

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Justice (Rtd.) C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 2157/Mum/2023 (A.Y. 2015-16)

DCIT, CC-5(4) Room No. 1927 Air India Building Nariman Point Mumbai-400 021.	Vs.	Raghuleela Estates Private Limited 301, Plantina, Plot C-59, G-Block Bandra Kurla Complex, Bandar-E Mumbai-400 098. PAN : AAACW5273G
(Appellant)		(Respondent)

Assessee by	Shri Ravikant Pathak
Department by	Ms. Mahita Nair
Date of Hearing	15.03.2024
Date of Pronouncement	19.03.2024

ORDER

Per B.R.Baskaran (AM) :-

The revenue has filed this appeal challenging the order dated 08-03-2023 passed by Ld CIT(A)-53, Mumbai and it relates to the assessment year 2015-16. The solitary issue contested by the revenue relates to the decision of Ld CIT(A) in deleting the disallowance of interest expenditure claimed by the assessee u/s 57(iii) of the Act against the interest income declared under the head 'Income from Other sources'.

2. The facts relating to the issue are discussed in brief. The assessee is engaged in the business of leasing out of Commercial properties and rental income is declared under the head 'Income from House Property'. It is also a partner in a partnership firm and interest income accrued in the partnership firm is declared under the head 'Income from Business'. It also lends surplus money available with it on short term basis on interest and the

interest income is declared under the head 'Income from Other sources'. Thus, the assessee is generating three types of income.

3. The assessee has borrowed loans for the purpose of acquisition of commercial complex and also for the purpose of making investment in the partnership firms. The interest expenditure incurred was claimed by the assessee as deduction against all the three types of income. viz., Income from House Property; Income from Business and Income from other sources.

4. During the course of assessment proceedings, the AO noticed that the interest expenditure claimed under the 'Income from other sources' in the immediately preceding year, viz., AY 2014-15 had been disallowed on the reasoning that the loans have been given from out of non-interest bearing funds. Since the said loan was outstanding during the year under consideration also, following the order passed in AY 2014-15, the AO held that the interest expenditure of Rs.5,75,64,486/- is not allowable as deduction. The AO also disallowed a sum of Rs.36,24,473/- on the similar reasoning. Thus the aggregate amount of interest disallowed by the AO was Rs.6,11,88,959/- (Rs.5,75,64,486/- + Rs.36,24,473/-) out of the interest expenditure claimed by the assessee u/s 57(iii) of the Act against the interest income declared under the head Income from Other sources.

5. The Ld CIT(A) noticed that the own funds and borrowed funds of the assessee have been put in common pot and hence the funds have become mixed funds. Both the funds have been used for the purposes of

- (i) purchase of commercial properties,
- (ii) investment in partnership firms and
- (iii) giving short term loans.

Hence he held that it is not correct to presume that the short term loans have been given exclusively out of non-interest bearing advances received by

the assessee. He held that, once part of loan funds have been used for giving short term loans; then the interest expenditure should be allowed. He also noticed that an identical disallowance made by the AO in AY 2014-15 has been deleted by him in that year. Further, the Ld CIT(A) also observed that the assessee has allocated interest expenditure between three heads of income on a reasonable basis. Accordingly, he held that the disallowance made by the AO is not called for. Accordingly, he allowed the appeal of the assessee. The revenue is aggrieved.

6. The Ld D.R submitted that the AO has given a finding that the assessee has used non-interest bearing funds only for giving loans. He submitted that the deduction u/s 57(iii) of the Act could be allowed only if it is proved that the relevant expenditure which was incurred for earning interest income. Since the AO has found that the assessee has used non-interest bearing funds for giving loans, the interest expenditure was rightly disallowed by the assessing officer. Accordingly, he prayed that the order passed by Ld CIT(A) may be reversed.

7. The Ld A.R submitted that the AO had made identical disallowance in the immediately preceding year, i.e., AY 2014-15 and the same was deleted by Ld CIT(A). The revenue had challenged the relief so granted by the Ld CIT(A) by filing appeal before the ITAT. He submitted that the Tribunal, vide its order dated 23.11.2023 passed in ITA No.2156/Mum/2013, has affirmed the order passed by Ld CIT(A). He submitted that there is no change in facts during the year under consideration and accordingly prayed that the order passed by Ld CIT(A) may be upheld following the decision taken by the Tribunal in AY 2014-15.

8. We heard rival contentions and perused the record. We noticed earlier that the assessee has declared income under three heads, viz., Income from House Property, Income from business and Income from Other sources. The

case of the assessee is that the loan funds have been used for earning income under all the three heads and accordingly the interest expenditure has been allocated against all the three heads of income under a methodology consistently followed year after year. It is also submitted that the assessee has voluntarily disallowed one portion of interest expenditure by not claiming it against any income.

9. We notice that the interest expenditure incurred by the assessee was Rs.68,77,93,073/-, which consisted of interest on term loan of Rs.61,31,93,073/- and loan processing charges of RS.7,96,00,000/-. The assessee has claimed interest expenditure against three heads as under:-

Income from House Property u/s 24(b)	-	27,26,55,015
Income from Business u/s 36(1)(iii)	-	12,75,86,751
Income from Other sources	-	19,22,10,648
INTEREST NOT CLAIMED	-	9,53,40,659

		68,77,93,0730
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We notice that the assessee did not claim interest expenditure to the tune of Rs.9,53,40,659/-. The methodology followed by the assessee for allocating interest expenditure has been explained as under:-

(a) Under the head 'Income from House Property':-

Interest expenditure in proportion of the "Amount of investment in property" to the "Total assets"

(b) Under the head 'Income from Business':-

To the extent of interest income actually earned from the Partnership firm.

(c) Under the head 'Income from Other Sources':-

On the basis of number of days the borrowed funds were used for earning interest income.

We notice that the assessing officer did not disturb the interest expenditure claimed under the head Income from House Property and Income from Business. The interest expenditure voluntarily disallowed by the assessee is

also accepted. The AO has disallowed a sum of Rs.6,11,88,959/- out of interest expenditure claimed under the head Income from Other sources on the reasoning that the assessee has used non-interest bearing funds for giving short term loans. In this regard, the AO has taken support of decision taken by him in AY 2014-15 for disallowing a sum of Rs.5,75,64,486/- out of the above said disallowance. We notice that the AO has examined immediate source of funds which were used for giving short term loans. Since the immediate source of funds were interest free lease advances received by the assessee, the AO took the view that the borrowed funds have not been used for giving short term loans and accordingly disallowed the proportionate interest expenditure.

10. We observed earlier that the Ld CIT(A) has given a finding that the assessee has used both types of funds, i.e., own funds as well as loan funds for carrying out its income earning activities, i.e., both types of funds cannot be identified if both are put in a common pot. Accordingly he held that the interest claim should be allowed so long as it is shown that a part of loan funds have been used for giving short term loans. We notice that the above said view has been accepted by the co-ordinate bench in AY 2014-15.

11. We shall examine the factual position on the basis of the financial statements. On a perusal of Balance Sheet filed by the assessee, we notice that the assessee had invested a sum of Rs.384.74 crores in acquisition of commercial property named "Platina" at BKC by borrowing long term loans from Financial Institutions. The outstanding balance of the term loan as on 01-04-2014 was Rs.288 crores (Rs.218 crore shown as long term borrowings (+) Rs.70 crores shown as current liabilities). The own funds available with the assessee on that date was Rs.69 crores. Thus, there was a shortage of around Rs.28 crores, which has been funded either by way of short term borrowings or non-interest bearing rent advances received by the assessee. We also notice that, during the year under consideration, the Long term

borrowings have increased to Rs.691 crores (Rs.229 crores shown as long term liabilities and Rs.562 crores shown as current liabilities) resulting in increase of loan funds by around Rs.403 crores. During the year under consideration, the assessee has made investment of Rs.468 crores in a Partnership firm, meaning thereby, the additional loan raised by the assessee has been fully invested in the partnership firm. Thus, it can be seen that the assessee has used both own funds, loan funds and non-interest bearing funds for making investments in Commercial Property, partnership firm and for giving loans. Hence it can be held that the entire loan funds have been used for any one of the income generating activity.

12. There should not be any dispute that the interest expenditure is allowable as deduction

- (a) u/s 24(b) while computing income under the head 'Income from House Property';
- (b) u/s 36(1)(iii) while computing income under the head 'Income from Other business' and
- (c) u/s 57(iii) while computing income under the head 'Income from Other Sources'.

Further the allowance of interest expenditure is not related to the quantum of income earned under each of the head, i.e., the entire amount of interest expenditure is allowable as deduction, even if the income earned is lesser than the amount of interest expenditure. The only condition is that the loan funds should have been used

- (a) for acquiring House Property, in the case of Income from House Property;
- (b) for the purpose of business, in the case of Income from business and
- (c) for earning interest income, in the case of Income from Other sources.

We have noticed earlier that the entire loan funds have been used for income generating activity of the assessee only. The question of disallowing part of interest expenditure shall arise only, if it established that the interest bearing funds have been diverted for personal purposes of the directors or for non-business (non-income earning activity) purposes. In the instant case, the case of the AO is not of that kind. According to AO, the non-interest bearing lease advances received by the assessee has been used to give short term loans, i.e., loan funds have not been used to give short term loans. For this purpose, the AO has examined immediate source of funds used for giving loans and not the overall position of funds. We have earlier noticed that all types of funds are fungible in nature when they were put in a common pot. It is the prerogative of the business man to use the funds in the best interest of his income earning activities.

13. We have noticed earlier that it is not the case of the AO that the interest bearing funds have been used for personal purposes or for non-income earning activity. Hence, under these set of facts, we are of the view that the AO has missed a moot point that the entire interest expenditure shall be allowable as deduction either under the head 'Income from House Property' or under the head "Income from Business" so long as it is not shown that the loan funds have been diverted for non-income earning/personal purposes. Hence, even if the AO considers that a part of interest expenditure is not allowable under the head 'Income from Other sources', then the same shall be allowable as deduction either under the head 'Income from House Property' or under the head "Income from Business".

14. Since the assessee has generated income from three sources, it has followed a consistent methodology for allocating interest expenditure between three heads of income. This is for the reason that the assessee is of the opinion that all types of funds, viz., own funds, loan funds and interest free

lease advances have been used for generating income from all the three heads of income. We notice that the very purpose of giving short term loans is for the purpose of generating income from idle funds, which are not immediately required for its activities. Since the assessee is having liability to pay interest expenditure on borrowed funds, it has taken prudent decision to generate income by giving short term loans. This is exclusive prerogative of the assessee and the tax man cannot question the wisdom of the business man.

15. Hence, in our view, so long as the assessee has not diverted the loan funds for non-income earning activities/personal purposes, the entire interest expenditure is allowable as deduction. Since the assessee has allocated the interest expenditure on a methodology consistently followed and since the same has been approved by the co-ordinate bench in the earlier year, the question of disallowing interest expenditure claimed u/s 57(iii) does not arise. Accordingly, we are of the view that the order passed by Ld CIT(A) does not call for any interference. Accordingly, we uphold the same.

16. In the result, the appeal filed by the revenue is dismissed.

Order pronounced on 19.03.2024.

Sd/-
(Justice (Rtd.) C.V. Bhadang)
President

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 19/03/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.

6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai