

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2156/Mum/2023

(A.Y: 2014-15)

ACIT-CC-5(4), Room No.1927,19 th Floor, Air India Bldg, Nariman Point, Mumbai-400021.	Vs.	RaghuleelaEstatesPvtLtd, 301,Platina, Plot C-59, G Block, BKC, Bandra (E), Mumbai-400098.
PAN/GIR No. : AAACW5273G		
Appellant	..	Respondent

Appellant by :	Smt.Mahita Nair. Sr.DR
Respondent by :	Shri.Madhur Agrawal. AR

Date of Hearing	04.10.2023
Date of Pronouncement	23.11.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec 250 of the Act. The revenue has raised the following grounds of appeal:

1 Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in allowing the deduction claimed u/s. 57(iii) of Rs. Rs. 5,92,19,931/- ignoring the fact that the assessee has failed to establish nexus between the interest income earned and interest expenditure which is wholly and exclusively for the purpose of making or earning such interest income.?"

2"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction on interest u/s 57(iii) of the Act on proportionate basis without the assessee proving the nexus between the loans availed and loans given and in view of the findings of the Assessing Officer that the interest bearing short term loan and advances given were out of own funds and interest free funds and therefore the interest expenditure is not incurred wholly and exclusively for carrying of interest income and therefore the same is not allowable u/s 57(iii) of the Act.?

2. The brief facts of the case are that, the assessee company is engaged in the business of leasing of commercial properties. The Assessee has disclosed income from house property, loss from business and income from other sources. The assessee has filed the return of income for the A.Y 2013-14 on 13.11.2014 disclosing a total income of Rs.46,77,53,930/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/sec 143(2) and U/sec 142(1) of the Act along with the questionnaire are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and clarifications. The Assessing Officer (AO) on perusal of the audited financial statements found that the assessee has disclosed the interest income on

loans of Rs.8,79,75,623/- under income from other sources and has claimed the deduction u/s 57(iii) of the Act pertaining to interest expenses of Rs.5,92,19,931/- and the AO called for the details of the loan utilization along with TDS and evidences.

3. In response to the notice, the Ld.AR of the assessee filed the working of allowance of interest u/s 57(iii) of the Act vide letter dated 29.11.2016 explaining that, only the proportion of the interest expenses attributable to the interest bearing loans for the actual period of loan advanced is claimed as expense. Whereas the AO has dealt on the facts and submissions and found that the explanations filed by the assessee are not satisfactory and asked the assessee to justify the claim of interest u/s 57(iii) of the Act by establishing the nexus between the interest paid and interest received on loans and advances. Whereas, the Ld. AR of the assessee filed a detailed letter dated 09.12.2016 explaining the nexus and methodology adopted and modus operandi of the transactions referred at Para 4.1 of the order as under:

“4.1. The contention put forth by the authorized representative of the assessee has been duly considered but not found satisfactory. Therefore, vide order sheet nothings dated 09.12.2016, the authorized representative of the assessee was asked to justify interest expenses u/s. 57 by establishing the nexus between interest given and taken. In response to the same, the authorized representative of the assessee has filed the explanation vide letter dated 09.12.2016, the relevant portion of the same is reproduced as under:

with regards to the interest claim w/s. 57(iii), we would like to state that as explained in the previous paragraph, the assessee company grants loan to various parties as and when any surplus/unutilized borrowed funds are available with them thereby earning interest income on the same. However, as it was virtually not feasible to work out the part of borrowed funds that was utilized for granting such loans exclusively, (due to the modus operandi of the business as such) the assessee company taking the base of the aforementioned formula for deduction u/s24(b) similarly determined the amount of deduction to be claimed u/s. 57(iii) of the Act as under:

Total Interest Cost X Total Balance of Loan given as at 31.03.2014
Total of Asset side of Balance Sheet as at 31.03.2014

The above formula assisted the assessee company in identifying the allocable portion of the interest cost towards the interest income earned on loans given. Also, the assessee company would also like to bring to your notice that they had claimed interest deduction only for the period such funds were given as loan to different parties The perusal of the Annexure 10 submitted vide our earlier submission dated 29.11.2016 would also help to establish this fact....

In support of its claim, assessee has further submitted reply dated 20th December:

"During the year under consideration the assessee had withdrawn its investment in Vijay Associates (Wadhwa) and received back Rs.68,31,99,360/- from the investee. Subsequently, the assessee company advanced this money to Bigdeal Infracon Pvt Ltd, Survivors Real Estates Pvt Ltd and Blissymbols Real Estates Pvt Ltd aggregating to Rs.68.50,00,000/- out of the amount received as Security Deposit from MSD Pharma. The Fund Flow statement indicating Further, as regards the balance advance given of Rs. 1,00,00,000/to Blissymbols Real Estates Pvt Ltd the aforesaid transactions is attached herewith as Annexure-1.

In addition to above, we are also attaching the copy of Bank Statement highlighting the said amount received and advance given as Annexure-2.

Further, the assessee company would like to mention here that the perusal of the balance sheet for AY.2012-13, 2013-14 and 2014-15 would reveal that the assessee company had a negative Net Worth as at the year ended 31.03.2012 of Rs19.90 Cr and it was only during the FY2012-13 that it had earned profit and thus the negative Net Worth turned into positive. In order to substantiate the same copy of the Balance Sheet and profit and loss account for FY 2012-13 is attached herewith for your immediate reference (Annexure-3).

Thus, it can be inferred from the financials that the assessee company had no interest free funds and that all the funds available are borrowed funds which were

utilised for making any and every investment, be it Short Term or Long Term (including Advance of Rs.68.31 Cr made in FY 2012-13).

The assessee company has claimed deduction of interest expense u/s 57 based on the formula derived (which has been explained in detail in our submission dated 09.12.2016).

It may also be appreciated that the assessee company has disallowed all the expenditure which is not attributable to the earning of income from house property and under other sources Thus, in nutshell only that portion of expenditure which is attributable to the earning of the incomes as referred above are claimed and no loss is claimed under the head of Income from business and profession"

Assessee's reply dated 21.12.2016:

"The assessee company has made investment in the Vijay Wadhwa Associates during the F.Y.2012-13. As regards to source of investment, the assessee company had received the interest free loan from Raghuleela Leasing and Real Estates Pvt. Ltd of Rs.48,39,35,954/on 18.09.2012 and from Tulsi Bhimjyani (L&A other) of Rs32,00,00,000/- on 07.01.2013. The funds so received back was invested in Vijay Wadhwa Associates aggregating to Rs.68,29,35,954/- on the same date on which the said funds were received. Copy of the fund flow statement is attached herewith for your ready reference evidencing the same(Annexure 1)

Thus, it can very well be inferred that all the investments and advancing has been made out of the

borrowed interest free and interest bearing funds and not out of the own funds of the assessee company In view of the above facts, the assessee company has claimed deduction of interest expense w/s 57 which shall be allowed."

4. Whereas the AO find that the assessee could not explain the nexus between the interest paid and interest received on loans and relied on the balance sheet for the F.Ys 2011-12 to 2013-14. Further the AO has dealt on the provisions of 57(iii) of the Act and observed that the assessee could not explain the nexus that the interest expenditure is incurred wholly and exclusive for the purpose of earning interest income and made disallowance of the claim of interest expenditure of Rs.5,92,19,931/- U/sec 57(iii) of the Act and assessed the total income of Rs.12,28,33,807/- and passed the order u/sec 143(3) of the Act dated 30.12.2016.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has relied on the provisions of the Act, factual aspects and judicial

decisions and has deleted the disallowance u/s 57(iii) of the Act and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting disallowance of interest expenditure u/sec 57(iii) of the Act overlooking the facts and findings of the AO and the assessee could not prove the nexus of earning interest income and the interest expenditure was incurred wholly and exclusively for the purpose of earning income and the Ld.DR relied on the order of the Assessing officer.

7. Per Contra, the Ld.AR submitted that the interest cost was allocated on the proportionate basis of total Loans and total Assets of the assessee and the interest expenditure was incurred wholly and exclusively for earning the interest income. Further the Ld.AR substantiated the submissions with the factual paper book, judicial decisions and relied on the order of the CIT(A)

8. We heard the rival submissions and perused the material on record. The sole disputed issue

envisaged by the Ld.DR that the CIT(A) has erred in deleting the disallowance u/s 57(iii) of the Act overlooking the facts, findings of the A.O and the provisions of the Act. Whereas the Ld. AR submitted that the assessee has allocated funds for different projects and has claimed proportionate deduction of interest based on the percentage of borrowed funds with the total availability of funds. Further the allocation is based on the methodology considering the total assets and total liabilities and total interest cost. Whereas the assessee has claimed deduction of interest component from income from house property U/sec24(b) of the Act and income from other sources U/sec57(iii) of the Act in the ratio worked out relying on the Audited financial statements. The Ld. AR emphasized that the assessee has made substantial investments in the projects by obtaining borrowed funds and own surplus available funds. We found that the CIT(A) has dealt on the factual aspects, provisions and methodology consistently adopted by the assessee and at this juncture, we consider it appropriate to refer to the findings of the CIT(A) in granting relief to

the assessee dealt at Page 9 Para 4.3 to 4.4.3 of the order as under:

“4.3 I have considered the submissions of the appellant. Sec. 57(iii) of the Act states the nature of expenditure which is allowable to the appellant. It reads as under

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

It is the case of the AO that one to one nexus between borrowed and deployed funds is not proved. As per the appellant, the funds are fungible and therefore it would be difficult to establish one to one nexus. The appellant has sought deduction on a proportionate basis. The appellant has applied an uniform ratio of apportionment of interest expenses for all its income and assets Out of the total interest expenses of Rs. 42,74,20,673/-, the appellant has not claimed interest expenses of Rs. 2,97,90,455/- as deduction. The details of interest cost claimed as deduction is as under:-

<i>Particulars</i>	<i>Amount</i>
<i>Total interest cost on term laon</i>	<i>42,74,20,673</i>
<i>Less: interest claimed as deduction u/s 24(B)</i>	<i>(33,84,10,287)</i>
<i>Less Interest claimed as deduction u/s 57(iii)</i>	<i>(5,92,19,931)</i>
<i>Interest cost not claimed as deduction</i>	<i>2,97,90,455</i>

Since, the appellant has made the allocation on a reasonable and pro-rata basis, the same cannot be stated to be arbitrary or illogical. In my view this would satisfy the requirement of condition laid down in S57(iii)

4.3.1 The appellant has also demonstrated that it has applied the same ratio uniformly, including for its claim u/s. 24(b). It has been pointed out by the appellant that funds allocated for deduction u/s24(b) is Rs. 2,28,95,66,628/-, out of its total borrowed funds of Rs. 2,89,17,80,025/- leaving borrowed funds of Rs. 60,22,13,397/- available with it. Out of the total asset size of Rs. 446,81,35,457/- investment in property giving rise to lease income is Rs. 353,76,45,929/-. Thus the other current assets is Rs. 93,04,89,528/-. This supports the claim of the appellant that a part of the borrowed funds of Rs. 60,22,13,397/ is deployed in such assets which has given rise to interest income. Thus, a view can be formed that the claim of the appellant to allocate the interest expenses on a pro-rata basis is a consistent and reasonable one. The same cannot be assailed only for the reason that direct nexus has not been proved

4.3.2 It is the AO's observation that the current investments in M/s Vijay Associates (Partnership firm) in F.Y2012-13 on which no interest expenses was claimed was repaid during the year. It has also been stated that this amount has been invested by way of loans of Rs. 69.50 crs. and so interest expenditure cannot be claimed. In this regard, I find the appellant's contention that it had not claimed any interest deduction in the preceding year owing to the fact that it had not received any interest from the partnership firm, to be a

reasonable explanation. Once the funds. have subsequently been deployed in interest bearing advances, the appellant's claim that it stands entitled to deduction u/s. 57(iii) has a logical basis. In any case, as pointed out in the preceding para, the appellant has demonstrated that part of the borrowed funds had indeed been deployed in interest bearing loans/advances and that using a consistent methodology, it had also not claimed interest expenses of Rs. 2,97,90,455/- during the year under reference

4.3.3 In view of the reasons above, I agree with the appellant that it is entitled to deduction u/s. 57(iii). The disallowance made by the AO of Rs. 5,92,19,931/- u/s. 57(iii) stands deleted.

Accordingly Ground Nos. 1 to 3 of the appeal stands allowed”.

9. The Ld. AR has substantiated the submissions with the information, written submissions and judicial decisions. Further the Ld.AR highlighted on furnishing of the details in the assessee's proceedings on the disputed issue by letter dated 29-11-2016, explaining the details of interest income on advances and loans and deduction on interest on loans claimed under income from house property and income from other sources placed at page 28 to 44 of

the paper book. Further the Ld.AR demonstrated the methodology and basis of claim of deduction of interest U/se 24(b) and U/sec57(iii) of the Act and details of interest paid and interest received on loans filed before the A.O vide letter dated 9-12-2016&20-12-2016 placed at page 45 to 60 of the paper book. We find that the assessing officer has not disputed on the genuineness of claim of interest, which are duly supported with the audited financial statements and books of accounts maintained as per the provisions of the Act. Whereas, the assessee has demonstrated with the material evidences, the nexus between the interest income earned and interest expenditure claimed based on the Audited financial statements. Further the interest expenditure claimed is wholly and exclusively for the purpose of earning the interest income on advances and loans based on the evidences filed before the revenue authorities. The CIT(A) has considered the facts, submissions and relied on the methodology of allocation of interest component and has passed a conclusive and reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) on the disputed issues and uphold the

same and dismiss the grounds of appeal of the revenue.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 23.11.2023.

Sd/-
(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 23.11.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai