

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 325/Ind/2023**  
**Assessment Year: 2020-21**

Shri Vinayak Kalani, 6 <sup>th</sup> Floor, Treasure Island, 11, Tukoganju Main Road, Indore.	<b><u>बनाम/</u></b> <b>Vs.</b>	Dy. CIT, 1(1), Indore.
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: ATGPK8379P</b>		
Assessee by	Shri Manjeet Sachdeva, Adv. & AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	07.08.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 31.07.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 12.09.2022 passed by learned Assessment Unit of Income-tax Department ["AO"] u/s 143(3) r.w.s. 144B of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2020-21, the assessee has filed this appeal.

2. The precise facts as can be culled out from assessment-order are such that the assessee-individual filed return of income for AY 2020-21 showing a

total income of Rs. 82,15,509/- comprising of taxable salary of Rs. 1,21,48,336/-, loss from house-property of Rs. 30,000/-, loss from other sources of Rs. 37,41,259/- and deductions under Chapter VI-A of Rs. 1,61,568/-. The assessee declared loss of Rs. 37,41,259/- from other sources as under:

*“Income from Other sources (Chapter IV F):*

<i>Interest from Saving Bank A/c</i>		<i>1,20,315</i>
<i>Interest Item</i>		<u><i>21,09,764</i></u>
		<i>22,30,079</i>
<i>Less:</i>		
<i>Interest Paid</i>	<i>51,28,176</i>	
<i>Legal Expenses</i>	<i>7,80,106</i>	
<i>Bank Charges</i>	<i>15,756</i>	
<i>Brokerage</i>	<u><i>47,300</i></u>	
		<u><i>59,71,338</i></u>
		<u><i>(-)37,41,259</i></u>

3. The case of assessee was selected for scrutiny and notices u/s 143(2)/142(1) were issued from time to time. During assessment-proceeding, the AO called assessee through various notices dated 29.06.2021, 29.10.2021, 22.11.2021, 24.02.2022, 07.03.2022 and 08.08.2022 to submit explanation regarding deductions claimed u/s 57 in computing taxable income (loss) under the head 'other sources' but the assessee filed only one reply dated 22.11.2021 and in the said reply also the assessee submitted only Form No. 16, Computation of Income, Bank Statement, etc. but did not submit any response qua the deductions claimed u/s 57. Ultimately, the AO completed assessment at a total income of Rs. 1,64,16,927/- by making two upward adjustments, viz. (i) disallowance of deductions claimed u/s 57 – Rs. 59,71,338/- and (ii) addition of interest

income – Rs. 22,30,079/-, and determining total income at Rs. 1,64,16,927/- by following order:

"4.6 Conclusion drawn :

*The assessee was given ample opportunities as tabulated above. In fact, in order to follow the principle of natural justice assessee was afforded with opportunity on 08.08.2022 to file its reply on 16.08.2022. However, assessee once again failed to prove the direct nexus between income earned from other sources and expenditure incurred are fully and exclusively for the purpose of earning such income. Hence, the variation to the tune of Rs. 82,01,417/- (i.e. Rs. 59,71,338/- + 22,30,079/-) are proposed. Since the assessee has completely failed to discharge the onus cast upon him.*

5. Table of variations :

S.No.	Description	Amount (in INR)
1.	Income as per Return of income filed	82,15,510/-
2	Income as computed u/s 143(1)(a)	82,15,510/-
3.	Variation in respect of issue of disallowance of deduction claimed u/s 57	59,71,338/-
4.	Variation in respect of issue of interest income	22,30,079/-
5.	Total income/Loss determined as per the above proposal	1,64,16,927/-

4. Aggrieved the assessee carried matter in first-appeal and made submissions but the CIT(A) was not convinced with assessee's submissions. Thus, he did not grant any relief to assessee. Still aggrieved, the assessee has come in next appeal before us.

5. The assessee has raised following grounds:

1. That the Ld. CIT(A) erred in confirming disallowance made by the Assessing Officer of Rs. 59,71,338/- u/s 57 of the Income-tax Act, 1961,

*on account of interest expense, legal expenses, bank charges and brokerage expenses.*

2. *That the Ld. CIT(A) erred in confirming addition made by the AO of Rs. 22,30,079/- on account of variation in respect of issue of interest income.*
3. *That the Ld. CIT(A) failed to appreciate the submission made by the appellant.*
4. *That the disallowance made is not based on the facts of the case and needs to be deleted.*
5. *That the appellant craves leave to add, alter and/or delete any of the grounds of appeal."*

Ground No.1:

6. In this ground, the assessee has challenged the disallowance of Rs. 59,71,338/- made by AO in respect of deductions claimed u/s 57.

7. It clearly emerges from assessment-order that the assessee did not file any justification for deductions claimed u/s 57 before AO. It can further be seen from earlier part of this order that the impugned deductions consist of Interest expenditure of Rs. 51,28,176/-, Legal expenses of Rs. 7,80,106/-, Bank charges of Rs. 15,736/- and Brokerage of Rs. 47,300/-. Ld. AR drew our attention to a 'Statement of Interest Received' filed at Page 7 of Paper-Book and another 'Statement of Interest Paid' filed at Page 8 of Paper-Book to show that the assessee has received interest @ 9/9.5/12% per annum and also paid interest @ 9% per annum (15% per annum/1.25% per month in a few cases). He submitted that broadly the interest rate received and paid by assessee are same except in some cases where the assessee has paid interest at a higher rate of 15% per annum. Placing reliance on **Order**

*dated 30.04.2021 of ITAT, Indore in ITA Nos. 87/Ind/2020 & 956/Ind/2019 of Smt. Padma Kalani (case of assessee's family member)*, Ld. AR submitted that the ITAT allowed deduction of interest paid by assessee at a higher rate of 12% to 15% per annum as against interest received @ 6% per annum. Ld. AR also submitted that the assessee has consistently claimed deductions u/s 57 year after year and the department has always allowed. In support of this fact, Ld. AR has filed copies of returns filed by assessee for earlier AYs 2012-13 and 2013-14. Lastly, Ld. AR contended that it is well-accepted view in several decisions that even if the final outcome of computation is a loss, the deductions cannot be denied.

8. Per contra, Ld. DR for revenue drew our attention to assessment-order and submitted that the AO has very clearly noted in Para 2 and 4 that the assessee did not make any compliance to several notices and that the assessee submitted only one reply dated 22.11.2021 which was also a part-reply. Ld. DR strongly contended that the assessee has not given any submission before AO regarding admissibility of deductions u/s 57 and therefore the AO was well justified to disallow assessee's claim. Then, Ld. DR drew us to Para 5 of CIT(A)'s order wherein the CIT(A) has not only considered assessee's submission but also made an analysis of assessee's financials from financial statements and thereafter came to a valid conclusion that the assessee had utilized borrowed funds for giving loans.

With these submissions, Ld. DR prayed that the disallowance made by AO and upheld by CIT(A) is proper and must be upheld.

9. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the documents filed in Paper-Book to which our attention has been drawn. The issue here is the disallowance of deduction of Rs. 59,71,338/- consisting of Interest expenditure of Rs. 51,28,176/-, Legal expenses of Rs. 7,80,106/-, Bank charges of Rs. 15,736/- and Brokerage of Rs. 47,300/- claimed by assessee against interest income of Rs. 22,30,079/-. Admittedly, the assessee has claimed these deductions u/s 57(iii). The assessee has earned interest income of Rs. 22,30,079/- only but claimed an aggregate deduction of Rs. 59,71,338/- which has resulted into a net loss of Rs. 37,41,259/- ultimately set off against salary income. In terms of legal provision of section 57(iii), the deductions claimed by assessee are allowable only if the relevant expenses have been laid out or expended wholly and exclusively for the purpose of making or earning interest income. Apparently, the deduction of Rs. 59,71,338/- claimed by assessee is about 2.68 times of interest income of Rs. 22,30,079/- and thus there is a wide-gap. There can hardly be any dispute that it is assessee's burden to provide sufficient details to show that the expenses were incurred wholly and exclusively for the purpose of making or earning interest income. So far as deduction of interest expenditure of Rs. 51,28,176/- is concerned, Ld. AR/assessee is only harping on comparison of

interest rate received and paid by assessee and contending that the interest rate paid by assessee is not on higher side and even if on higher side, the department cannot question or make disallowance and that is how the Ld. AR has pressed the order of ITAT in case of **Smt. Padma Kalani (supra)** but that Order of ITAT is not applicable because there were different facts and controversy in as much as the assessee in that case was engaged in money lending business (Para 10 of ITAT order) and the controversy related to deduction of interest as business expenditure on account of commercial expediency (Para 14 of ITAT order). In present case, the assessee is not engaged in money lending business which is a fact. The assessee has shown interest income under 'other sources' head and therefore the deduction claimed by assessee has to be allowed only if the mandate of section 57(iii) is satisfied. While we admit that the interest rate paid can be higher as compared to interest rate received but first of all the assessee has to prove that the funds on which he has paid interest and claimed deduction were actually utilized for giving loans so as to satisfy the requirement of "wholly and exclusively for the purpose of making or earning income" as per section 57(iii). In present case, there is no submission by assessee to prove this factum. Therefore, the assessee is required to submit clinching particulars to AO in this regard. At the same we also find that the AO has disallowed interest deduction of Rs. 51,28,176/- claimed by assessee fully as if the assessee has not utilized a single pie of borrowed funds for giving loans. Apparently, this approach of AO is also not correct. So far as other

expenses, namely Legal expenses of Rs. 7,80,106/-, Bank charges of Rs. 15,736/- and Brokerage of Rs. 47,300/-, are concerned, there is no submission from assessee's side before lower-authorities or even before us. Therefore, the case of assessee can be carried to a proper conclusion only if complete particulars of all deductions are available and the AO examines the same from the touchstone of section 57(iii). Being so, we have no option except to remand this matter back to the file of AO for a fresh adjudication. Needless to mention that the assessee shall file complete explanation to satisfy the AO and the AO shall also pass order afresh without being influenced by his previous order.

Ground No. 2:

10. In this ground, the assessee has challenged the addition of Rs. 22,30,079/- made by AO on account of interest receipt/income.

11. On a careful examination of assessment-order, we find that the assessee has shown net loss of Rs. (-) 37,41,259/- under the head other source safter claiming deduction of Rs. 59,71,338/- from gross interest receipt/income of Rs. 22,30,079/-. Thus, the gross interest receipt/income of Rs. 22,30,079/- stands already included in total income of assessee. Therefore, by making a further addition in assessment-order, the AO has doubly taxed the same item. Being so, we delete the addition of Rs. 22,30,079/- made by AO. This ground is allowed.

Ground No. 3 to 5:

12. Ground No. 3 and 4 are already covered by specific Ground No. 1 and 2 adjudicated above. Ground No. 5 is general. Therefore, Ground No. 3 to 5 do not require any separate adjudication from us.

**13. Resultantly, this appeal is allowed in terms mentioned above.**

Order pronounced in open court on 07.08.2024.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 07.08.2024  
CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore