

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 571/JP/2023
निर्धारण वर्ष / Assessment Year : 2017-18.

Shri Kapil Gupta 3/4, SMS Colony, Maharani Farm, Durgapura, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 6(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ADRPG 3175 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &
Shri R.K. Bhatra, CA

राजस्व की ओर से / Revenue by : Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 19/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 19/12/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 21.08.2023 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act, 1961 for the assessment year 2017-18. The assessee has raised the following grounds :-

1. That on the facts and in the circumstances of the case the Id. CIT (A), NFAC is wrong, unjust and has erred in law in confirming disallowance made by the Id. AO of claim of the appellant u/s 57 of the IT Act, 1961 in respect of interest paid of Rs. 29,12,113/- against interest income of Rs. 42,04,008/- allegedly on the ground that the appellant did not have certificate from competent authority for such activities ignoring the plea of the appellant that he is not carrying business of banking.

2. The assessee craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.

2. The brief facts of the case are that the assessee is an Individual having income from house property, business being partner in some firms and income from other sources. The assessee filed his return of income for the year under consideration on 19.02.2018 declaring an income of Rs. 15,61,280/-. The case of the assessee was selected for scrutiny on the reason of "Deduction against income from other sources" for the assessment year under consideration. Notices under section 143(2)/142(1) of the IT Act were issued to the assessee requiring the assessee to submit the information/documents for verification of the facts of the case. In compliance to the above notices, the assessee filed the reply/submission along with the required information and documents which were examined and placed on record. The assessee under the head Income from other sources declared income from interest Rs. 42,04,008/- and claimed interest paid of Rs. 29,12,113/- against the said interest income. The AO disallowed interest paid claimed as deduction from interest received and thereby assessing gross receipt of interest received on frivolous ground. The AO made the addition on the alleged ground that the appellant is not entitled for deduction of this amount under section 57 of the IT Act as he does not held certificate from Competent Authority for such activity. Aggrieved by the order of assessment, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) after considering the facts as mentioned by the AO rejected the claim of the assessee by observing that the assessee is not entitled to take the

deduction under section 57, as the assessee does not have a licence from the competent authority for such business.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee submitted the following written submissions :-

" The brief facts of the case are that assessee advanced loans/advances to some individuals/firms in which he is partner and received interest from them and for that purpose raised loans/advances from some individuals / firms and paid interest thereon. The activity is in ordinary course of advancing/lending as a commercial expediency. The total interest received less interest paid by assessee was shown under the head income from other sources. The Ld. A.O. while accepted that interest paid by assessee is expended wholly and exclusively for the purpose of making or earning of said interest income and no other objection regarding its allow ability has been raised. However Ld. A.O. held that "The assessee is not entitled to take the deduction u/s 57 of the income Tax Act, 1961 as the assessee has no certificate from the competent authority for such business. For commencing banking business, a primary cooperative bank, as in the case of commercial bank, is required to obtain a license from the Reserve Bank of India under the provisions of section 22 of the Banking Regulation Act, 1949. Hence, the assessee has no such certificate,. Hence, the deduction u/s 57 of the Income Tax Act, 1961 is not allowable. The same is disallowed amounting to Rs. 29,12,113/- and added to the total income of the assessee."

In this connection it is submitted that assessee requires no certificate from any authority to carry on that activity which is in ordinary course of accepting and giving loans. The assessee is not carrying on banking business as held by A.O. akin to primary co- operative Bank or commercial Bank so as to required to obtain a licence from Reserve Bank of India under provisions of section 22 of Banking Regulation Act. The Ld. A.O. has not made any detailed discussion to hold that assessee is carrying on banking business and arbitrarily held so. Even for argument sake assessee would have required such licence then it is violation of that Act/Law and appropriate action is to be taken by the authority under said Act/Law. The Income Tax is leviable under Income Tax Act, 1961 on the income of a person which is receipt less expenditure incurred for the said purpose or for earning and making it subject to provisions of L. T. Act, 1961 and expenses/deduction permitted under I. T. Act, 1961 is to be allowed from gross receipts to determine income.

In law even if it is taken that some business is in violation of any law even Revenue expenses incurred by the assessee in his character as a trader and wholly and exclusively for the purpose of his business, stand on a different footing from penalties and fines. Such expenses though tainted with illegality - e.g. infringement of the Companies Act, 1956-or any other law in force are deductible, just as income tainted with illegality is assessable; even in an illegal business it is the profits, and not the gross receipts, that are taxable CIT Vs. Kothari 82 ITR 794, 801-802 (SC), CIT Vs. Tinplate 207 ITR 72, Nilgiri Finance Vs. CIT 213 ITR 384, CIT Vs. Piara Singh 124 ITR 40 and

various cases of High Courts. Where the entire business of the assessee is illegal, and that income is sought to be taxed by the Income tax Officer, then the expenditure incurred in the illegal activities will also have to be allowed as deduction, CIT Vs. Panchganga 250 ITR 772. A breach of the bye-law by a co-operative sugar factory cannot be a ground for disallowing a bona fide expenditure incurred out of commercial expediency. The explanation to section 37 (1) inserted retrospectively from the commencement of the Act is confined only to disallowance of an expenditure for prohibited purposes such as illegal payments made to police and other Govt. officers etc. which are not deductible even made in course of legal business.

The impugned disallowance is further wrong, unwarranted and bad in law in as much as complete details of expenses claimed along with supporting evidences were submitted to the assessing officer during the course of assessment proceedings. Further there is direct nexus between the loans taken and onwards given/invested in partnership firms in which he is a partner. The Ld. A.O. has also accepted the said fact that interest paid by assessee is wholly and exclusively for the purpose of making or earning of said interest income and no objection regarding its allowability has been raised. It is also submitted that the then DCIT, Central Circle-2, Jaipur (A senior officer of the department) in the assessee's own case having very similar facts allowed the interest paid/claimed against the interest income under the head income from other sources in the scrutiny assessment

completed u/s 143(3) of the IT Act, 1961 vide order dated 30-01-2016. A copy of assessment order for the A.Y. 2013-14 is enclosed herewith.

In view of the above facts of the case and position of law the disallowance of Rs. 29,12,113/- being interest paid claimed against interest received by assessee under the head income from other sources is grossly wrong and bad in law. The assessee prays that said disallowance confirmed by Ld. CIT(A) may kindly be deleted.”

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. The Id. A/R has submitted that the AO at the time of assessment proceedings has accepted that interest paid by assessee is expended wholly and exclusively for the purpose of making or earning of said interest income and no other objection regarding its allowability has been raised. But while passing order has denied the claim of the assessee observing that assessee is not entitled for deduction under section 57 of the IT Act as the assessee has no certificate from the competent authority for such business. The Id. A/R has controverted the observation of the AO by submitting that assessee requires no certificate from any authority to carry on that activity which is in ordinary course of accepting and giving loans. The assessee is not carrying on banking business as held by AO akin to primary co-operative Bank or commercial bank so as to required to obtain a licence from Reserve Bank of India under provisions of section 22 of Banking Regulation Act. The AO has not made any detailed discussion in his order

to hold the assessee that he is carrying on banking business. The Id. A/R further submitted that the then DCIT Central Circle-2, Jaipur in the assessee's own case having very similar facts allowed the interest paid/claimed against the interest income under the head Income from Other sources in the scrutiny assessment completed under section 143(3) of the IT Act, 1961 vide order dated 30.01.2016. On being directed by the Bench during the course of hearing, the assessee furnished copies of return of income and computation of total income for the assessment years 2013-14 to 2018-19. On perusal of these documents, it is evident and verifiable that assessee has regularly claimed interest paid as expenses against the interest income under the head Income from Other sources and the department has allowed the same. Thus in all the preceding assessment years and subsequent years the department has allowed the interest paid as an expenses against the income under section 57 of the IT Act. Therefore, upon consideration of the detailed facts and circumstances as discussed hereinabove and taking into consideration the detailed submissions and evidences/documents and the case laws furnished by the assessee, we are of the view that the assessee deserves to succeed. Accordingly, the impugned order of the Id. CIT (A) is set aside. The addition made by way of disallowance of interest paid is deleted.

6. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 19/12/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2023.

Das/

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

1. अपीलार्थी / The Appellant- Shri Kapil Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward 6(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 571/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar