

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" SMC" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.956/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2017-2018

Asitkumar Chimanlal Patel, 13, Gyankunj Society, Nr. Punit Ashram, Maninagar, Ahmedabad-380008.  <b>PAN: AFAPP9300D</b>	Vs.	Income Tax Officer, Ward-6(1)(4), Now Ward 6(1)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Biren Shah, AR
Revenue by :	Shri Urjit Shah, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **29/01/2024**

घोषणा की तारीख /**Date of Pronouncement**: **14/02/2024**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Ahmedabad, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-2018.

2. The only issue raised by the assessee is that the Ld. CIT(A) erred in confirming the disallowance of interest expenses amounting to Rs. 26,69,433/- against the interest income offered to tax of Rs. 21,56,948 only.

3. The facts in brief are that the assessee in the present case is an individual and a partner in partnership firm namely M/s Lubgraf Products. The assessee has borrowed money from the firm on interest. As such the assessee has incurred interest expenses on the money borrowed from the firm at Rs. 29,69,433/- only. It is also important to note that the borrowed money from the firm was used for the purpose of investment in the personal properties.

3.1 The assessee at the same time has also advanced money to the company namely M/s Lubgraf Synoils Pvt. Ltd. on interest basis which was offered to tax under the head income from other sources. As per the assessee, he was not able to withdraw the money advanced to the private limited company due to some financial crisis and therefore he has borrowed money from the partnership firm in which he is partner. Accordingly, the assessee sought adjustment of such interest expenses against the interest income as discussed above.

4. However, the AO disagree with the claim of the assessee and accordingly added the interest expenses of Rs. 29,69,433/- to the total income of the assessee by observing as under:

*The assessee's submission has been carefully considered, but not acceptable. The assessee has not submitted his personal capital account and balance sheet. It is not known whether any withdrawal is there from the firm or any interest payment has been made or not. Further, the assessee in all his submissions stated that he had claimed interest expenditure of Rs.29,69,433/- incurred on account of interest paid to partnership firm M/s. Lubgraf Products. This statement of the assessee has no worth because the assessee had stated to be withdrawn from the firm for purchase of residential property. Therefore, the assessee's claim of expenditure incurred towards payment of interest to the firm is not allowable and therefore, the same is added to the total income of the assessee as it is purely for non business purpose.*

5. Aggrieved assessee carried the matter before the Ld.CIT(A), who partly allowed the appeal of the assessee by observing as under:

*As per the position of income tax law, no assessee has any option to skip a particular head of income. The prerequisite for invoking a particular head of income mentioned in the Income tax Act is receipt of income under that head, except in the case of head of Income House Property. In the case of Income from House Property, it is enough if the assessee owns house property but not necessary to receive specific rental. In other words, the moment an assessee owns a house property, the head of income from house property kicks in, with no choice left to the assessee, unless otherwise the assessee specifically declares it under the head of Business & Profession by incurring recurring business expenses. Therefore, the head of income from house property is now applied in this case and accordingly, a relief of Rs.2,00,000/- is granted to the appellant u / s 24(b) of the I.T.Act, 1961, though the appellant has not raised any alternative ground in this regard. The AO is directed to allow a relief of Rs.2,00,000/- from the disallowance of Rs.29,63,433/-.*

*Therefore, this ground of appeal is "Partly Allowed".*

6. Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

7. The Ld. AR at the outset before us submitted that the Tribunal in the own case of the assessee for earlier AY 2016-17 has decided the issue in favour of the assessee in ITA No. 1351/AHD/2019 vide order dated 31/05/2022. On the contrary, the Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that this Tribunal in identical facts and circumstances in the own case of the assessee in ITA bearing No. 1351/Ahd/2019 vide order dated 31/05/2022 has decided the issue in favour of the assessee by observing as under:

*10. We have heard the rival contentions and have carefully considered the materials available on record. The facts of the case on hand are not in dispute. Therefore, we are not inclined to repeat the same for the sake of brevity and convenience. The 1<sup>st</sup> allegation of the Revenue was that the necessary documents were not furnished by the assessee with respect to the interest expenses incurred by him during the assessment proceedings. However, we disagree with the contention of the revenue on the reasoning that the assessee before the learned CIT-A has claimed to have furnished the necessary details to establish the genuineness of the interest expenses and this contention of the assessee was not controverted by the learned CIT-A. Accordingly we can safely infer that all the details relating to the interest expenses were available before the AO during the assessment proceedings. Besides the above we have referred the paper book filed by the learned AR running into pages 1 to 82 and note that the assessee has filed the capital account maintained in the partnership firm which is placed on pages 43 to 45 of the paper book. The learned DR*

*at the time of hearing has also not brought anything on record contrary to the arguments advanced by the learned AR for the assessee. Thus, we hold that the expense shown by the assessee in the form of interest to the partnership firm is genuine.*

*11.1 The 2<sup>nd</sup> controversy arises whether the interest expense can be adjusted against the interest income. Admittedly, the borrowed fund was utilized for the purchase of essential property which was not used for the purpose of the business. Therefore, such interest expenses, generally should not be allowed as deduction. However, the facts of the case on hand are different and bit peculiar. It is for the reason that there were certain deposits made by the assessee in a company but the assessee failed to take back the same deposits from the company on account of lack of liquidity available in the hands of the company. Thus there were compelling circumstances for borrowing the money from the partnership firm. As such the assessee had to borrow the money for the reason that he failed to recover the deposits from the company. Had the assessee been in a position to recover the money from the company, then there was no reason for borrowing the money from the partnership firm on interest. In such a situation, there would not have been any source of income in the hands of the assessee on the deposits made in the company. Likewise, there would not have been any interest expenses. Thus the question of disallowing the interest expenses would not have been arising.*

*11.2 The ITAT in the case of Raj Kumar Aggarwal Vs. DCIT reported in 47 taxmann.com 88 has observed as under:*

*"On these facts, in order to protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so incurred is wholly and exclusively to earn the fixed deposit interest income. The authorities below were apparently swayed by the fact that the borrowings were triggered by assessee's financial needs for personal purposes and, by that logic, the borrowing cannot be said to be wholly and exclusively for the purposes of earning interest income, but what this approach overlooks is whether the expenditure is incurred for directly contributing to the beginning of or triggering the source of income or whether the expenditure is for protecting, and thus keeping alive, that source of income, in either case it is expenditure incurred wholly and exclusively for the purpose of earning that income."*

*11.3 The facts of the case on hand are identical to the facts of the case discussed in the aforesaid case. Accordingly, we hold that the principles laid down by the tribunal in the case as discussed above are squarely applicable to the present facts of the case. Therefore, we hold that the interest expense was incurred by the assessee on the money borrowed from the partnership firm as he failed to recover the deposits from the company. Thus, in our considered view the interest expenses are directly connected to the interest income which the assessee has received on the deposits from the company and thus eligible for deduction. In view of the above the ground of appeal of the assessee is allowed.*

9.1 Thus, respectfully following the order of Co-ordinate Bench discussed above, we reverse the order of the Id. CIT-A with the direction to the AO to delete the

addition made by the AO. Hence, the grounds of appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 14/02/2024 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

(True Copy)  
14/02/2024