

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Ms. Astha Chandra, Judicial Member**

**ITA No. 251/Del/2019 : Asstt. Year : 2014-15**

**ITA No. 726/Del/2020 : Asstt. Year : 2015-16**

Rajesh Gupta, D-1/GF-5, Virat Bhawan, Dr. Mukharji Nagar, New Delhi-110009	Vs	ACIT, Circle-40(1), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAHPG7035J</b>		

**ITA No. 252/Del/2019 : Asstt. Year : 2014-15**

**ITA No. 725/Del/2020 : Asstt. Year : 2015-16**

**ITA No. 1255/Del/2020 : Asstt. Year : 2016-17**

Sanjay Gupta, D-1/GF-5, Virat Bhawan, Dr. Mukharji Nagar, New Delhi-110009	Vs	ACIT, Circle-40(1), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAHPG7036M</b>		

**Assessee by : Sh. Ashwani Kumar, Adv. &**

**Sh. Ankur Agarwal, Adv.**

**Revenue by : Sh. Piyush Tripathi, Sr. DR**

<b>Date of Hearing: 15.02.2024</b>
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<b>Date of Pronouncement: 08.03.2024</b>
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**ORDER**

**Per Bench:**

The present appeals have been filed by the assesseees against the orders of Id. CIT(A)-14, New Delhi dated 06.11.2018, 08.11.2018, 09.12.2019 and 14.02.2020.

2. Common grounds raised by the assesseees in ITA Nos. 251 & 252/Del/2019. In ITA No. 251/Del/2019, following grounds have been raised by the assessee:

*"1. The Id. CIT(A) has ignored the nexus of all the specific transactions of borrowings shown to him and erred in allowing only partial of interest paid on borrowings for the business of the firm ignoring the direct nexus of borrowings therefore the any of disallowance may please be deleted.*

*2. The Id. CIT(A) is unlawful, unjust in allowing only partial interest on borrowed funds ignoring,*

*(a) Yearlong accrual of incomes earned*

*(b) Own tax paid incomes*

*(c) The commercial expediency and other facts."*

3. Common grounds raised by the assesseees in ITA Nos. 725 & 726/Del/2020, the only difference in amount involved. In ITA No. 725/Del/2020, following grounds have been raised by the assessee:

*"1. That the order dated 09.12.2019 passed u/s 250(6) of the Act by the Learned Commissioner of Income-Tax (Appeals) -14, New Delhi is against law and facts on the file in as much as he was not justified to partly uphold the action of the Learned Joint Commissioner of Income-Tax, Special Range -14, Delhi in restricting the disallowance on account of interest paid on Unsecured Loans to Rs.57,69,219/- out of total interest paid at Rs.91,05,072/- despite the fact that the confirmations in respect of interest paid to various parties were duly filed during the assessment proceedings.*

*2. That the order dated 09.12.2019 passed u/s 250(6) of the Act by the Learned Commissioner of Income-Tax (Appeals) -14, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Joint Commissioner of Income-Tax, Special Range-14, Delhi in framing the assessment by ignoring the basic principles of natural justice as the alleged report of the Investigation Wing was never confronted to the appellant."*

4. In ITA No. 1255/Del/2020, following grounds have been raised by the assessee:

*"1. That the order dated 14.02.2020 passed u/s 250(6) of the Act by the Learned Commissioner of Income-Tax (Appeals) -14, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Deputy Commissioner of Income-Tax, Special Range -14, Delhi in making a disallowance on account of interest paid on Unsecured Loans amounting to Rs. 92,83,796/- on the ground that -*

*(a) genuineness of the interest paid by the Appellant Firm is not provided bona fide despite the fact that the confirmations were received in respect of interest paid to various parties and their ITRs were duly filed during the assessment proceedings and also placed before the Ld. CIT(A) during the first appellate proceedings:*

*(b) Interest expenditure is not allowable against remuneration received from a Firm in which the Appellant is a Partner."*

5. ITA No. 251/Del/2019 : Asstt. Year : 2014-15 in the case of Rajesh Gupta is a lead case.

6. During the course of assessment proceedings, the Assessing Officer observed that the assessee has claimed interest expense of Rs.76.81 lacs on the loan taken from various parties. The Assessing Officer observed that the assessee has advanced large amount of loans to its firm and his related concerns. The Assessing Officer held that since the loans received on which the interest paid was utilized for advancing loans for which no interest has been received, the total interest paid has been disallowed. The Assessing Officer has relied on the order of the Co-ordinate Bench of ITAT Hyderabad in the case of DCIT, Circle 3(2), Hyderabad Vs. M/s Suryavanshi Spinning Mills Ltd., Secunderabad that any deduction for

interest paid on money borrowed from outsiders for making advances is not an allowable expenditure. The decision of the ITAT is reproduced as under:

*"The sec 36(1)(iii) of the IT Act provides for deduction of interest on loans raised for business purposes. Once the assessee claims any such deduction, the onus will be on the assessee to satisfy the assessing officer that whatever loans were raised by the assessee was used for the purpose of business. If in the process of examination of such deduction, it transpires that the assessee had advanced certain funds to sister concerns or any other person without any interest, there should be very onus on the assessee to discharge before the assessing officer to the effect that in spite of borrowing loans on which the assessee is incurring liability to pay interest, there was justification to advance loan to its sister concern/subsidiary company without any interest and accordingly, the assessee should be allowed deduction of interest being paid on borrowed funds to that extent. If the assessee's funds are used to lend to subsidiary without any interest then the interest payable by assessee on its own fund cannot be allowed fully."*

7. The Id. CIT(A) tailored the action of the Assessing Officer modifying the interest disallowance of Rs.76.81 lacs to Rs.17.05 lacs (22% of the interest paid) holding that the disallowance has to be worked out by taking the ratio of average interest bearing funds and the average total funds.

8. Before us, it was submitted by the Id. AR that the amounts received as loans have been invested in M/s B. K. Sales Corporation as capital in partnership firm and has earned

income from house property and other sources from such an investment. It was submitted that the opening balance in the partnership firm was Rs.7.96 Cr. in the earlier years which has been increased to Rs.12.49 Cr. It was submitted that the assessee had enough interest free funds earned as remuneration and portion of profit from partnership firm, rental and other incomes to invest in equities in its group concerns and advance interest free sums to its sister concerns. The fact in such cases is that the advances and equity purchases are out of interest free funds. The funds of the assessee were sufficient to invest and cover the interest free advances made by him to its sister concerns.

9. The Id. DR submitted that once the funds have been utilized it should be deemed that the interest bearing funds have been given to the related concerns. It was argued that as interest free funds have already been utilized, the assessee has left with no option but to advance loans to the related concerns from the monies received as loans on which interest has been paid. Hence, the action of the Assessing Officer needs to be upheld.

10. We have examined the financials on record. The assessee has returned income Rs.4.58 Cr. and had a capital of Rs.25.69 Cr. and is also on fact that Rs.7.96 Cr. has been invested in the partnership firm on which the assessee has earned income which has been duly offered to tax. Further, capital account of the assessee in the books of M/s B. K. Sales Corporation for year ending 31.03.2001, 31.03.2002, 31.03.2003, 31.03.2004, 31.03.2010, 31.03.2011, 31.03.2012 & 31.03.2014 have been

examined. After examination and verification, it is observed that the assessee had sufficient own funds to lend advance free loans and the loans received have been used for income earning purpose and such income earned has been offered to tax. Hence, we hold that no disallowance on account of interest is called for.

**ITA No. 1255/Del/2020**

11. In addition to the ratio laid down above, in this case the assessee has also filed confirmations with regard to the loans received before the authorities. The loans, having been accepted as genuine, no disallowance of interest is called for.

12. In the result, the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 08/03/2024.

Sd/-

**(Astha Chandra)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 08/03/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**