

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 330, 331 & 332/Ahd/2020

(निर्धारण वर्ष / Assessment Years : 2014-15, 2015-16 & 2016-17)

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| Girishbhai Vadilal Shah 139, V R Shah Smruti Shikshan Mandir, Nr. Dharnidhar Derasar, Vasna, Ahmedabad, Gujarat, 380007 | बनाम/ Vs. | DCIT Circle – 4(1)(2), Ahmedabad |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABJPS3102P | | |
| (Appellant) | .. | (Respondent) |

| | |
|-------------------------------------|--------------------------------|
| अपीलार्थी ओर से /Appellant by : | Shri Jaimin Shah, AR |
| प्रत्यर्थी की ओर से/Respondent by : | Ms. Saumya Pandey Jain, Sr. DR |
| Date of Hearing | 26/06/2024 |
| Date of Pronouncement | 15/07/2024 |

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These three appeals are filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-8, Ahmedabad, (in short the ‘CIT(A)’), (in short ‘the CIT(A)’ all dated 16.03.2020 for the Assessment Year 2014-15, 2015-16 and 2016-17. As the issues involved in the three appeals are common, they were heard together and are being disposed vide this common order.

2. All the three appeals were filed with a delay of 30 days, which was falling within the Covid pandemic period. Hence, the delay in filing the appeals is condoned.

3. These appeals were initially decided by this Tribunal ex-parte on 12.10.2022. Thereafter, the assessee had filed Miscellaneous Applications which were decided in M.A. No. 33 to 35/Ahd/2023 dated 26.07.2023 and all the three orders dated 12.10.2022 were recalled for the reason that the assessee's appeal for A.Y. 2013-14 was still pending before the ITAT for adjudication.

ITA No. 330/Ahd/2020

4. ITA No. 330/Ahd/2020 is taken as the lead case and the facts are discussed in detail. The assessee has taken the following grounds in this appeal:

- “1. That the Ld. CIT(A) has erred both in law and on facts while sustaining the disallowance of interest expenses of Rs. 21,13,971/- u/s 57(iii) of the I.T. Act. 1961 which is requires to be deleted.*
- 2. That the Ld. CIT(A) has without considering the facts and circumstances of the case disallowed interest expenses of Rs.21,13,971/- is against the principal of natural justice and therefore It requires to be deleted.*
- 3. That the Ld. CIT(A) has sustained the disallowance of notional interest of Rs. 21,13,971/- on adhoc basis with certain assumptions and presumptions and also without doubting genuineness of the transactions is against the documents available on records and against the provision of law. Therefore the addition sustained of Rs. 21,13,971/- may please be deleted.*

4. *That the Ld. CIT(A) has disallowed the Interest expenses of Rs. 21,13,971/- without considering the facts that the Interest paid to the persons are paying tax on their respective income which amounts to double taxation, which is against the principal of law and natural justice. Therefore addition sustained by CIT(A) for Rs. 21,13,971/- may please be deleted.*
5. *Without Prejudice to the above grounds of appeals, The Ld. CIT(A) has allowed our plea in para 6.3.1 that notional interest on account of loan given to Shri Harmish G Shah is deleted. However while calculating disallowances by Ld. CIT(A) in para 6.6 deducted Rs.21,31,971/-out of Rs. 77,15,185/-i.e. without deducting notional interest on Harmish G Shah as per finding of CIT(A) in para 6.3.1 is required to be recalculated after deducting Rs.47,37,840/- out of Rs. 77,15,185/-."*

5. The brief facts of the case are that the return of income for A.Y. 2014-15 was filed on 31.07.2014 declaring total income of Rs.67,60,019/-. In the course of assessment proceedings, the AO found that the assessee had earned interest income of Rs.2,03,85,303/- against which interest expenses of Rs.1,71,57,630/- was claimed as deduction and net interest income of Rs.32,27,673/- was offered for taxation. The AO observed that the assessee had paid interest on the unsecured loan @ 12% per annum on majority of the loans taken and had also paid interest at lower rates in few cases. It was also observed that most of the persons to whom interest was paid @ 12% were persons specified under Section 40A(2)(b) of the Income Tax Act, 1961 (in short 'the Act'). Further, it was noticed that the assessee had paid interest @ 12% to his son's HUF but no interest was charged from his son in individual capacity against whom there was closing balance of Rs.3,94,82,000/-. However, the assessee was charging interest between 0% to 9% per annum only,

on the loans advanced by him. In view of these facts, the AO held that interest expenses claimed as deduction by the assessee under Section 57(iii) of the Act was not allowable in full as they were not laid out wholly and exclusively for the earning of interest income that was offered to tax. According to the AO, the interest payment @12% on the advances taken, can't be held as laid out wholly and exclusively for the earning of interest at less than 12% rate on the advances given. Therefore, the AO disallowed an amount of Rs.77,15,185/- out of interest expenses claimed by the assessee under Section 57(iii) of the Act and added to the income.

6. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which was decided vide the impugned order. The Ld. CIT(A) held that disallowance as made by the AO under Section 57(iii) of the Act was incorrect as no finding was given by the AO that the loans on which higher interest rate was paid were not utilized for earning interest income. According to the Ld. CIT(A), the AO should have invoked the provisions of Section 58(2) r.w.s. 40A(2) of the Act and only disallowed the excess and unreasonable expenditure. The Ld. CIT(A) found that the assessee had taken loan at the rate of interest 12% per annum from its family members who were covered under Section 40A(2) of the Act, which was held as excessive and unreasonable considering the facts that loan at the rate of interest 8.5% was taken from other parties. Accordingly, the Ld. CIT(A) held that 1/4th of the total interest paid to such related parties was

excessive and accordingly interest of Rs.21,13,971/- was disallowed under Section 58(2) r.w.s. 40A(2) of the Act. Accordingly, the disallowance as made by the AO was restricted to this extent.

7. Shri Jaimin Shah, Ld. AR for the assessee submitted that the AO had made disallowance under Section 57(iii) of the Act on the ground that the interest payment as made by the assessee was not laid out or expended wholly and exclusively for the purpose of earning interest income. He submitted that identical issue was involved in the assessee's own case in A.Y. 2013-14 which was decided by the *Ld. Tribunal in ITA No. 429/Ahd/2018, dated 15.03.2024* and the disallowance of interest expenses under Section 57(iii) of the Act was held as incorrect and unwarranted. The Ld. AR contended that the issue involved in this year was identical to the facts of the preceding year. On the applicability of provision of Section 40A(2)(b) of the Act as applied by the Ld. CIT(A), the Ld. AR submitted that the interest rate of 12% cannot be held as excessive and, therefore, no disallowance was called for. The Ld. AR also relied upon the decision of this Tribunal in case of *M/s. Laxmisagar Tradelink Pvt. Ltd. in ITA No. 1476/Ahd/2018 dated 15.03.2021* in support of his contention that the interest paid @12% was not excessive and no disallowance under Section 40A(2)(b) of the Act was called for.

8. Per contra, Ms. Saumya Pandey Jain, Ld. Sr. DR appearing for the Revenue submitted that the issue involved in the current year is distinct from the issue as decided in A.Y. 2013-14.

According to the Ld. Sr. DR, the AO had invoked the provision of Section 57(iii) in A.Y. 2013-14 which was upheld by the Ld. CIT(A) but the Ld. ITAT held that as the nexus between the expenditure incurred and the income earned was established, no disallowance under Section 57(iii) should have been made. The Ld. Sr. DR emphasized that in the current year the Ld. CIT(A) had given a categorical finding that disallowance made by the AO under Section 57(iii) of the Act was incorrect. Rather, the Ld. CIT(A) had upheld disallowance of only 25% of the interest paid to related parties under Section 58(2) r.w.s. 40A(2) of the Act. Thus, the finding of the Ld. Tribunal in the A.Y. 2013-14 cannot be imported to the current year as the addition was confirmed by the Ld. CIT(A) in altogether under different section of the Act. The Ld. Sr. DR further submitted that the interest paid to the related parties were certainly excessive considering the market rate of interest and also the interest paid by the assessee to other parties and, therefore, the disallowance as made under Section 58(2) r.w.s. 40A(2) of the Act was correct. She also relied upon the following judicial pronouncements in this regard:

- i. CIT vs. H R. Sugar Factory (P.) Ltd., [1990] 53 Taxman 63 (Allahabad)*
- ii. CIT vs. Accelerated Freeze Drying Co. Ltd., [2011] 10 taxmann.com 108 (Kerala)*
- iii. Netra Software Technologies (P.) Ltd. vs. ACIT (CPC), [2022] 138 taxmann.com 309 (Bangalore-Trib.)*

9. We have carefully considered the rival submissions and perused the materials on record. There is no dispute to the fact that disallowance of Rs.77,15,185/- as made by the AO under Section 57(iii) of the Act was not correct. The assessee had utilized the loans taken at higher interest rate to advance loan at lower interest rates and, therefore, the nexus between the two loans was clearly established. Therefore, it cannot be held that the expenditure was not laid out or expended for the purpose of earning of interest income. The Co-ordinate Bench of this Tribunal has already held in the assessee's own case in A.Y. 2013-14 (supra) that the disallowance of interest expenses under Section 57(iii) of the Act was incorrect and unwarranted.

10. The moot issue to be decided in this case is whether any disallowance of interest expenditure can be made under Section 58(2) of the Act as upheld by the Ld. CIT(A). The provision of Section 58 of the Act is found to be as under:

58. Amounts not deductible.

(1) Notwithstanding anything to the contrary contained in section 57, the following amounts shall not be deductible in computing the income chargeable under the head "Income from other sources", namely-

.....

(2) The provisions of section 40-A shall, so far as may be, apply in computing the income chargeable under the head "Income from other sources" as they apply in computing the income chargeable under the head "Profits and gains of business or profession". (emphasis supplied)

From the bare reading of this provision, it is evident that Section 58 of the Act has an overriding effect on the deduction as admissible under Section 57 of the Act. Therefore, the provision of Section 40A of the Act has to be mandatorily applied while

examining any claim of deduction as made under Section 57(iii) of the Act.

11. There is no denial to the fact that the assessee had paid interest to his relatives at higher rate than interest rate as paid to the unrelated parties. The Ld. CIT(A) has given the following finding in this regard in his order:

“6.4 The appellant furnished a calculation pertaining to the average rate of interest that was paid by it to various parties. It was found that the average value of unsecured loan taken was Rs 20,60,49,838/- and interest paid was Rs.1,71,57,630/-. So the average rate of interest of taking loan comes to be 8.33% Further, it is seen that the overall appellant has earned interest income of Rs.32,27,673/- despite having paid interest to certain parties as higher rates. However, it is also a fact that the appellant paid interest @ 12% to several persons that were related u/s 40A(2)(b) of the Act. Other 3 parties Mehta' (Total Loan Rs 5,00,000/-) were not found to be under 40A(2)(b) of the Act by the AO. Details of loans from such parties are as under:

| Sr. No. | Name | Loan as on 31.03.2014 | Interest | Rate of Interest |
|---------|-------------------------|--------------------------|----------|---------------------|
| 1 | Bina M Shah | 8587657 | 962157 | 12% |
| 2 | Girishbhai V Shah(HUF) | 11798826 | 1276826 | 12% |
| 3 | Hansaben G Shah | 5183337 | 568337 | 12% |
| 4 | Harmishbhai G Shah(HUF) | 3963747 | 429747 | 12% |
| 5 | Kalpanaben V Shah | 6967820 | 697820 | 12% |
| 6 | Kinnariben A Shah | 518569 | 55569 | 12% |
| 7 | Mimishbhai G Shah | 23731824 | 2394824 | 12% |
| 8 | Mimishbhai G Shah(HUF) | 5943421 | 664421 | 12% |
| 9 | Nipaben H Shah | 13060684 | 1406184 | 12% |
| | Total | 79755885 | 8455885 | |

*6.4.1 This is also an incontrovertible fact that the appellant is engaged in activity where it is taking interest on loan advanced and paying interest on other set of loans earning income on interest u/s 57. However, the AO has not given any finding that the said loans on which higher rates of interest was paid were not utilized for earning interest income. AO only found that the rate of interest paid was comparatively higher and therefore excessive and unreasonable. Therefore disallowance u/s 57(iii) was incorrect. However Section 58(2) r w Section 40A(2) talks about disallowance of any expenditure which is **excessive and unreasonable** having regard to the fair market value of goods, services or facilities.*

6.4.2 The AO has while making the said addition noticed and considered this fact that the higher rate of interest than paid to other parties are mentioned in section 40A(2)(b). He has adjudged that the interest paid is higher than it should have been paid by the appellant. However to arrive at the quantum of such excessive disallowance he has actually charged notional interest on loans advanced to the related parties. Here it is uncontroverted fact that unsecured loans were taken with several parties @ rates ranging from 6%, 8%, 8.5% and 12% Loans amounting to Rs 22,67,99,016/- are taken at such rates Loans amounting to Rs 22,48,00,614/- were given 8-9% In fact the appellant took loan amounting to Rs 10.50,00,000/- from group companies, viz. Ahmedabad Cements Company P Ltd & Adeshwera Cements Company P Ltd @ 8.5% only. No reason whatsoever has been advanced that what was the exigency to take loans from specified persons @ 12% at such higher rates when the loan from everyone else was taken at maximum rate 8.5%. No commercial expediency has been proven

6.5 In the facts and circumstances as discussed above and in view of the assessee having paid interest at varying rates of interest, in view of the provisions of section 40A(2) (a) of the Act which clearly provides that where the payment is being made to any person specified under section 40A(2)(b) of the Act, such goods/services should be provided at market rate. Where the assessee himself has paid interest at a rate lesser than 9%, I hold the appellant having taken loan at the rate of interest @ 12% per annum from its family members, who are admittedly specified persons covered under section 40A(2), being excessive and unreasonable especially in view of the fact that it had taken loan @ 8.5% from other related parties. No commercial expediency has been proven. Since loans were advanced maximum @ 8.5%, I hold that 3% or one fourth of such interest paid @ 12% as being excessive and unreasonable. Accordingly 1/4 of total interest paid to such related parties of Rs 84,55,885/- or Rs. 21,13,971/- is disallowed and added back to the appellant's income u/s 58(2) rw 40A(2) of the Act."

12. The assessee has not controverted the fact that he had taken loan of Rs.10.50 Crores from Ahmedabad Cements Company P. Ltd. & Adeshwera Cements Company P. Ltd., a group companies, @ 8.5% only. The reason for taking loan from related parties @ 12% was not explained, particularly when the loan from all other parties was taken at maximum interest rate of 8.5% only. In the absence of any explanation on the part of the assessee for obtaining loan from the related parties at exorbitantly high rate, we do not find anything wrong in the disallowance as made by

the Revenue under Section 58(2) read with Section 40A(2)(b) of the Act.

13. In the case of *CIT vs. H R. Sugar Factory (P.) Ltd. (supra)*, relied upon by the Revenue, the assessee had raised loans from banks on security of its assets. The assessee advanced huge amounts to its Directors by charging interest @ 2.25% per annum whereas it was paying interest @ 8% per annum. The Hon'ble High Court held that difference between interest charged from its Directors on aforesaid advances and interest paid by it to banks on borrowings was not an allowable deduction.

14. The assessee has relied upon the decision in the case of *Laxmisagar Tradelink Pvt. Ltd. (supra)*. It is found that interest @ 18% was paid to unrelated parties in that case, whereas it had paid interest @ 16.75 % only to the related parties. On these facts, the Co-ordinate Bench of the Tribunal held that no disallowance under Section 40A(2)(b) of the Act was called for. Thus, the facts of that case are found to be totally different. In the present case, the assessee has taken loan from several parties at rates ranging from 6%, 8% and 8.5% but loan was taken from the related parties at much higher rate @ 12%. On the other hand, he had given loans at the rates ranging from 8% to 9% only. The assessee has not established any commercial expediency for taking loans at higher rate from the related parties and advancing the same at lower rates. We are, therefore, of the considered opinion that Ld. CIT(A) has not erred in facts and in law in restricting the disallowance of 1/4th of such interest paid @ 12%

to the related parties as being excessive and unreasonable under Section 58(2) r.w.s. 40A(2)(b) of the Act. He has correctly appreciated the facts of the case and rightly invoked the provision of Section 58(2) r.w.s. 40A(2)(b) of the Act to restrict the addition as made by the AO. Accordingly, the order of the Ld. CIT(A) is upheld and the disallowance of Rs.21,13,971/- as worked out by the Ld. CIT(A) under Section 58(2) r.w.s. 40A(2) of the Act is confirmed. Grounds Nos. 1 to 4 as taken by the assessee are dismissed.

15. In Ground No.5, the assessee has contended that the Ld. CIT(A) had deleted the notional interest on account of loan given to Shri Harmishbhai G. Shah. However, while calculating the disallowances in Para 6.6 of the order, the Ld. CIT(A) had deducted Rs.21,13,971/- out of total addition of Rs.77,15,185/- made by the AO, which was without deducting the notional interest in respect of Shri Harmishbhai G. Shah. It was submitted that the disallowance as worked out by the Ld. CIT(A) needs to be recalculated.

16. We have carefully considered the order of the Ld. CIT(A) and the submission of the assessee. It is found that in Para 6.3.1 of the order, the Ld. CIT(A) has deleted the notional interest on account of loan given to Shri Harmishbhai G. Shah. The notional interest of Rs.47,37,840/- in respect of Shri Harmishbhai G. Shah was part of total addition of Rs.77,15,185/- as made by the AO under Section 57(iii) of the Act. In fact, the Ld. CIT(A) has held that the disallowance made by the AO under Section 57(iii) of the

Act was incorrect and, therefore, the entire addition of Rs.77,15,185/- as made by the AO was deleted. At the same time, the Ld. CIT(A) had held that interest of Rs.21,13,971/- paid to related parties was excessive and was disallowed under Section 58(2) r.w.s. 40A(2) of the Act. In essence, addition to the extent of Rs.21,13,971/- is required to be made under Section 58(2) r.w.s. 40A(2) of the Act. Accordingly, the Ld. CIT(A) had confirmed the addition to the extent of Rs.21,13,971/- and deleted the balance amount of Rs.56,01,124/- out of total addition as made by the AO. We do not find anything wrong with the working of the Ld. CIT(A). Therefore, the ground as taken by the assessee is dismissed.

17. Ground No.6 is in respect of charging of interest and initiation of penalty proceeding, which is only consequential in nature and is, therefore, dismissed.

18. In the result, appeal preferred by the assessee in ITA No. 330/Ahd/2020 is dismissed.

ITA No. 331/Ahd/2020 (A.Y. 2015-16)

19. The assessee has taken the following grounds in this appeal:

- “1. That the Ld. CIT(A) has erred both in law and on facts while sustaining the disallowance of interest expenses of Rs. 24,02,792/- u/s 58(2) r.w.s. 40A(2) of the L.T. Act. 1961 which requires to be deleted.*

2. *That the Ld. A.O as well as CIT(A) has not doubted the genuineness of Interest expenditure and the appellant has fulfilled all the conditions of section 57(iii) of the Income Tax Act, 1961, Further Interest paid to related parties u/s 40A(2)(b) all are paying tax on their Individual Income, However the disallowances made and sustained by CIT(A) for Rs. 24,02,792/- amounts to double taxation and therefore it requires to be deleted.*
3. *On peculiar facts and circumstances of the case of the appellant Ld. CIT(A) has erred both in law and on facts while sustaining disallowance of Interest expense of Rs. 11,26,619/- out of Income from house property and therefore it requires to be allowed u/s 24(b) of the Income Tax Act, 1961.*
4. *That the appellant has fulfil all the conditions of section 24(b) of the Income Tax Act, 1961 and therefore whole interest expenses of Rs. 25,97,100/- paid on construction of house property is allowable as deduction during the year under consideration. Therefore the deduction sustained by CIT(A) for Rs. 11,26,619/- which may please be allowed.*
5. *That the assessee has not concealed or suppressed any particulars of income as per explanation-1 to section 271(1)(c) and as such the penalty and interest u/s 234A, 234B and 234C may please be deleted.”*

20. Ground Nos. 1 & 2 pertain to disallowance of interest expenses of Rs.24,02,792/- under Section 58(2) r.w.s. 40A(2) of the Act. The issue involved in this year is exactly identical to the issue as discussed in ITA No.330/Ahd/2020. Following the decision as already taken in that case, the disallowance of Rs.24,02,792/- made under Section 58(2) r.w.s. 40A(2) of the Act is upheld and these grounds are dismissed.

21. Ground Nos. 3 & 4 pertain to disallowance of interest expenses of Rs.11,26,619/- out of ‘income from house property’. In the course of assessment, the AO found that the assessee had utilized interest bearing borrowings to the extent of

Rs.7,46,64,758/- for the purpose of purchase of land and construction of building. The AO, therefore, found that interest of Rs.25,97,100/- on this borrowed fund was not allowable as deduction under Section 57 of the Act.

22. Before the Ld. CIT(A), the assessee claimed that this interest should be allowed as deduction under Section 24(b) of the Act, as the assessee had shown income of Rs.32,46,009/- under the head 'income from house property'. The Ld. CIT(A) considered the request of the assessee and he has given the following finding in this regard:

“8.1 The appellant has shown Income from House Property from Rajoda House of Rs 45,00,000/- (gross @ Rs 15,00,000/- per month) Hence, it can be construed that that the property was on rent from January 2015 onwards for period of 3 months For AY 2016-17 the appellant had shown annual gross receipt on rent as Rs 1,84,35,000/-and claimed entire interest of Rs 36,36,384 u/s 24(b) For this FY it has filed a chart claiming that out of the Total interest paid on such loan of Rs 25,97,100/- Rs 11,26,619/ pertained to period April 2014 to Dec 2014 and Rs 14,70,481/- pertained to period Jan 2015 to Mar 2015. The AO is directed to verify this calculation. Interest for period April 2014 to Dec 2014 is not allowed and addition of that much amount is confirmed Interest for period Jan 2015 to Mar 2015 is allowed u/s 24(b). Not to say the claim of appellant in this regard is admitted in view of the Supreme Court order in the case. The ground of appeal 2 is partly allowed.

23. The Ld. CIT(A) allowed only proportionate interest for the period Jan. 2015 to March 2015 as the property was given on rent only for a period of 3 months during the year i.e. from Jan. 15 to March 2015. It was held by the Ld. CIT(A) that interest for the period April 2014 to December 2014 was not allowable as deduction and the addition of interest pertaining to this period was confirmed. The ground taken by the assessee is against this

finding of the Ld. CIT(A). The Ld. AR has submitted that once the construction of the property has been completed and it was given on rent during the current year, interest for the entire year is allowable as deduction under Section 24(b) of the Act. On the other hand, the Ld. CIT-DR supported the order of the CIT(A).

24. We have carefully considered the submissions of the assessee. The provision of Section 24(b) of the Act stipulates that where the property is acquired or constructed with borrowed capital, the amount of any interest payable on such capital is allowable as deduction. Further, the Explanation to Section 24 provides that the interest on borrowed capital pertaining to the period prior to the previous year in which the property is acquired or constructed, shall be deducted in five equal installments in the previous year in which the property is acquired/constructed and in the immediately succeeding four previous years, in equal installments. Thus, as per the scheme of the Act, the interest on borrowed capital pertaining to the period prior to the year of acquisition/construction is also allowable as deduction in 1/5th amount in 5 years. In view of this provision, the action of the Ld. CIT(A) to restrict the interest only for the 3 months in the year of acquisition was not correct. The assessee was entitled for deduction of the interest pertaining to the entire current year as the property was acquired in the current year itself. Accordingly, the matter is set aside to the file of the AO to work out the interest on borrowed capital for the current year and allow the deduction of the same in accordance with provisions of Section 24(b) of the

Act. The grounds as taken by the assessee are allowed for statistical purposes.

25. Ground No. 5 pertaining to charging of interest and initiation of penalty proceeding is consequential in nature and, hence, dismissed.

26. In the result, appeal preferred by the assessee in ITA No. 331/Ahd/2020 is partly allowed.

ITA No. 332/Ahd/2020 (A.Y. 2016-17)

27. The assessee has taken the following grounds in this appeal:

- “1. That the Ld. CIT(A) has erred both in law and on facts while sustaining the disallowance of interest expenses of Rs. 27,02,501/- u/s 58(2) r.w.s. 40A(2) of the LT. Act. 1961 which requires to be deleted.*
- 2. That the Lid. A.O as well as CIT(A) has not doubted the genuineness of Interest expenditure and the appellant has fulfilled all the conditions of section 57(iii) of the Income Tax Act, 1961, Further Interest paid to related parties u/s 40A(2)(b) all are paying tax on their Individual Income, However the disallowances made and sustained by CIT(A) for Rs. 27,02,501/- amounts to double taxation and therefore it requires to be deleted.*
- 3. That the assessee has not concealed or suppressed any particulars of income as per explanation-1 to section 271(1)(c) and as such the penalty and interest u/s 234A, 234B and 234C may please be deleted.”*

28. Ground Nos. 1 & 2 in respect of disallowance of Rs.27,02,501/- under Section 58(2) r.w.s. 40A(2) of the Act are

pari passu with the issue as discussed in ITA No.330/Ahd/2020.
Hence, these grounds are dismissed.

29. Ground No.3 regarding charging of interest and initiation of penalty proceeding is consequential in nature and hence, dismissed.

30. In the result, appeal preferred by the assessee in ITA No. 332/Ahd/2020 is dismissed.

31. In the final result, appeal of the assessee in ITA Nos. 330 & 332/Ahd/2020 is dismissed, whereas appeal in ITA No.331/Ahd/2020 is partly allowed.

This order is pronounced in the Open Court on 15/07/2024

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 15/07/2024

S. K. SINHA

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad