

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.186/Viz/2023

(निर्धारणवर्ष/ Assessment Year : 2013-14)

Mohsin Enterprises (P) Ltd.,
Visakhapatnam.

PAN: AABCM 1861 K

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

Vs. The Income Tax Officer,
Ward-3(3),

Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

घोषणाकीतारीख/Date of
Pronouncement

: 29/02/2024

: 21/03/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)-NFAC] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1053184274(1), dated 25/5/2023

arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2013-14.

2. Briefly stated the facts of the case are that the assessee-company is engaged in the business of Trading in General Hardware, filed its return of income for the AY 2013-14 on 28/11/2013 admitting a total income of Rs. 18,36,860/-. The return was processed U/s. 143(1) of the Act accepting the income returned. Thereafter, the case was selected for scrutiny under CASS and notice U/s. 143(2) was served on the assessee on 11/9/2014 by the ITO, Ward-3(1), Visakahaptnam and the same was duly served on the assessee on 16/9/2014. Subsequently, the case was transferred to the ITO, Ward-3(3), Visakhapatnam and accordingly the assessee was given a fresh opportunity U/s. 129 of the Act. In response to the notices issued, the assessee's Authorized Representative appeared from time to time and produced the details as called by the Ld. AO. On perusal and verification of the information submitted by the Ld. AR of the assessee-company and also the books of account of etc., the Ld. AO observed that certain expenses viz., insurance, travelling, freight, sales commission, bad debts, miscellaneous expenses have increased abnormally compared to the Financial Year 2011-

12 and the Ld. AR of the assessee was asked to furnish the evidence of the expenses and also the confirmation letters from sundry creditors and their income tax returns. In response the Assessee's Representative submitted the information and after considering the submissions made by the Assessee's Representative, did not satisfy with the replies given and made certain additions ie., (i) disallowance of business courtesy expenses (20% of 2,45,770) – Rs. 49,154/-; (ii) disallowance of claim of expenditure of loading & unloading charges (10% of 12,71,405/-) – Rs, 1,27,140/-; (iii) Disallowance towards Pooja & Festival charges Rs. 66,900/- and (iv) disallowance of interest paid on principal loan amount availed from M/s. Bajaj Financial Service for purchase of Shares in M/s. Dolphin Overseas Private Limited, Singapore amounting to Rs. 76,60,803/-. Thus, the Ld. AO completed the assessment U/s. 143(3) of the Act and determined the assessed income at Rs. 97,40,857/-. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC partly allowed the appeal wherein the Ld. CIT(A)-NFAC sustained the disallowance of Rs. 76,60,803/- made by the Ld. AO being the expenditure under the head interest paid. Aggrieved by the order

of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in sustaining the addition of Rs. 76,60,803/- made by the Assessing Officer towards disallowance of interest on loan from Bajaj Financial Services.*
3. *Any other grounds that may be urged at the time of hearing.”*

3. At the outset, before us the Ld. Authorized Representative [AR] submitted that the interest paid on loan taken from M/s. Bajaj Financial Service is for the purpose of making capital investment and such interest paid on capital investment is eligible for deduction under the head ‘income from other sources’ since the expenditure was laid out for the purpose of investment on which income would be generated in future. The Ld. AR also submitted that as per the provisions of section 57 of the Act, the interest expenditure was eligible for deduction even if no income was generated on investment in capital asset. On this issue, the Ld. AR heavily relied on the judgment of the Hon’ble Calcutta High Court in the case of Sri Satyasai Properties And Investment P. Ltd vs. CIT reported in [2014] 361 ITR 0641 (Cal.). The Ld. AR

therefore pleaded for deletion of the addition made by the Ld. AO and confirmed by the Ld. CIT(A)-NFAC.

4. On the other hand, Ld. Departmental Representative [DR] heavily relied on the orders of the Ld. Revenue Authorities. The Ld. DR contended that once the investment is found to be capital in nature, the expenditure incurred being interest paid on the loan taken by the assessee for such investment should also be capital in nature and therefore not allowable U/s. 57 of the Act. The Ld. DR therefore pleaded that the orders of the Ld. Revenue Authorities be confirmed.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The only issue involved in this appeal, whether the interest of Rs. 76,60,803/- incurred on borrowed funds utilized for making investment in shares of M/s. Dolphin Overseas Private Limited, Singapore is a proper expenditure allowable U/s. 57 or not? We have also carefully perused the citation quoted by the Ld. AR in the case of Sri Satyasai Properties and Investment P. Ltd vs. CIT (supra). The issue in the instant case is identical to the issue directly dealt with by the Hon'ble Calcutta High Court in the case of Sri Satyasai Properties and Investment P. Ltd vs.

CIT (supra). The Held portion from the judgment of the Hon'ble Calcutta High Court (supra) is extracted herein below for reference:

“Mr. Khaitan rightly contended that the expenditure on account of interest was a proper expenditure allowable under section 57. The reason which found favour both with the Assessing Officer and the Tribunal was that the investment was not for the purpose of earning dividend. It could not be followed as to how can it be said that earning of dividend can be the sole motive or the sole source for the purpose of making income from other sources. What is an income from other sources has not been put into any straight jacket formula. Even the legislature has not attempted to define the words expressly. Income from other sources is a very wide term. The legislature has advisedly expressed "without prejudice to the generality of the provision". Therefore, there was no reason why a proper expenditure should have been disallowed only because the investment was not made for the purpose of earning dividend. There is no finding that the investment was made otherwise than for the purpose of making an income. We are, as such, of the opinion that both the Tribunal and the Assessing Officer were wrong in disallowing the expenditure. Accordingly, the question is answered in the negative and in favour of the assessee.”

6. As observed by the Hon'ble Calcutta High Court in the case of Sri Satyasai Properties and Investment P. Ltd vs. CIT (supra), in the present case also it is not disputed that the assessee's investment in M/s. Dolphin Overseas Private Limited, Singapore is for the purpose of earning income in the future periods. Further, the Ld. Revenue Authorities also did not bring on record that the investment was made by the assessee otherwise than for the purpose of making an income. Further, we observed that section 57(iii) is clear and has to be construed according to its natural meaning. It should not be given a narrowed meaning and the

interpretation of section 57(iii) cannot be held to be conditional upon making or earning of the income. Therefore, considering the facts and circumstances of the case and also respectfully following the decision of the Hon'ble Kolkata High Court (supra), we are of the considered view that the assessee is eligible to claim deduction of interest expenditure incurred on borrowed funds utilized for making investment in shares of M/s. Dolphin Overseas Private Limited, Singapore as per the provisions of U/s. 57 of the Act. It is ordered accordingly. Thus, the grounds raised by the assessee are allowed.

7. In the result, appeal filed by the assessee is allowed.

Pronounced in the open Court on 21st March, 2024.

Sd/-

(दुव्वूरु आर. एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S. BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated : .03.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Mohan Enterprises (P) Ltd, D.No. 24-4-10, Mohsin Building, Harbour Road, Visakhapatnam, Andhra Pradesh-530001.

2. राजस्व/The Revenue –The Income Tax Officer, Ward-3(3), Infinity Towers, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh-530016.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam