s 57(iii) of the Act.

4.4 Keeping in view of the facts and circumstances of the case and respectfully following the precedents as aforesaid, the addition made by the AO and sustained by the Ld. CIT(A) is hereby deleted by allowing the grounds raised by the assessee.

5. In the result, appeal of the assessee is allowed."

By respectfully following the ratio laid down in the order of the Tribunal in Assessee's own case for AY 2014-15 (supra) and in the absence of any contrary

ratio brought to the notice of the Bench, we allow the grounds of appeal of the assessee and delete the addition made by the AO which has been sustained by the Ld. CIT(A).

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in open Court on 12th October, 2023.

Sd/-	Sd/-
(SHAMIM YAHYA)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 12/10/2023
Pk/R.N, Sr.ps

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI