

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.2164 & 2165/Del/2018
(Assessment Year: 2007-08)

Anil Dutt, C/o. RRA Taxindia, D- 28, South Extention, Part-1, New Delhi (Appellant) PAN:ABJPD8568Q	Vs. ACIT, Panipat Circle, Panipat (Respondent)
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Assessee by :	Dr. Rakesh Gupta, Adv Shri Somil Agarwal, Adv
Revenue by:	Shri Kanv Bali, Sr. DR

Date of Hearing	11/01/2024
Date of pronouncement	23/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2164/Del/2018 for AY 2007-08, arises out of the order of the Commissioner of Income Tax (Appeals), Karnal [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. IT/06/Set Aside/KNL/2011-12 dated 23.01.2018 and in ITA No. 2165/Del/2018 dated 16.11.2016 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 03.12.2009 by the Assessing Officer, ACIT, Panipat Circle, Panipat (hereinafter referred to as 'Id. AO').

2. At the outset, we find that in the quantum appeal in ITA No. 2165/Del/2018 filed by the assessee, there is delay of 418 days in preferring appeal by the assessee before us. In this regard, the assessee has filed condonation petition together with sworn in affidavit. The reasons stated by the assessee in the condonation petition is that the order of the Id CIT(A) was received by him on

05.12.2016 and the said order was passed without considering the observations made by the Id AO in the remand report. If the said remand report is considered, the assessee would be entitled for substantial relief. Since, the appellate order has been passed by the Id CIT(A) without considering the remand report by the Id AO, the assessee preferred a rectification petition u/s 154 of the Act before the Id CIT(A). In the rectification proceedings, the Id CIT(A) did not agree to the contentions of the assessee and dismissed the same. Hence, the assessee after the disposal of the rectification petition by the Id CIT(A), had preferred appeal against the original quantum appellate order of the Id CIT(A) before us with a delay of 418 days. We find that the assessee was pursuing an alternative remedy available with him legally before the Id. CIT(A) by waiting for disposal of rectification application. In our considered opinion, the reasons adduced by the assessee for the delayed filing of appeal is sufficient cause and hence we are inclined to condone the delay in filing of appeal and admit the appeal of the assessee for adjudication.

3. Against the rejection of the rectification application by the Id CIT(A), the assessee had also preferred another appeal before us. Since, both the appeals involve identical issue in dispute, they are taken up together and disposed of by this common order for the sake of convenience.

4. The only effective issue to be decided in these appeals is as to whether the Id CIT(A) was justified in confirming the disallowance of interest on the ground that the borrowed funds were utilized for non-business purposes.

5. We have heard the rival submissions and perused the material available on record. The assessee is an individual dealing in purchase and sale of securities and purchase and sale of properties. During the year under consideration, the assessee has made purchase of properties of Rs. 3,48,06,726/- which is reflected in the trading account of the assessee. These properties were purchased in the course of business partially out of own funds and partially out of borrowed funds. The borrowed funds thereon are raised specifically for the purpose of purchasing the properties. The Id AO observed that the assessee had claimed deduction of Rs.

42,21,167/- on account of interest expenditure. The Id AO proceeded to disallow the entire interest u/s 14A of the Act on the ground that borrowed funds were utilized for making investments in securities and shares which had yielded exempt income to the assessee and completed the assessment. The Id CIT(A) however, addressed the entire dispute on the ground that the borrowed funds were utilized for non business purpose in terms of section 36(1)(iii) of the Act. The assessee had furnished the complete details of borrowed funds together with its utilization thereon before the Id CIT(A) and pleaded that the interest paid on borrowed funds would be eligible for deduction. The Id CIT(A) sought for a remand report from the Id AO. The Id AO indeed submitted the remand report which are enclosed in pages 269 to 270 of the PB, clearly giving the details of utilization of borrowed funds. This remand report has not been properly appreciated by the Id CIT(A) while dismissing the appeal of the assessee. Considering the fact that the Id AO had given the remand report and that remand report was very much available before the Id CIT(A), the Id CIT(A) ought to have considered the observations given by the Id AO in the remand report. Hence, we deem it fit and proper to restore this quantum appeal to the file of Id CIT(A) qua the issue in dispute before us with regard to disallowance of interest for re-adjudication in the light of remand report submitted by the Id AO. Accordingly, the grounds raised by the assessee are allowed for statistical purposes in ITA No. 2165/Del/2018. Since, the quantum appeal is restored to the file of the Id CIT(A), the adjudication of appeal in ITA No. 2164/Del/2018 against the rectification proceedings becomes infructuous.

6. In the result, the appeal of the assessee in ITA No. 2165/Del/2018 is allowed for statistical purposes and appeal in ITA No. 2164/Del/2018 is dismissed as infructuous.

Order pronounced in the open court on 23/01/2024.

-Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:23/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi