

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHARY, JM

ITA No. 3820/Mum/2023

(Assessment Year: 1999-2000)

ITA No. 3819/Mum/2023

(Assessment Year: 2005-06)

ITA No. 3818/Mum/2023

(Assessment Year: 2006-07)

Harsh Estates Pvt. Ltd.
32, Madhuli, 3rd Floor,
ABN Road, Opp. Nehru
Centre,
Worli, Mumbai-400 018

Vs.

Dy. Commissioner of
Income Tax,
Central Circle 4(3),
Room No.1921, 19th floor,
Air India Building,
Nariman Point
Mumbai-400 021

(Appellant)

(Respondent)

PAN No. AAACH3480I

Assessee by : Shri Dharmesh Shah &
Ms. Jigna Jain, ARs
Revenue by : Shri Dr. P. Daniel, Spl. Counsel

Date of hearing: 07.03.2024

Date of pronouncement : 21.03.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA number 3820/M/2022 is filed for assessment year 1999 – 2000 by Harsha estate private limited, Mumbai (the assessee/appellant) against the appellate order passed by the Commissioner of income tax, appeals – 52, Mumbai (the learned CIT – A) dated 31/8/2023 wherein

the appeal filed by the assessee against the assessment order passed under section 143 (3) read with section 254 of the income tax act, 1961 (the act) dated 29/6/2016 passed by the deputy Commissioner of income tax – Central Circle – 4 (3), Central Ranch – 4, Mumbai (the learned AO) was partly allowed.

02. The assessee is aggrieved and has preferred this appeal raising the solitary ground of appeal which is pressed before us states that the learned CIT – A has erred in law and on facts in not allowing the deduction of interest expenditure claimed by the appellant amounting to Rs. 32,795,923/- and restricting the deduction only to the tune of Rs. 3,520,886/-.

03. Grounds in ITA No. 3820/Mum/2023:-

"1. The learned CIT (A) has erred in law and in facts in passing order under Section 250 of the Act and confirming the order of Learned. Assessing Officer.

2. The learned CIT (A) has erred in law and in facts in not allowing the deduction of interest expenditure claimed by the appellant amounting to ₹3,27,95,923/- and restricting the deduction only to the tune of ₹35,20,886/-.

3. The learned CIT (A) has erred in law and in facts in not appreciating that the interest under Section 234B was not calculated by the learned Assessing Officer correctly."



04. Ground no 1 is general in nature and not pressed and hence, dismissed.
05. Ground no 2 is the grievance. Briefly stated the fact shows that :-
- i. Assessee is a notified person under The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and all its assets including bank accounts were attached and are lying in the hands of the custodian appointed under the said act.
 - ii. Assessee did not file any return of income and the assessment under section 144 of the act was passed on 7/2/2022 of the total income of Rs. 6,830,640/-.
 - iii. On appeal before the learned CIT - A, it was dismissed. Assessee approached the coordinate bench which restored the matter back to the file of the CIT - A. In such appeal proceedings the assessee raised an additional ground of interest expenditure claim of Rs. 327,95,923/- which the learned CIT - A dismissed.
 - iv. Assessee approached the coordinate bench in ITA number 4021/M/2011 wherein as per order dated 2/2/2015 the issue was set-aside to the file of the AO with direction to verify the issue.
 - v. The assessing officer passed the order under section 143 (3) read with section 254 of the act dated 29/6/2016 assessing the total income of Rs.

6,232,130. The issue before the learned assessing officer was with respect to the deductibility of the interest liability pertaining to the family members of the assessee amounting to Rs. 32,795,923/-. The assessee submitted that that assessee has taken interest-bearing loan from JH Mehta and others for making investment in the shares and securities. Since the interest was paid to these parties amounting to Rs. 32,795,923/- in total and Rs. 43,706,074/-, (-) 20,06,509/-, (-) 89,03,642/- respectively. Thus, net interest expenditure of Rs. 32,795,923 is claimed as interest payable while determining the income from other sources. Thus, the claim of the assessee is that this interest expenditure is deductible against the interest income earned by the assessee. The assessee made; However, the learned AO was of the view that except making the submission assessee did not produce any new material. It was also stated before the learned assessing officer that on similar issue based on the identical facts and circumstances for assessment year 2012 - 13 and 2013 - 14 and therefore the issue is squarely covered in favour of the assessee. The learned assessing officer rejected all the contentions raised by the assessee and held that the conclusion arrived at by the learned assessing officer in the original assessment proceedings stood good and therefore the interest expenditure claimed of Rs. 32,795,923/- was disallowed.



- vi. Appeal was preferred before the learned CIT – A. He held that assessee has earned interest on term deposit of Rs. 4,108,356/- and has claimed interest expenditure on loan of Rs. 327,95,923/-. He further noted that this identical issue was considered by the coordinate bench in assessment year 2013 – 14 in appellant's own case wherein the appeal of the assessee was allowed on the very same issue. It was held that the assessee had claimed deduction of interest expenditure in that assessment year i.e., assessment year 2013 – 14 of Rs. 23,338,930/-. It was the claim in that year that the assessee is entitled to the deduction to the extent of Rs.407,230/- being the income earned during the year. The coordinate bench held that the assessee should get deduction of interest expenditure to the extent of interest income earned. The learned CIT – A relying on the findings of the coordinate bench for assessment year 2013 – 14 has held that the interest income on term deposit as per the profit and loss account of the assessee for this year is Rs. 4,108,356/- and assessee has made the claim of deduction of interest expenditure of Rs. 32,795,923/- therefore the claim of deduction is more than the interest income offered for taxation. He therefore held that in line with the decision of the coordinate bench this has to be restricted to the interest income earned. The learned CIT – A also looked into the issue from a different angle. He found that the



assessee has not bifurcated the interest expenditure into interest on loan for investment or interest on loan from Term deposits or other assets. He noted that as on 31st of March 1999 the investment is of Rs. 24.58 crores while the cash and bank balance on that date is of Rs. 43,700,000 only. Therefore, it is seen that the appellant also has other assets such as debtors of Rs. 90,917,922 and other fixed assets of Rs. 7,495,000/-. Thus, the assessee has negative net worth. Therefore, it can be inferred that all such assets are funded out of such unsecured loans and other liabilities, and it would be erroneous to claim the entire interest expenditure as having been incurred for earning interest income. Thus, he was of the opinion that the interest pertaining to unsecured loans is spread across all assets the claim of the appellant for deduction and interest income will reduce. Therefore, he also supported his view that the claim of the appellant has to be restricted. He further noted that the assessee has not furnished any working to show as to how the interest expenses claimed for the year have been worked out. Therefore, he held that (1) interest deduction shall not exceed the interest income as the funds were not borrowed to make investment in Term deposits only (2) subject to the above ceiling, the proportionate interest expenses are allowable. For this purpose, the interest expense can be attributed to the same ratio of average bank balance versus average loans.

(3) The interest expenditure allowance cannot exceed the total income for it would result in giving indirect benefit to the appellant. Accordingly, he computed the average cash and bank balance on hand of Rs. 3.91 crores. He also worked out the unsecured loan average balance of Rs. 36.49 crores. Therefore, he proportionately computed the interest expenditure of Rs. 32,795,923/- as is attributable to the unsecured loans of the appellant worked out at Rs. 3,520,886/-. Since the interest attributable for Tom deposits according to him as Rs. 3,520,886/- he allowed the same as deduction.

06. Therefore, the assessee is in appeal before us and according to the assessee the total amount of interest of Rs. 327,95,923 should have been allowed to the assessee as deduction and the action of the learned CIT (A) of allowing only Rs. 3,520,886/- is erroneous.
07. The learned authorized representative filed 2 paper books before us. The first paper book contains 66 pages wherein the orders passed by the coordinate benches are placed. In the second paper book also containing 65 pages the decision of the coordinate benches in case of assessee for assessment year 2013 - 14, 2014 - 15 and 2015 - 16 dated 15/9/2020, the order of the coordinate bench in case of family member of the assessee in ITA number 6228 and 5839/M/2018 dated 27/11/2019 and the coordinate bench decision in case of Grow more leasing and investment Ltd and others in ITA number

1219/M/2017 dated 27/12/2017 for assessment year 2012 – 13 is placed.

08. The learned authorized representative specifically referred to the decision of the coordinate bench in assessee's own case in ITA number 6957, 6958 and 6959/MUL/2018 dated 15/9/2020. He submits that according to paragraph number nine of that order the issue was decided by following the decision of Grow more leasing and investment Ltd and in the case of Mr. Sudhir H Mehta ITA number 5799/M/2014. He further referred to paragraph number 13 wherein following the decision of cascade Holdings private limited relief was allowed to the assessee in earlier years. He further referred to the decision of the coordinate bench in case of Pratima H Mehta by the dated 27/11/2019 stating that identical issue arose in that case where also the coordinate bench has allowed the deduction of interest expenditure on identical facts and circumstances. He further referred to the decision of the coordinate bench in case of Growmore leasing and investments Ltd dated 27/12/2017 wherein also identical deduction was allowed. It was specifically referred that in paragraph number 14 of that, issue was raised about the Nexus of interest expenses with the interest income. It was stated therein that the liability in that case was accrued on account of purchase of shares and securities by the assessee which were sold in terms of the directions of the special court in subsequent years and the sale proceeds were received were invested in term deposits with the bank and accordingly the assessee has claimed

interest expenditure against the interest on term deposits. After considering the above facts, the coordinate bench has allowed the above deduction of interest expenditure therefore according to him the issue is squarely covered in favour of the assessee and the assessee is entitled to the deduction of the complete interest expenditure of Rs. 3.27 crores.

09. The learned departmental representative vehemently supported the order of the learned lower authorities. It was stated that the assessee has claimed the interest expenditure of Rs. 3.27 crores whereas it has earned only the deposit interest of Rs. 41 lakhs. The learned CIT – A accordingly has granted proportionate deduction of interest expenditure to the assessee. He submitted that according to the provisions of section 57 of the income tax act only the expenditure incurred by the assessee wholly and exclusively for the purpose of earning of the fixed deposit interest is only allowable to the assessee as deduction. He further referred to the order of the learned CIT – A where the assessee has failed to give any details of the interest expenditure incurred. Accordingly, he submitted that the learned CIT – A is gracious enough to allow the assessee the deduction of Rs. 3,520,000/-. Therefore, the assessee's appeal requires to be dismissed.
010. We have carefully considered the rival contention and perused the orders of the lower authorities. Undoubtedly the assessee has earned bank interest of Rs. 41 lakhs. According to section 57 of the income tax act, assessee is

entitled to deduction under section 57 (iii) of any other expenditure which is not in the nature of capital expenditure which is laid out or expended wholly and exclusively for the purpose of making or earning such income. Therefore, the issue whether the expenditure of interest is laid out or expended wholly and exclusively for the purpose of making or earning such income is required to be tested. Same has been verified and decided by the coordinate bench in case of assessee for assessment year 2013 – 14 till 2015 – 16 as per order dated 15/9/2020. Further the direction of the learned CIT – A in restricting the deduction to the extent of income earned of term deposit is also not in accordance with the decision of the coordinate bench wherein in case of Mr. Ashwin Mehta in ITA number 5839/M/2018 dated 27/11/2019 wherein against the interest receipt of ₹ 1,801,778/- the coordinate bench has granted the deduction of ₹ 21,969,050/-. In absence of any contrary facts pointed out before us, respectfully following the decision of the coordinate bench in case of the assessee for subsequent years we direct the learned assessing officer to allow the claim of the assessee of deduction of interest expenditure of ₹ 3.27 crores as per ground number 2 of the appeal. Accordingly, that ground is allowed.

011. Ground number 3 is with respect to the charge of interest under section 234B of the act. We find that the learned CIT – A has given a detailed finding in paragraph number 7 regarding chargeability of the same. However it is apparent that the proviso to section 209 (1) has been



inserted with effect from 1 April 2012. Therefore if any income of the assessee on which tax is deductible, the interest under section 234B shall not be chargeable prior to 1 April 2012. However the learned assessing officer is directed to compute the interest in accordance with the law as it was prevailing for assessment year 2006 – 07. Accordingly ground number 3 of the appeal is allowed with above direction.

012. Before us the assessee has raised an additional ground of appeal on 7 March 2024 wherein the assessee has stated that the learned assessing officer has observed that the income of the appellant remains unchanged at ₹ 6,232,130 as per order dated 31/12/2010 however the assessee has stated that the learned CIT – A – per order dated 20/11/2013 has directed the learned assessing officer to add adopt the interest income at ₹ 4,108,355/- as against ₹ 6,849,683. Accordingly the total income of the assessee requires to be adjusted according to the direction of the learned CIT – A. It is submitted before us that the learned AO has not carried out the direction of the learned CIT – A. We direct the assessing officer to compute the correct income as per the direction of the learned CIT – A. Thus additional ground filed by the assessee is merely a correction in the order, therefore, same is admitted and adjudicated as above.

013. In the result appeal of the assessee for assessment year 1999 – 2000 is partly allowed.



014. ITA number 3819/M/2023 for assessment year 2005 – 06 is filed by the assessee against the appellate order passed by the CIT – A – 52, Mumbai dated 31/8/2023 wherein ground number 2 is with respect to the proportionate allowance of the interest by the learned CIT – A of ₹ 5,424,664/- against the claim of the assessee of ₹ 32,795,923. This ground of appeal is identical to ground number 2 of the appeal of the assessee for assessment year 99 – 2000 wherein following the various decisions of the coordinate benches in the case of the assessee, we have allowed this ground. For the same reasons, we also allow ground number 2 of the appeal for this year.
015. Ground number 3 of the appeal is with respect to the chargeability of interest under section 234B on income on which tax is deductible, is identical to ground number three of the appeal of the assessee for assessment year 99 – 2000, which we have restored back to the file of the learned assessing officer, for similar reasons we also restore this ground of appeal for this year.
016. Ground number 1 of the appeal is general in nature and therefore same is dismissed.
017. In the result ITA number 3819/M/2023 for assessment year 2005 – 06 of the appeal of the assessee is partly allowed.
018. ITA number 3818/M/2023 is filed by the assessee for assessment year 2006 – 07 against the appellate order passed on 31/8/2023 by the learned CIT – A.



019. Ground number 1 of the appeal is general in nature and therefore same is dismissed.
020. Ground number 2 of the appeal is with respect to the proportionate disallowance of interest expenditure claimed by the assessee. Assessee has claimed interest expenditure of ₹ 32,795,923/-, the learned CIT – A has restricted allowance to the extent of ₹ 4,546,900. This ground is identical to the ground number 2 of the appeal for assessment year 99 – 2000 wherein, respectfully following the decision of the coordinate benches in assessee's own case for subsequent years, we have directed the learned AO to delete the disallowance in toto. Accordingly we direct the learned AO to delete the disallowance for this year also. Ground number 2 of the appeal is allowed.
021. Ground number 3 is with respect to the chargeability of the interest under section 234B of the act with respect to the income included in the total income on which tax is deductible. This ground is identical to ground number 3 of the appeal for assessment year 99 – 2000. We have directed the learned assessing officer to compute the interest under section 234B of the act in terms of provisions of the act as applicable for that assessment year. Therefore, it similar reasons we also restore this ground of appeal to the file of the AO with similar direction.
022. In the result, appeal for assessment year 2006 – 07 is partly allowed.



023. Accordingly all three appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 21.03.2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.03. 2024

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Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai