

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3683/MUM/2023
Assessment Year: 2018-19
&
ITA No. 3705/MUM/2023
Assessment Year: 2020-21**

Vinod D Chheda,
148 Chandra Darshan, Jawahar
Nagar Road, Goregaon (W),
Mumbai-400062.

PAN NO. AANPC 3393 B

Appellant

Mumbai ITO 11.1.1,
Aayakar Bhavan,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. S D Chedda
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 29/04/2024
Date of pronouncement : 08/05/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders, both dated 18.08.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19 and 2020-21 respectively. As common issue in dispute is involved



in both these appeals , therefore, same were heard together and disposed off by way this consolidated order for convenience and avoid repetition of facts.

2. First we take up the appeal of the assessee for assessment year 2018-19. The grounds raised by the assessee are reproduced as under:

1. The learned CIT(A) has erred in law and in facts and in circumstances of case to confirm disallowance of interest of Rs. 1,30,73,008/--u/s 57.

2. The learned CIT(A) has disallowed interest on incorrect facts that the unsecured loans existed in the balance sheet of the proprietorship concern of the appellant as on 31-03-2017 whereas there is no such loan existed in the balance sheet of the proprietorship concern as apparent from the Balance Sheet filed of proprietorship concern namely M/s Rajwadi Emporium Pvt. Ltd.

3. The learned CIT(A) has erred in law and in facts to held that it becomes only academic whether the unsecured loans were transferred from the books of the proprietorship concern to the proprietor viz... the appellant and failed to appreciate the business transferred was of proprietary concern and not of all assets and liabilities of proprietor.

4. The learned CIT(A) has erred in law and in facts and in circumstances of case to held wrongly that the appellant has also not furnished any details with regard to the TDS made on such interest payments in spite of the fact that all details against the documents submitted.

5. The learned CIT(A) has erred in law and in facts and in circumstances of case to held wrongly that the interest payments stated to be payable by the appellant to various parties are not actually been paid upto 31-03-2020.

6. The learned CIT(A) has erred in law and in facts and in circumstances of case to held that the interest payments are not truly legitimate rather only employed as a strategy to lower the taxable income and such observation is only on the basis of surmises & presumptions rather than on actual facts.

7. The learned CIT(A) has erred in law and in facts and in circumstances of case to appreciate the facts that loans and advances on which interest has been paid has arisen only from the loan taken



on which interest has been paid and assuming that even if it is not believed by CIT(A), The learned CIT(A) has not given finding that loans taken has been used for any other purposes.

8. The learned CIT(A) has failed to understand how the interest can be paid if there is no liability of unsecured loan in books of accounts and failed to understand that The interest paid is directly against interest received& If the assessee has not incurred the expenditure on such loan, the earning of such income was impossible.

9. The learned CIT(A) has failed to understand that if The Assessing Officer has further noticed while concluding the assessment of subsequent year AY 2020-21, that the interest payments stated to be payable if the loan liabilities on which interest is paid had not been taken over, the assessee would not have got the interest and paid the interest and that figure of interest would have been paid M/s Rajwadi Emporium Pvt. Ltd directly to the loan creditors.

10. The learned CIT(A) has erred in law and in facts to confirm the disallowance of interest of Rs.1,01,74,226/- inspite of the fact the AO has failed to consider the Instruction No. 20/2015 Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes North Block, New Delhi, dated 29th of December, 2015 and in such a case the disallowance is bad and required to be deleted.

11. The learned CIT(A) has erred in law and in facts to appreciate the facts of the case and has failed to consider the relevant submission as well as submission made during video conference before disallowing the expenditure and made disallowance in a predetermined manner and without application of mind

12. The learned CIT(A)has erred in law and in facts to confirm disallowance of interest inspite of the fact that interest paidhas been for earning income from other sources and there is no finding that funds of interest paid has been used for other purposes.

13. The learned CIT(A)ought to have allowed the interest expenditure when nothing in the reply is found wrong and there is nothing to suggest that interest expenditure has not been spent for earning income from other source.

3. Briefly stated, facts of the case are that the assessee filed return of income on 31.08.2018 declaring gross income of Rs.26,14,219/- and claimed further deduction amounting to Rs.2,25,000/-. The return of income filed by the assessee was selected for 'limited scrutiny' for examining the deduction claimed



by the assessee under the head 'income from other sources'. The statutory notices under the Income-tax, 1961 (in short 'the Act') were issued and complied with. The claim of interest expenses as deduction against interest income was disallowed by the Assessing Officer and addition of Rs.1,30,73,008/- was made in the assessment order passed on 22.03.2021.

3. On further appeal, the Ld. CIT(A) upheld the disallowance. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

4. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 124.

5. The grounds raised by the assessee are in respect of sole issue of disallowance of deduction of the interest claimed u/s 57 of the Act against the interest income received by the assessee. In ground No. 12 this specific issue has been raised by the assessee. All the grounds being connected with the single issue of disallowance of interest expenditure, all these grounds raised are adjudicated together.

6. Briefly stated, facts qua the issue in dispute are that the assessee was carrying on business under the proprietorship concern namely M/s Rajwadi Emporium, which was transferred as going concern to M/s M/s Rajwadi Emporium India P. Ltd. w.e.f. 01.04.2017. An agreement for takeover of business as going



concern was made between the assessee and the purchaser company on 31.03.2017. A copy of said agreement is placed on paper book page 94 to 97. As per terms of this agreement, the vendor i.e. assessee would sale and the purchaser i.e. company buy all the assets and liabilities of proprietorship business excluding bank accounts. Further, the agreement provided that the purchaser should satisfy and discharge all the mortgage and other debts and liabilities of the vendor in respect of said business which subsists on the date of takeover. The purchase consideration would be balance of all the assets less liabilities as per the balance sheet as on 31.03.2017 except bank balances. Under the agreement it was provided that the purchaser company would pay the consideration in five years and would pay interest @ 18% per annum from 01.04.2017 till the date of the payment of outstanding balances. The purchaser company had not paid the purchase consideration till the end of the year under consideration and thus interest @ 18% was paid by the said company to the assessee for the period from 01.04.2017 to 31.03.2018, which amounted to Rs.1,31,57,660/-. This amount of the interest has been offered by the assessee in the return of income under the head 'income from other sources'.

6.1 But against such interest received the assessee claimed interest expenditure of Rs.1,30,73,008/- as deduction. It was claimed before the Assessing Officer that said sum on deduction represented the interest payment made by the assessee to various



persons against the loan taken from them. It was contended that unsecured loan outstanding in the books of proprietary concern M/s Rajwadi Emporium amounting to Rs. 8,48,94,091/- was transferred to capital account of the assessee in said proprietorship concern. It was explained that the interest expenditure claimed is the interest payment made on such loans taken by the assessee from his proprietary concern into his personal capital account before transfer of business to the private limited company.

6.2 The Assessing Officer rejected the contention of the assessee for the two reasons. **Firstly**, the interest expenditure claimed of Rs. 1,30,73,008/- was not for the purpose of earning the interest income and **secondly**, the assessee did not substantiate actual payment or credit by way of TDS details. On further appeal, the Ld. CIT(A) upheld the disallowance observing as under :

“5.4 The above submissions of the appellant have been carefully considered. It is the contention of the appellant that the unsecured loans were transferred to the capital account of the appellant just before the transfer of business to the Private Limited Company. However, it is seen that the unsecured loans existed in the balance sheet of the proprietorship concern of the appellant as on 31-03-2017. The agreement of transfer of business is for takeover of business as a going concern. All the assets and liabilities of the proprietorship concern except the bank balances would become the assets and liabilities of the purchaser. Accordingly, the purchaser has taken over the business along with the existing liabilities including the unsecured loans of the proprietary concern. Further, there is no reason why the unsecured loans should be retained by the appellant when the business is sold as a going concern. Also, the business run by the appellant is a proprietorship concern which does not have separate legal existence. Further, the appellant does not have any other business other than the proprietorship concern run in the name of M/s Rajwadi Emporium. That being the case, it becomes only academic whether the unsecured loans were transferred from the books of the proprietorship concern to the proprietor viz... the appellant.”



5.5 Further, it is claimed by the appellant that interest at the rate of 18% has been paid by the purchaser company M/s Rajwadi Emporium Private limited and the said amount was almost entirely paid out as interest at the rate of 18% to the unsecured lenders. If that were the case, it defies logic why the purchaser company did not pay the interest directly to such parties. The Assessing Officer has further noticed while concluding the assessment of subsequent year AY 2020-21, that the interest payments stated to be payable by the appellant to various parties are not actually been paid upto 31-03-2020. Further, the appellant has also not furnished any details with regard to the TDS made on such interest payments. In the given situation, the interest payments are not truly legitimate rather only employed as a strategy to lower the taxable income. Such interest cannot be treated as directly relatable to the interest income admitted to the head "Income from other sources". Only such expenditure laid out or expended wholly and exclusively for the purpose of earning the income admitted shall be allowed as a deduction u/s 57 of the Act. Since, the interest payments do not pass this test, it cannot be allowed as a deduction. Therefore, the order of the Assessing Officer is affirmed."

7. Before us, the Ld. counsel for the assessee referred to page 40 and 42 of paper book to support that the unsecured loans which were appearing in the books of proprietorship concern as liability were transferred to the capital account of the assessee in the books of said proprietorship concern. He further submitted that, the assessee received interest on the sale consideration of the proprietorship concern and which has been shown as income under the head 'income from other sources'. According to the Ld. counsel for the assessee, the interest payment incurred by the assessee in respect of loans was in respect of amount due from company and therefore, interest expenditure incurred was for the purpose of earning of the interest income and thus deduction is justified u/d 57 of the Act.



8. On the other hand, the Ld. Departmental Representative (DR) submitted that interest income has been earned in respect of late payment of sale consideration of the proprietary concern sold/transferred by the assessee, whereas the interest expenditure is in respect of loans taken earlier for the purposes of business of the proprietary concern but now stands transferred to the personal account of the assessee. The income from sale or transfer of the proprietary concern has not been shown under the head 'income from other sources'. Therefore, the loan taken for the purpose of proprietary concern sold now cannot be claimed as interest expenditure against the interest income received by the assessee for delayed payment of the sale consideration of the proprietary concern. Accordingly, he submitted that order of the lower authorities on the issue in dispute might be sustained.

9. We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute is in respect of deduction under the provisions of section 57 of the Act for interest expenditure incurred on loans appearing in the capital account of proprietary concern against the interest income received on delayed payment of sale consideration of said proprietary concern namely M/s Rajwadi Emporium. The expenditure incurred for realizing interest receipt is only allowed as deduction under the provisions of the Act, therefore, for claiming deduction, the onus was on the assessee to substantiate whether the interest expenditure has been



incurred for the purpose of earning the said interest income. In the case interest income has been earned on delayed payment of the sale consideration of the proprietorship concern, whereas the interest expenditure has been incurred on the loans which were taken by the proprietorship concern for its business purchases which later on transferred to the capital account of the assessee. Therefore, the interest expenditure is connected with the proprietorship concern which has been sold. Such interest expenditure is not connected in any manner with the interest which has been earned on the late payment of sale consideration by the purchaser company. The receipt of the sale consideration by the assessee in five years was as per the terms of contract between two parties and such interest income being revenue in nature has been correctly charged under the head 'income from other sources'. But the interest expenditure however being connected with the sale of proprietorship concern, which is liable for tax under the head 'capital gain' and thus the expenditure incurred for investment in the proprietorship concern is related to cost of the said proprietary concern to the assessee. Thus on this ground only the claim of the assessee is not allowable. Further, we find that assessee has failed to substantiate any deduction of the tax at source on such interest credited or actual payment of the interest to the parties. In absence of any documentary evidence to support that interest was either credited in the respective account of those unsecured loans donors



or paid by the assessee, the claim of the deduction is also not eligible for allowance in view of lack of the evidences.

9.1 In view of the above discussion, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and we accordingly uphold the same. All the grounds raised by the assessee are accordingly dismissed.

10. In assessment year 2020-21 also the identical issue of disallowance of interest expenditure against the interest income from M/s Rajwadi Emporium India P. Ltd has been raised, therefore, following our finding in assessment year 2018-19, the grounds raised in assessment year 2020-21 are also dismissed.

11. In the result, both the appeals of the assessee for assessment year 2018-19 and 2020-21 are dismissed.

Order pronounced in the open Court on 08/05/2024.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 08/05/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai