

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 100/JP/2024
निर्धारण वर्ष / Assessment Years : 2016-17

J. K. Jewellers, 8A Govindi House, Kanota Bagh Takteshahi Road, J. L. N. Marg, Jaipur	बनाम Vs.	Assistant Commissioner of Income Tax, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABFJ 7051 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. L. Poddar, Adv.
राजस्व की ओर से / Revenue by : Sh. Anoop Singh, Add. CIT

सुनवाई की तारीख / Date of Hearing : 03/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 25/06/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is because the assessee was dissatisfied with the order of the Commissioner of Income Tax (Appeals)-4, Jaipur dated 16/01/2024 [here in after Id. CIT(A)] for assessment year 2016-17, wherein the appeal of the assessee was partly allowed. That appeal before the Id. CIT(A) was filed by the assessee against the order dated 19.11.2018

passed under section 143(3) of the Income Tax Act, by ACIT, Central Circle-2, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

"1. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 29,51,790/- (2521290 + 430500/-) out of Rs.39,16,214/- u/s 57(iii) of the Income Tax Act, 1961 for disallowance of interest payment.

2. In the facts and circumstances of the case the learned CIT(A) has erred in not considering the submission of the assessee that all the interest expenses were incurred for earning of interest income.

3. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing."

3. Succinctly, the fact as culled out from the records is that the assessee firm is indulged in the business of trading and manufacturing of precious and semi precious stones including rough stones. The assessee e-filed its return of income for the AY 2016-17 on 11.10.2016 declaring total income at Rs. 64,08,610/-. The case of the assessee was selected for scrutiny u/s 143(3). Finally, AO completed the assessment vide order dated 19.11.2018 at a total income of Rs. 1,03,24,830/- by making an addition of Rs. 39,16,217/- on account of disallowance of interest expenditure claimed u/s 57(iii) was disallowed. While doing so the Id. AO contended that, there is no nexus between earning interest income with total of interest

expenditure and thus, interest expenditure cannot be considered to have incurred wholly and exclusively for the purpose of earning interest income. Therefore, the interest expenditure of Rs. 39,16,217/- (25,21,290 + 9,64,427/- + 4,30,500/-) claimed u/s 57 (iii) was added in the income of the assessee.

4. Aggrieved from the order of Assessing Officer, the assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

The appellant is engaged in the business of jewellery and during the year has taken loan on interest including bank OD and also advanced loans. Interest received is shown as income from other sources and appellant has reduced (netted) the interest paid out of interest received u/s 57(iii) of the Act. The appellant has made a combined submission on all the three additions done in the assessment order and further even though there is a reference to section 37(1) in the ground of appeal however there is no specific submission on the same as the submissions are on the issue of netting of interest in calculation of income from other sources. Further the appellant has not filed revised return of income to claim the same.

In the assessment order the addition has been done on broadly the three accounts as below:-

(i) Interest expenditure to the extent of Rs. 3,68,000/- and 21,53,290/- total ing to Rs. 25,21,290/- as not incurred wholly and exclusively for the purposes to earn the interest income of Rs. 1,49,14,621/- as per section 57(iii) of the Act.

(ii) proportionate interest expenditure aggregating to Rs. 9,64,427/- due to the fact that in some cases rate of interest charged is less than rate of interest on which loan is obtained by appellant and the same is disallowed as not incurred

wholly and exclusively for the purpose to earn the interest income as per section 57(iii) of the Act.

(ii) proportionate interest expenditure aggregating to Rs. 4,30,500/- is disallowed at the rate of 14% on interest free loans given by appellant as not incurred wholly and exclusively for the purpose of to earn the interest income as per section 57(iii) of the Act.

Issue (i)

As regards the interest expenditure to the extent of Rs. 3,68,000/- and 21,53,290/- totaling to Rs. 25,21,290, the relevant facts as noted in the assessment order are as under:-

On perusal of the ledger of IDBI O/D vis a vis ledger account of the persons from whom interest income has been shown, it is found that 3 persons out of total 15 has old loan with opening balance and balance 12 persons has been advance loan from IDBI O/D accounts. The details is summed up as under:

Sr.	Party	Amount	Rate	Nature of loan
1	Mahendra Kumar Agarwal	195343.00	12%	Old loan with opening balance
2	Okay Plus Builders LLP	2739559.00	15%	IDBI O/D accounts
3	Goverdhan Agarwal	300984.00	15%	IDBI O/D accounts
4	Rangoli Developers	1084808.00	12%	IDBI O/D accounts
5	Shree Krishna Vatika Colonizers LLP	522131.00	15%	IDBI O/D accounts
6	V K Enterprises	400000.00	12%	IDBI O/D accounts
7	Neemrana Developers	5610656.00	15%	IDBI O/D accounts

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8	Atul Krishna Modi	370492.00	12%	IDBI O/D accounts
9	Rajkumari Agarwal	166415.00	15%	IDBI O/D accounts
10	Gordhan Das Maheshwari	110250.00	13%	IDBI O/D accounts
11	Gopal Ansal	2700000.00	10%	IDBI O/D accounts
12	Jaimala Agarwal	207495.00	15%	IDBI O/D accounts
13	Swati Choudhary	12338.00	15%	Old loan with opening balance
14	Jaipur Multiplex Entertainment	80500.00	14%	IDBI O/D accounts
15	Vidushi Shukla	413650.00	15%	Old loan with opening balance
	Total	14914621.00		

From the above, it is evident that either the loans were advanced out of IDBI O/D account or are old one. However, the assessee has claimed interest expenditure on account of loan received from Smt. Manbhar Devi Agrwal and Sh. Chirag Gupta amounting to Rs. 3,68,000/- and Rs. 21,53,290/- respectively. These are fresh loan which were taken on 23.04.2015 and 26.05.2015 to 04.06.2015 respectively. Therefore, it is established that the loans received from these persons amounting to Rs. 50,00,000/- and 2,50,00,000/- were not advanced to the above mentioned persons which earned the interest income which has been offered under income from other sources.

In this regard the appellant has argued that they have overdraft facility in the IDBI Bank. The assessee has also used this overdraft facility to advance loans to other persons and earned interest income. It is further stated that amount received from Smt. Manbhav Devi Agarwal was paid to Shri Ritesh Agarwal partner of the firm. The loan amounts obtained from Shri Chirag Gupta were utilized for payment of another partner Shri Jugal Kishore Garg and for reducing the bank overdraft limit. It is also claimed that the amount received on 04.01.2016 from Shri Chirag Gupta was utilized for advancing a loan of Rs. 33,00,000/- to M/s Rangoli Developers from where the assessee has earned interest income and balance amount to reduce the bank limit and also for returning capital to the partners.

The OD facility from the IDBI Bank has been used by the appellant both for the purposes of use for the activities income from which is offered under the head income from business and profession and also for the activities income from which is offered under the head income from other sources. In the adjudication of the ground of Appeal what is to be seen is the interest paid and its nexus with the earning of interest income which has been offered under income from other sources,

It is undisputable that loan received from Smt. Manbhav Devi Agarwal was not used for earning of interest income which has been offered as income from other sources. No factual nexus has been established by the appellant and the same is not corroborated with the documents whereas in the assessment order detailed date wise analysis has been done. The appellant has not submitted any date wise fund flow statement. Thus no fault is found in the action of the Id. assessing officer in not allowing deduction of the interest paid to Smt. Manbhav Devi Agarwal while calculating the net interest income under the head income from other sources.

Further similarly is the situation regarding loan received from and interest paid to Shri Chirag Gupta as most of it as stated by the appellant itself has been used for activities other than advancing of loans income from which are offered under the head income from other sources. Appellant has also claimed that one instalment of loan from Shri Chirag Gupta was used to advance loan to M/s Rangoli Developers. However in the assessment order the deduction of interest paid by the appellant with respect to amount of loan advanced to M/s Rangoli Developers has already been allowed. Apparently as the same has been allowed in

connection with OD from IDBI bank and in case the same is shifted to loan from Shri Chirag Gupta, then equivalent amount of loan funds would be free from the IDBI Bank OD and accordingly equivalent amount of interest would be not allowable from that account in calculating net interest income and the effect is thus neutralizerther, even though this be boy claimed that such funds were used to advance loan to M/s Rangoli Developers however no factual nexus has been established by the appellant and the same is not corroborated with the documents whereas in the assessment order detailed date wise analysis has been done. The appellant has not submitted any date wise fund flow statement in this regard. The onus is on the appellant to show that incurring of expenditure has resulted in corresponding income taxable under the head 'income from other sources'. It needs to be specifically stated that scope of section 57(iii) vis-à-vis section 37(1) of the Act is different. There is much narrower scope of deductions eligible under section 57(iii) of the Act.

In the case of RRPR Holding (P.) Ltd. v. Deputy Commissioner of Income-tax, [2023] 152 taxmann.com 537 (Delhi Trib.)/[2023] 201 ITD 781 (Delhi Trib.)[22-06-2023], Hon'ble ITAT has held that

“17. Grounds Nos. 2 and 3 of the appeal of the assessee concerns disallowance of interest/financial charges to the extent amounting to Rs. 26,44,176/-, In the course of the assessment, the Assessing Officer inter alia noticed that the assessee has earned interest income on fixed deposits with ICICI bank to the tune of Rs. 31,85,254/- and claimed interest expenditure amounting to Rs. 26,03,379 arising from loans. The net interest income of Rs. 5,41,078/- was declared under the head income from other sources. The Assessing Officer denied the adjustment of interest expenses against the interest income earned on fixed deposits on the ground that interest expenses have not been incurred wholly and exclusively for the purposes of earning the interest on fixed deposits as provided under section 57 of the Act. The Assessing Officer inter alia observed that the cash flow statement furnished by the assessee proves that interest expenses were incurred for the loans taken by it which was utilized for making investment in shares of NDTV Ltd. and hence it has nothing to do with the earning of interest income which was earned subsequently on fixed deposits made out of sale proceeds by a part of investment in shares. The Assessing Officer thus added Rs. 26,44,176/- to the total income of the assessee.

18. In the first appeal, the CIT(A) noted distinction between the scope of section 57(m) vis-à-vis section 37(1) of the Act and found the action of the Assessing Officer to be in conformity with the provisions of the Act. The CIT(A) thus denied any relief to the assessee on this score,

19. Before the Tribunal, the Id. counsel has merely reiterated its contentions placed before the lower authorities without showing any nexus between the interest earned and corresponding interest expenditure as observed. The Revenue on the otheekand has clearly recorded a finding of fact that the interest expenditure has not given rise to the corresponding interest income. The interest

income has arisen independently out of fixed deposits fixed with bank, the source of which in turn is sale of investments. The interest expenditure on the other hand has been incurred on borrowings utilized for investment in acquisition of shares of NDTV Ltd. Thus, apparently the assessee has failed to discharge the onus which lays upon it to show that incurring of expenditure has resulted in corresponding income taxable under the head 'income from other sources'. In the absence of any linkages between the expenditure and the corresponding income, the Revenue Authorities have rightly disallowed the claims at interest expenses having regard to the narrower scope of deductions eligible under section 57(iii) of the Act. We hereby decline to interfere with the action of the Assessing Officer and the First Appellate Authority."

As held in the case of *Malankara Plantations Ltd.v.Assistant Commissioner of Income-tax, Kottayam* [2015] 64 taxmann.com 132 (Kerala) by Hon'ble Kerala High Court,

"6. As we have already stated, the income in question was returned as income from other sources. When an income has been returned as income from other sources, one of the heads of income provided in Section 40, deduction can also be only under the provisions in the same head of income. Therefore, in respect of income from other sources deduction of income is permissible only under Section 57, sub-section (iii) of which provides for deduction of any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly or exclusively for the purpose of making or earning such income. Evidently, this provision is not attracted in the case in question and, therefore, the Assessing Officer has rightly declined the claims of the assessee,"

In view of the above discussion addition of Rs. 25,21,290 as done in the assessment order is hereby sustained and the ground of Appeal in this regard is dismissed.

Issue (ii) and (iii)

These two issues pertain to proportionate interest expenditure aggregating to Rs. 9,64,427 and proportionate interest expenditure aggregating to Rs. 4,30,500, respectively.

Regarding issue (ii), the appellant has stated in this regard that the assessee has charged lesser interest and it cannot be disallowed by calculating notional interest without considering the other factual circumstances. The learned AO is not empowered to enter in to the shoes of the assessee to decide what to do or what to not do. It is only prerogative of the assessee to decide that the particular transaction is profitable or not. There are certain other factors which is to be considered for deciding the same. The some other business interest are also involved when the assessee lend surplus funds to other persons on lower rate of interest which cannot be measured in monetary terms.

It is observed that the interest has been disallowed on notional basis without any other supporting reason other than the lower rate of interest. There is no finding or allegation in the assessment order regarding deriving of any personal benefit by the partners of the firm or the use of the funds for any other personnel purposes. In view of the discussion this disallowance worked out by the Id. assessing officer in the assessment order is hereby directed to be deleted and the appellant succeeds on this ground.

Regarding issue (iii), the appellant has stated that Shri Mahendra Singh 2 Rathore and Poonam Chand Rawka is employee of the assessee firm and the assessee firm has made advances to employees for their personal needs/ requirements which is being recovered out of salary in subsequent period. So the advances are during the course of business and for the purpose of welfare and benefit of the employees of the company. Further advance given to M/s Govindi Devi Trust is advanced during financial year 2009-10 and still could not be recovered and assessee is in doubt whether this amount can be recovered or not.

In view of the submissions of the appellant it is undisputable that the funds have not been used by the appellant for earning of the interesting come which has been offered under income from other sources. The loan funds have been advanced and expenditure on such loan funds has been claimed as a deduction in computation of income under the head income from other sources whereas such loan funds have not been advanced for the purposes of earning of income taxable under the head income from other sources. Accordingly the interest paid on such loan funds which have been advanced to the above named two employees and the trust is not deductible in computation of the income fesoms other sources. The appellant has not shown which loans (direct nexusj obtained by the appellant have been utilized or further loaned to the employees accordingly there is no direct matching available and the calculation has been BA done in the assessment order at the rate of 14% which is found to be very much reasonable considering the fact that most of loans have been advanced by the appellant at the rate of 15% even though there are few loans at lower rates of interest as well. In view of the above discussion addition of Rs. 4,30,500 as done in the assessment order is hereby sustained and the ground of Appeal in this regard is dismissed.

Even though there is a general reference to section 37(1) in the ground of appeal however there is no specific submission on the same as the submissions are on the issue of netting of interest in calculation of income from other sources Further the appellant has not filed revised return, of income to claim the same. In the submissions the appellant has claimed that the funds were used for the business purposes however the same has not been substantiated with supportings. Further the appelalnt has himself accepted that interest expense was not incurred for business purpose u/s 37(1) of the Act by putting the same under head income from other sources u/s 57 of the Act. The issue requires going into the verification of facts of the case including the purpose for which the loans have been advanced and whether these fulfill the conditions laid down u/s 37(1) of the Act

and complete facts in this regard are not placed on record of appeal. The interest deduction is provided u/s 36 of the Act and the same is not claimable u/s 37(1) of the Act. Appellant is required to satisfy the provisions u/s 36 of the Act. Further there is no record in this regard that whether this claim was raised before the learned assessing officer during the assessment proceedings and in case the same was not raised before the learned assessing officer the justification for raising the issue for the first time in appeal proceedings has not been submitted for consideration. Accordingly this part of the ground of appeal is hereby rejected.

In view of the above discussion, this ground of appeal is hereby partly allowed.

5. The last ground of appeal is that appellant craves indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.

5.1 The appellant has not added and altered any of the above mentioned ground of appeal. Accordingly such mention by the appellant in its ground is treated as general in nature, not needing any specific adjudication and is accordingly treated as disposed off.

6. In the result, the appeal of the appellant is partly allowed.”

5. As the appeal of the assessee was considered only for the part amount of Rs. 9,64,427/-, the assessee for the sustained addition of Rs. 29,51,790/- preferred the present appeal raising two grounds of appeal challenging that sustained addition. To support these two grounds of appeal raised by the assessee, the Id. AR appearing on behalf of the assessee has placed their written submission on record which reads as under ;

“STATEMENT OF FACTS -

The assessee is a partnership firm engaged in the business of manufacturing and trading of precious and semi-precious stones, including rough stones. The assessee firm e-filed its return of income for A.Y. 2016-17 on 11/10/2016 declaring total income of Rs. 64,08,610/-. The case of the assessee was selected for limited scrutiny under CASS and notice u/s 143(2) was issued by the Learned Assessing Officer on 05/07/2017. The assessment stands completed on total income of Rs.1,03,24,830/-, vide order u/s 143(3) dated 19/11/2018, by making the following additions:

1.	Disallowance of interest paid to Smt. Manbhar Devi (Rs.368000) and to Shri Chirag Fuhta (Rs.2153290) totaling to Rs 25,21,290/- as mentioned in assessment order as not incurred wholly and exclusively for earning interest income u/s 57(iii)/37	Rs. 25,21,290/-
2.	Proportionate disallowance of interest paid to Rangoli Developers, VK Enterprises, AK Modi, Gopal Ansari holding that interest paid was in excess of interest rate charged	Rs.9,64,427/-
3.	Disallowance of interest to the extent of interest free advances made to M.S. Rathore, P.C. Ranwka and Govindidevi Trust	Rs. 4,30,500/-

2. Aggrieved with the assessment order, the assessee preferred appeal before the Learned CIT(A). The Learned CIT(A), vide appellate order dated 16/01/2024 in appeal No. ITBA/APL/M-1250/2023-24/1060041517(1), partly allowed the appeal of the assessee as under :-

S.No	Addition	Outcome of appeal
1	Addition by way of disallowance of interest of Rs.25,21,290/-	Addition sustained
2	Addition by way of disallowance of interest of Rs. 9,64,427/-	Addition deleted
3	Addition by way of disallowance of interest of Rs. 4,30,500/-	Addition sustained

The Learned CIT(A) has grossly erred in sustaining the addition made by the Learned Assessing Officer by way disallowance of interest of Rs. 25,21,290/- and Rs.4,30,500/- without appreciating the facts of the case and the submissions made by the assessee. The action of the Learned CIT(A) is unlawful, illegal and unjust.

3. Against the order of the Learned CIT(A), the assessee is in appeal before the Hon'ble Tribunal. The individual grounds of appeal are discussed hereunder :-

GROUND NO.1

In the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the addition of Rs. 29,51,790/- (2521290 + 430500) out of Rs 39,16,214/- u/s 57(iii) of the Income Tax Act, 1961 for disallowance of interest payment.

&

GROUND NO.2

In the facts and circumstances of the case, the Learned CIT(A) has erred in not considering the submission of the assessee that all the interest expenses were incurred for earning of interest income.

(A) Disallowance of interest of Rs. 2521290

4. The assessee firm is engaged in the business of precious and semi-precious stones, where the investment of huge funds is always in need. The firm consists of two partners, viz., Shri Jugal Kishore Garg and Shri Ritesh Agarwal. There are always heavy balances in the capital account of both the partners, on which firm pays interest @ 12%. As and when the partners press for withdrawal of funds, the firm has to take loans from private parties in order to provide funds to the partners. During the year under consideration, the assessee firm obtained loan as under :-

S.No	Name of the party	Amount of loan	Date of loan	Rate of interest
1	Smt. Manbhardevi	50,00,000	23/4/2015	1.2% per month
2	Chirag Gupta	50,00,000	26/5/2015	1.2% per month
		50,00,000	08/6/2015	-do-
		1,50,00,000	01/7/2015	-do-

In support of the above loans and also regarding payment of interest, copy of account of Smt.Manbhar Devi and Shri Chirag Gupta along with confirmation are available on Paper Book Page No.1-4.

The aforesaid loans were put to use as under :-

- (1) Smt. Manbhar Devi Agarwal loan taken on 23/4/2015 : Rs. 50,00,000/-

S.No	Name of party to whom advanced	Amount of advance	Date	Rate of interest
1	Ritesh Agarwal, partner	Rs.6800000 Including Rs. 50 lacs loan taken from manbhar Devi	24/04/2015	12%

Thus, the entire loan of Rs. 50,00,000/- taken from Smt. Manbhar Devi on 23/04/2015 was advanced the very next day to partner Shri Ritesh Agarwal. In support of this, copy of bank account with IDBI Bank is available, where both the entries of loan taken and given are appearing on the relevant date.

(2) Loan taken from Shri Chirag Gupta (Rs.2,50,00,000) (Rs.50,00,000 on 26/5/2015, Rs.50,00,000 on 08/06/2015 and Rs.1,50,00,000 on 01/07/2015

S.No	Name of party to whom advanced	Amount of advance	Date	Rate of interest
1	Jugal Kishore Garg	Rs.5300000 (incl Rs. 50 lacs loan taken from Chirag Gupta	30/05/2015	12%
2	Jugal Kishore Garg IDBI Loan account	Rs. 10 lacs Rs.33,59,492	09/06/2015 10/06/2015	12% 13%
3	Jugal Kishore Garg Rajkumari Agarwal Rajkumari Agarwal IDBI Loan account	Rs.3500000 Rs.2230000 Rs.3300000 Rs.3359492	06/07/2015 07/07/2015 07/07/2015 09/07/2015	12% 15% 15% 13%

In support of the aforesaid transactions, copy of IDBI bank account is available on Paper Book Page No.5-15.

4.1 It is submitted that the Learned Assessing Officer disallowed the payment of interest made to Smt. Manbhar Devi and Chirag Gupta on the ground that assessee was not able to show the utilization of these funds for the purposes of business. The Learned CIT(A) sustained the addition made by the Learned Assessing Officer on the same ground without appreciating the facts of the case. It is submitted that the partners in the firm namely Shri Jugal Kishore Garg and Ritesh Agarwal have large capital invested in the firm, on which firm is allowing rate of interest of 12%. During the year under consideration also, the firm has paid interest to Shri Jugal Kishore Garg of Rs. 55,71,134/- and to Shri Ritesh Agarwal of Rs.38,51,640/-. The same is apparent from the copies of account of these persons, copies of which are available on Paper Book Page No. 16-23. It is further submitted that both these partners have disclosed these interest income in their return of income. Copy of returns of income along with computation of income are available on Paper Book Page No.24-30. The submission of the assessee is that the loan taken 23/04/2015 from Smt. Manbhar Devi was wholly advanced to Shri Ritesh Agarwal on 24/04/2015. By advancing loan to Ritesh Agarwal, the assessee firm has reduced its interest liability accordingly as the firm was paying interest @ 12% to Shri Ritesh Agarwal on his capital balance with the firm. When the firm has returned amount to the extent of Rs. 50 lacs, it has reduced its interest liability accordingly. Therefore, it is established beyond doubt that the loan amount of Rs. 50 lacs taken from Smt. Manbhar Devi was used for purposes of business and for reducing liability of interest. In view of this, the Learned Assessing Officer as well as the Learned CIT(A) are on incorrect footing in making and sustaining addition of Rs.3,68,000/- on account of interest disallowed, which was paid to Smt. Manbhar Devi. However, it is submitted that interest paid to Smt. Manbhar Devi is @ 1.2 per month whereas interest paid to partner is @ 1.1% per month. Thus, the difference is hardly of 0.2% in making payment of interest to Manbhar Devi. In business, these considerations are of trival nature when the volume is too high. Therefore, it is submitted that the disallowance of interest of Rs. 3,68,000/- paid to Smt. Manbhar Devi may kindly be deleted.

4.2 The position in respect of payment of interest to Shri Chirag Gupta is not different. Interest has been paid to Shri Chirag Gupta also @ 1.2% per month totaling to Rs. 21,53,290/-. In his case, the money taken as loan from has been largely advanced to Jugal Kishore Garg, partner and to his wife, Smt. Raj Kumari Agarwal. The interest paid to partner is @ 12%. It is submitted that out of loan taken from Shri Chirag Gupta, a sum of Rs. 45 lacs (Rs. 10 lacs on 09/06/2015 and Rs. 35,00,000 on 06/07/2015) has been advanced to Shri Jugal Kishore Garg, partner. The assessee firm is paying interest to Shri Jugal Kishore partner on his capital @ 12%. By making payment of above Rs. 45 lacs to Shri Jugal Kishore partner, the assessee firm has reduced its liability of

interest to the extent of this amount. In other words, the assessee firm shall be paying lesser interest to Shri Jugal Kishore Garg. During the year under consideration, the assessee firm has paid interest of Rs. 55,71,134/-. This payment of interest would have been more if the assessee firm had not returned amount to the extent of Rs. 45 lacs as noted above. In that case, assessee firm had to incur interest on Rs. 45 lacs also and pay to Shri Jugal Kishore Garg accordingly. The sum and substance of the submission of the assessee is that by making payment of Rs. 45 lacs to Shri Jugal Kishore Garg, the assessee firm has saved interest @ 12% on this amount.

4.3 The assessee firm has also used the loan taken from Shri Chirag Gupta by advancing a sum of Rs. 55,30,000/- (Rs.2230000 + Rs.3300000) to Smt. Raj Kumari Agarwal on 07/07/2015. The assessee firm has charged interest @ 15% from Smt. Rajkumari Agarwal. Therefore, it cannot be said that loan taken from Shri Chirag Gupta has not been used for earning interest. The assessee firm has paid interest @ 1.2% to Shri Chirag Gupta whereas interest has been charged from Smt. Raj Kumari Agarwal @ 1.25%. In view of this, the Learned Assessing Officer was not justified in disallowing payment of interest made to Shri Chirag Gupta.

4.4 It is submitted that the loan taken from Shri Chirag Gupta is of Rs. 2.50 crores. Out of this, 45 lacs have been used in advancing money to Shri Jugal Kishore Garg and Rs.55,30,000/- to Smt. Raj Kumari Agarwal, both totaling to Rs. 1,00,30,000/-. It is submitted that the balance amount was used as under :-

Returned to IDBI Loan account on 10/6/2015 : Rs.33,59,492

(A/c No.0298675100000833)

Returned to IDBI Loan account on 10/7/2015: Rs.33,59,492

(A/c No.0298675100000833)

Rs.67,18,984

The amount was returned to IDBI Loan account No. (A/c No.0298675100000833) , on which interest was being paid @ 13%. In support of the loan from IDBI Bank, sanction letter dated 30/09/2013 is available on Paper Book Page No.31-34, which also evidences payment of interest @ 13%. It is submitted by making payment in the IDBI Loan account, the assessee has saved payment of interest which is @ 13%. In view of this, the total funds used out of loan taken from Shri Chirag Gupta are as under :-

(i)	Jugal Kishore Garg	Rs.45,00,000
(ii)	RajKumari Agarwal	Rs.55,30,000
(iii)	IDBI Loan account	<u>Rs.67,18,984</u>
		Rs.1,67,48,984/-

Balance amount of Rs.82,51,016/- continued to be in the OD Bank account No.0298102000018513 and was used for business purposes. It is further submitted that OD account also carried interest @ 13%. In view of this, the funds taken on loan from Shri Chirag Gupta were used in the above manner for purposes of business. Considering the above facts the Learned Assessing Officer as well as the Learned CIT(A) were not justified in making and sustaining addition of Rs. 21,53,290/- on account of disallowance of interest paid to Shri Chirag Gupta.

4.5 In view of the discussion made above, the hon'ble ITAT is humbly requested to delete the entire addition of Rs 25,21,290/-. (Rs.2153290 + 368000).

Disallowance of interest of Rs 4,30,500/-

5. The Learned Assessing Officer has made disallowance of interest of Rs. 4,30,500/- on the premise that the assessee had given interest free advances to Shri Mahendra Singh Rathore (Res.8750000) Poonamchand Ranwka (Rs.1500000) and Govindi Devi Trust (Rs.700000). In this regard, it is submitted that Shri Mahendra Singh Rathore and Shri Punamchand Ranwka happened to be old, sincere and devoted employees of the firm. In consideration of their past services as well as promoting them for better performance in future, the firm extended a helping hand in times of need by providing interest free loans. The interest free loan also serves the purposes of business as the same was advanced to employees for winning their confidence and encouraging them for better performance. Therefore, it cannot be said that the loans to the employees were given without any consideration of business. It is submitted that employees work for business and any amenity or facility granted to them is only in order to facilitate the conduct of business. By promoting the employees, business is promoted. Hence, the Learned Assessing Officer as well as the Learned CIT(A) were not justified in making the addition and confirming the same by disallowing the interest on loan taken in proportion to loans advanced interest-free to employees. It is further submitted that loan was granted to Govindi Devi Trust, recovery from the same is difficult, not to speak of any interest. The assessee shall account for the interest as and when the amount is recovered and interest is received. Disallowance on notional basis deserves to be deleted. The following case-laws are quoted in support :-

- (i) Madhav Prasad Jatia Vs. CIT
(1979) 118 ITR 200 (SC)
- (ii) LM Thaper Vs. CIT
(1988) 173 ITR 577.
- (ii) Mysore Kirloskar Ltd Vs. CIT
(1987) 166 ITR 836.

The employees of today may become the ex- employees tomorrow. Any expenditure laid out or expended for their benefit, if it satisfies the other

requirements, must be allowed as deduction under s. 37(1). The fact that somebody other than the assessee is also benefited or incidentally taken advantage of by the provision made, should not come in the way of the expenditure being allowed as a deduction under s. 37(1).

In view of the above facts and circumstances of the case and case laws cited, the Hon'ble Tribunal is requested to consider these facts and delete the addition.

GROUND NO.3

The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

The Hon'ble Tribunal is requested to consider the the submissions made and case-laws cited and decide the appeal in favour of the assessee and oblige.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No	Particular	Page no.
1.	Copy of confirmation and copy of account of Smt. Manbhar Devi	1-2
2.	Copy of confirmation and copy of account of Shri Chirag Gupta	3-4
3.	Copy of bank account with IDBI	5-15
3.	Copy of account of Shri Jugal Kishore Garg	16-17
4.	Copy of account of Shri Ritesh Agarwal	18-23
5.	Copy of IT return and computation in the case of Shri Jugal Kishore Garg	24-27
6.	Copy of IT return and computation in the case of S nhri Ritesh Agarwal	28-30
7.	Sanction letter of loan from IDBI dt. 30/9/2013	31-34

7. The Id. AR of the assessee submitted that considering the nature of business of the assessee being precious and semi-precious stones requires huge funds. The investment requirement is fulfilled by the partners from

their capital and also has to borrow from the market as and when required. During the year under consideration the assessee has borrowed Rs. 50 lac from Smt. Manbhardevi and Rs. 2.5 cr from Shri Chirag Gupta on various dates. In support of these loans the assessee submitted all the details such as confirmation loan and copy of ledger account from the books of the assessee was submitted. The loan so taken from Smt. Manbhar Devi was used to repay the capital invested by Ritesh Agarwal. The money so borrowed from the Chirag Gupta was utilized for payment of IDBI loan account, Payment to Rajkumari Agarwal and Shri Jugal Kishor Garg as withdrawal partner of the firm, out of the capital lying in the firm. The interest paid to Smt. Manbhar Devi and Shri Chirag Gupta was disallowed on the grounds that the assessee was not able to show the utilization of the money so borrowed. Whereas all the details were placed on record regarding the borrowing and the utilization of the money so borrowed. Merely the assessee has reduced the loan account and paid the money to partner against their capital balance the money so borrowed being for the purpose of the business disallowance of interest was made without appreciating the nature of business of the assessee and the business expediency of the assessee firm. The disallowance is based on the surmises and conjecture and the same cannot be disallowed. During the

year under consideration the assessee has received interest for an amount of Rs. 1,49,14,621/- the assessee has also claimed the interest expenses against that receipt for an amount of Rs. 39,16,217/- out of which the Id. CIT(A) has allowed the claim to the extent of Rs. 9,64,427/- only. But because the money so received were used for the purpose of earning the business income or that of the interest income is deductible u/s. 57(iii) or that of under business income alternatively is allowable for an amount of Rs. 25,21,290/-. As regards the interest disallowance of Rs. 4,30,500/- calculated on the interest free loan amount given the Id. AR of the assessee submitted that interest free loan were given to Shri Mahendra Singh Rathore (Rs.8750000) Shri Poonamchand Ranwka (Rs.1500000) and Shri Govindi Devi Trust (Rs.700000). On these loan he submitted that Shri Mahendra Singh Rathore and Shri Punamchand Ranwka happened to be old, sincere and devoted employees of the firm. In consideration of their past services as well as promoting them for better performance in future, the firm extended a helping hand in times of need by providing interest-free loans. The interest free loan also serves the purposes of business as the same was advanced to employees for winning their confidence and encouraging them for better performance. Therefore, it cannot be said that the loans to the employees were given without any consideration of

business. It is submitted that employees work for business and any amenity or facility granted to them is only to facilitate the conduct of business. As regards the given to Govindi Devi Trust, recovery from the same is difficult, not to speak of any interest. The assessee shall account for the interest as and when the amount is recovered, and interest is received.

8. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR vehemently argued that there were two reasons upon which the Id. CIT(A) has sustained. The first is based on the finding of the fact that the loans upon which the interest is received were advanced out of IDBI O/D account or are old one and has not relation to the interest expenditure claimed by the assessee as the interest paid to Manbhar Devi Agarwal and Shri Chirag Gupta are fresh loans and there is no nexus of the interest income with that of the expenditure and therefore, the same has rightly been denied to the assessee u/s. 57(iii) of the Act. Alternatively the assessee also argued that the fund has been used from the IDBI bank account and the therefore, the money were either deposited in the that OD account or used to allow the withdrawal of capital of the

partner and the same is being business expediency that interest but since the assessee has claimed the said interest u/s. 57(iii) the same cannot be allowed and Interest in respect of Rangoli Developers has already been allowed considering the explanation of the assessee. As regards the oral arguments of the Id. AR of the assessee, the same be allowable under the head business income cannot be considered at this stage as the same was not claimed by the assessee before the lower authority. As regards the interest disallowed on the interest free loans he relied upon the finding recorded in the orders of the lower authority.

9. In the rejoinder the Id. AR of the assessee submitted that the assessee has provided the complete details of the use of fund and the nexus is established for the purpose of which the income is already taxed. The fund of the assessee is common merely the same is claimed against the other income the disallowance made is not correct. The Id. AR of the assessee submitted that there is clear finding of the Id. CIT(A) that the loan for which interest income is accounted is given from the IDBI OD account of the earlier year and the same is either of the loan of the IDBI or that of the partners capital account be allowable against the interest income and there is no necessity to clearly established the nexus but the indirect nexus

is against the interest income the assessee is made the expenditure of interest and the same be allowed.

10. We have heard the rival contentions and perused the material placed on record. The apple of discord in this appeal is whether the disallowance of interest of Rs. 29,51,790/- claimed by the assessee against the interest income of Rs. 1,49,14,621/- is correct or not?

11. The facts related to the dispute as emerges from the order of the lower authority is that the assessee has offered the interest income of Rs. 1,49,14,621/- and as against that income assessee claimed interest expenditure of Rs. 39,16,217/- was claimed by the assessee as per provision of section 57(iii) of the Act. In the assessment proceeding the Id. AO contended that there is no nexus between the interest income with that of interest expenditure and therefore, the same was disallowed and since the assessee also advanced the interest free advance disallowance of interest of Rs. 4,30,500/- was also made and the same was sustained by the Id. CIT(A) too for an amount of Rs. 29,51,790/-.

12. As regards the disallowance of interest of Rs. 25,21,290/-, the brief fact is that the assessee has borrowed the money from Smt. Manbhar Devi a sum of Rs. 50 lac upon which interest of Rs. 3,68,000/- claimed. The assessee borrowed the money on 23.04.2015 and on 24.04.2015 Rs. 68,00,000/- was withdrawn by the partner of the firm. So the Id. AO and that of the Id. CIT(A) noted that the interest so paid has not relation to the interest income offered by the assessee. The assessee also borrowed a sum of Rs. 2,50,00,000/- from Shri Chirag Gupta on three different dates on 26.05.2015 [Rs. 50 lac], 08.06.2015 [Rs 50 lacs] and on 01.07.2015 [Rs. 1.5 cr]. On that borrowing the assessee has paid a sum of Rs. 21,53,290/-. The money so borrowed on these dates were claimed to be used for paying Rs. 53 lac on 30.05.2015 and Rs. 10 lac on 09.06.2015 to Shri Jugal Kishor Garg a partner of the firm and the balance amount was used to pay IDBI OD account and payment to Shri Rajkumari Agarwal. While confirming the said interest payments to these two parties the Id. CIT(A) noted by way of chart that the interest income of Rs. 1,49,14,621/- were either out of the loan advanced from the IDBI OD account or are of the old advance. So he contended that the interest paid by the assessee to these two parties i.e. Smt. Mahbhar Devi and Shri Chirag Gupta were not used to earn interest income under the same head interest from other

sources. On this aspect of the matter the bench we have gone through the case records and the finding recorded in the orders of the lower authority and at this stage we would like to reproduce para 4.3 and para 4.4 of the assessment order and the same reads as under:

- 4.3 The above details shows that, assessee has earned total interest income of Rs. 1,49,14,621/- as against which total interest expenditure claimed u/s 57(iii) amounted to Rs. 1,35,39,888/-, resulting into interest income under head income from other sources amounting to Rs. 13,74,733/-.
- 4.4 Further, it is also found that the assessee has claimed interest expenditure of Rs. 1,10,18,598/- on account of IDBI O/D account. Accordingly, the assessee was asked to explain how the same has direct nexus with interest income vide notice dated 29.10.2018, he was also asked to furnish ledger account of IDBI O/D which was submitted by the assessee on 03.11.2018.

13. As it is evident that the Id. AO and that of the Id. CIT(A) has no objection of the assessee claiming the interest paid to IDBI OD account loan which is used for the business purpose as well as for advancing the money to be claimed u/s. 57(iii) of the Act but has objection of the assessee claiming deduction of the money borrowed from the private party for which interest is claimed at Rs. 25,21,290/- and said fund being common used for withdrawal of partner, payment to reduce the OD account and payment to one Smt. Rajkumari Agarwal from whom interest @ 15 % is received as against 14 % paid. Thus, the use of the fund being common

and are arise from the common fund and the assessee in net earned interest income of Rs. 13,74,733/- [para 4.3 of AO]. There is no basis to disallow the fund merely on the aspect that there is no direct nexus but since based on the facts discussed here in above that the funds directly or indirectly comes from the said IDBI OD account and routed through that account and regards the interest chargeable to partners balance where the law allows the interest @ 12 % and can recover the same at that rate. But in this case the firm has paid interest to the partners and money withdrawn has suffered the recovery and therefore, the disallowance on that count also not possible to sustain. Based on the discussion recorded here in above we direct to delete the disallowance of interest of Rs. 25,21,290/-.

14. As regards the notional interest disallowed for an amount of Rs. 4,30,500/-. The facts is that the assessee has advanced the money of Rs. 8,75,000/- to Shri Mahendra Singh Rathore, Rs. 15,00,000/- to Shri Poonam Chand Ranwaka and Rs. 7,00,000/- to Smt. Govindi Devi Trust. On all these money being interest free advances notional interest @ 14 % was calculated and was disallowed for a sum of Rs. 4,30,500/-. The advances made to first two person being the employees of the assessee

firm the interest at most be considered as perquisite and the same is allowable to the assessee as part of salary and thus, the same has neutral effect there is no basis for making the disallowance of advances given to employees of the assessee and the same is directed to be deleted. So far as the interest notionally computed for the advances given to Smt. Govindi Devi Trust the money has been advanced in the year 2009-10 and there is no finding in the order of the lower authority that the money so advanced in 2009-10 are from the interest-bearing fund. Not only that in the year under consideration the net result being positive income there is no basis to sustain the interest disallowance on that amount. Based on the observation so recorded we do not see any merit in sustaining the addition of Rs. 4,30,500/- and the same is directed to be deleted.

15. In the result the disallowance of interest sustained by the Id. CIT(A) to the extent of Rs. 29,51,790/- is directed to be deleted. Thus, ground no. 1 & 2 raised by the assessee is allowed. Ground no. 3 being general in nature does not require any our adjudication.

In terms of these observations, the appeal of the assessee is allowed.

Order pronounced in the open court on 25/06/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/06/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- J. K. Jewellers, Jaipur
2. प्रत्यर्था / The Respondent- ACIT, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 100/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar