

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3963/Mum/2023  
(Assessment Year :2018-19)**

Shri Nishit Kantilal Savla 1003, Kailash Palace Upashray Lane Ghatkopar East Mumbai – 400 077 Maharashtra	Vs.	Deputy Commissioner of Income Tax-Circle 27(2) 4 <sup>th</sup> Floor, Tower No.6 Vashi Railway Station Complex, Vashi Navi Mumbai-400703
<b>PAN/GIR No.ABDPS7792K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Nilesh Joshi
Revenue by	Shri Sunil Shinde
<b>Date of Hearing</b>	<b>14/08/2024</b>
<b>Date of Pronouncement</b>	<b>26/08/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 08/09/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) for the A.Y.2018-19.

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

*“1. Disallowance of expense claimed u/s 57(iii) of the Income Tax Act, 1961*

*The learned Assessing Officer has erred in making disallowance of expense claimed u/s 57(iii) of the Act and the learned CIT (Appeals) has erred in confirming the said disallowance amounting to a sum of Rs. 57,40,318/- being amount of interest expenditure claimed against interest income earned by the Appellant despite the Appellant having proved the nexus of interest income and interest expenditure.*

*2. Disallowance of Interest expense against Interest Income earned from Partnership Firm*

*The learned Assessing Officer has erred in not allowing deduction of interest expense and the learned CIT (Appeals) has erred in confirming the said disallowance being interest paid to M/s Savla Associates against interest income earned from Partnership Firm M/s Sadgurukrupa Developers of Rs. 25,61,206/- despite the Appellant having proved the nexus of interest income earned from M/s Sadgurukrupa Developers and interest expense paid to M/s Savla Associates.”*

3. The brief facts are that assessee is an individual and partner in various firms including in M/s. Savla Associates and M/s. Sadgurukrupa Developers. During the A.Y. 2018-19, the assessee had declared interest income of Rs.18,65,954/- and shown interest received on partner's capital of Rs.25,61,206/- from M/s. Sadgurukrupa Developers and claimed interest expenditure of Rs.76,06,272/- u/s.57 paid to M/s. Savla Associates as per the details given below:-

SL.NO	Particular	Interest Amt	Interest Amt
A	Interest from Loan and advances		
1	Integrated Coreinfra Limited	4,52,326	
2	Integrated Spaces Limited	14,13,628	
	Total Income from Other Sources	18,65,954	
B	Income from Business and Profession		
	Interest on Partner's Capital received from Sadgurukrupa Developers		25,61,206
	Total Interest Income earned		44,27,160
Less	Interest expense paid to Savla Associates		(76,06,272)
	Net Income		(31,79,112)

4. In response to the show-cause notice before the Id. AO, assessee submitted as under:-

*"In respect of your notice u/s 142(1) dated 07/01/2020, we hereby submit as follows:*

*1. Following are the details of Income from other sources for AY 2018-19:*

<i>Person or entity from whom income is received from</i>	<i>Amount/Income</i>	<i>Nature of receipt</i>	<i>Respective documentary evidence</i>

<i>Integrated Coreinfra Limited</i>	<i>4,52,326</i>	<i>Interest income</i>	<i>Ledger account attached</i>
<i>Integrated Spaces Limited</i>	<i>14,13,628</i>	<i>Interest income</i>	<i>Ledger account attached</i>
<i>Dividend Income</i>	<i>45,586</i>	<i>Dividend income Exempt u/s 10(34)</i>	<i>Ledger account attached</i>
<i>Interest received from bank</i>	<i>23,142</i>	<i>Bank interest</i>	<i>Bank statement attached</i>
<i>Shreeji Construction</i>	<i>5,00,000</i>		<i>Ledger account attached</i>

2. The assessee is a partner in Savla Associates. During the AY 2018-19, the assessee had received remuneration from Savla Associates amounting to Rs 47,74,799/- and the assessee had paid Rs 76,06,272/- interest on capital to Savla Associates @ 9% p.a. We are enclosing the ledger account of Savla Associates for AY 2018-19 highlighting the interest expense. Since the income tax return did not accept the deduction of interest expense of 76,06,272/- from remuneration income of Rs 47,74,799/-, the assessee had shown the interest expense under the head income from other sources.

Following is details of interest income and expense for AY 2018-19:

<b>Sr. No</b>	<b>Particular</b>	<b>Interest Amt</b>
	<i>Interest from Loan and Advances</i>	

1	<i>Integrated Coreinfra Limited</i>	4,52,326
2	<i>Integrated Spaces Limited</i>	14,13,628
	<i>Total interest income</i>	18,65,954
Less	<i>Interest Expense u/s 57</i>	
1.	<i>Savla Associates</i>	76,06,272
	<b><i>Net interest income</i></b>	<b>57,40,318</b>

*The interest expenses were incurred in connection with the Tome earned hence the interest expenses are allowable as expenses u/s 57 of the Income Tax Act, 1961,*

*3. We are enclosing the ledger account of Savla Associates for AY 2018-19.*

*4. TDS is not applicable on interest expense on partners capital.”*

*5. The ld. AO also did not allow deduction against interest on partner’s capital received from M/s. Sadgurukrupa Developers of Rs.25,61,206/- on which assessee has claimed deduction of interest payment on the interest received from the capital of the firm. Thus, the ld. AO did not allow the claim of deduction of Rs.57,40,318/- claimed u/s.57.*

*6. The ld. CIT(A) too has confirmed the said addition and he noted the figures of balance sheet as on 31/03/2008 wherein the he has observed and held as under:-*

*4.1.3 The appellant has paid interest on the amount borrowed from M/s. Savla Associates, a firm in which the appellant is a partner. The amount of borrowings from the firm outstanding as on 31-03-2018 is Rs.4,74,06,183/- (circled in the figure above). A*

sum of Rs. 76,06,272/- has been paid as interest on these borrowings from the firm. A closer examination of the balance sheet of the appellant would reveal that this sum borrowed from M/s. Savla associates has been deployed in various assets shown on the right side of the balance sheet. The primary asset for which the funds have been deployed is the investment in shares of Indian Co. amounting to Rs.6,26,16,659/-(circled in the figure above). Thus, it can be seen that the funds on which interest has been paid during the year has been utilised for making Investments in the shares of Indian Co. amounting to Rs.6,06,16,659/-. No income has been earned during the year from such investment in shares. Therefore, there is no merit in the claim of expenditure of interest u/s 57 during the year. When there is no direct nexus shown between the funds which earned the interest income and the funds utilised for earning such income, no deduction can be allowed. When the borrowed funds have been deployed for investment in the shares of Indian Co. and other purposes, they cannot be said to be utilised for providing loans and advances which have yielded interest income during the year. Though it can be inferred that, the entire borrowed funds have been deployed for investment in the shares of the India Co. and other purposes, the Assessing Officer has been very fair and has allowed deduction of interest to an extent of Rs. 18,65,954/-. Effectively, he has considered a portion of the borrowed funds to have been deployed for providing loans and advances which have yielded interest income during the year. Accordingly, the order of the Assessing Officer calls for no interference. This ground of appeal of the appellant is dismissed.

4.2 Ground no.02 raised by the appellant relates to the grievance of the assessee that the Assessing Officer has not allowed any deduction against the interest on partner's capital received from the firm M/s Sadguru Krupa Developers admitted under the head Business Income. During the year, the appellant has admitted interest income received on capital from the firm M/s Sadguru Krupa Developers of Rs.25,61,206/- The appellant claims that the

*interest payments made to M/s Savla Associates shall be allowed as a deduction against this income. Under the head Business Income, in terms of Section 37 of the Act only those expenditure which are wholly and exclusively incurred for the purpose of the business are allowed as a deduction. As discussed in paragraph 4.1 of this order, the borrowed funds have been utilised for the purposes of investment in shares of the Co, and not for investing in the capital of the partnership firm M/s Sadguru Krupa Developers That being the case, interest expenditure cannot be allowed as an expenditure. This ground of appeal is accordingly dismissed.”*

7. We have heard both the parties and also perused the relevant finding given in the impugned orders. It is an undisputed fact that assessee had earned interest income from loans and advances given to the parties of Rs.18,65,954/- which has been shown under the head ‘income from other sources’. Besides this, assessee also declared interest on partner’s capital received from one of the partnership firm Sadgurukrupa Developers of Rs.25,61,206/-. Thus, the total interest income earned had been shown at Rs. 44,27,160/- as per the detail noted above. The assessee has also paid interest of Rs.76,06,272/- on the partner’s capital to M/s. Savla Associates @ 9% per annum which was in accordance with the partnership deed. Now, the issue is, whether the claim of interest expenditure which has been incurred by the assessee and claimed to be netted off from the interest income can be allowed on the facts of the case. From the perusal of the balance sheet, it is seen that assessee’s capital account aggregated to Rs.3,86,22,812/- and the capital account with various partnership firms was Rs.3,45,79,512/-. The

assessee has made borrowing from Savla Associates and as on 31/03/2018, the outstanding amount was Rs.4,74,06,183/-. On this amount assessee has paid interest on these borrowings from the firm. The case of the Id. CIT (A) is that the borrowed funds from the partnership firm, M/s. Savla Associates have been deployed for various assets shown on the right side of the balance sheet and one of the primary items deployed is investment in shares of the Indian company from which no income has been shown during the year from such investments. Thus, the Ld. CIT (A) held that interest expenditure has been incurred for investing in shares from which no income has been shown. To appreciate the position of the funds, it would be relevant to incorporate the balance sheet as on 31/03/2018.

### Balance Sheet

1-Apr-17to31-Mar-18

Liabilities	as at 31-Mar-18	Assets	As at 31-Mar-18
Capital Account	<b>3,86,22,812.46</b>	<b>Fixed Assets</b>	<b>11,20,000.00</b>
N. K Savla Capital A/c	<u>3,86,22,812.46</u>	Gold Ornaments	<u>11,20,000.00</u>
Loans (Liability)	<b>1,83,07,613.00</b>	<b>Investments</b>	<b>2,46,119.25</b>
Secured Loans	91,07,613.00	Investment in Bonds	1,00,000.00
Unsecured Loans	<u>92,00,000.00</u>	Investment in Life Insurance	32,27,196.50
Current Liabilities	<b>3,54,202.00</b>	Investment in Mutual Fund	18,09,213.33
Sundry Creditors	<u>3,54,202.00</u>	Investment in Others	28,12,543.42
<b>Suspense A/c</b>		Investment in Property	1,66,85,166.00
<b>Capital A/c with Partnership Firm</b>	<b>3,49,79,512.29</b>	<b>Current Assets</b>	<b>37,637.00</b>
CC-Pranay Realtors	(-)3,53,476.86	Deposits (Asset) Loans &	4,03,100.00
CC-Sadgurukripa Developers	(-)1,19,73,194.50	Advances (Asset) Sundry	27,39,573.91
FC-Savla Associates	4,74,06,183.65	Debtors Cash-in-hand Bank	68,723.00
		Accounts	2,64,002.00
			<u>2,96,238.09</u>

FC-Sadgururupa Developers (-)50,000.00		<b>Capital A/c with Proprietor</b>	<b>11,474.50</b>
FC - Savla Associates <u>(-)50,000.00</u>		<b>Concern</b>	
<b>Deposit(Liability)</b>		Nish Enterprises Nishit Savla	3,385.50
<b>Profit &amp; Loss A/c</b>		HUF	<u>8,089.00</u>
Opening Balance		Other Assets	<b>1,10 250.00</b>
Current Period		Kotak Securities	1,750.00
		Trade Mark & Copy Right Registration	<u>1,08,500.00</u>
		<b>Shares of Indian Co</b>	<b>6,26,16 659.00</b>
		SC-Integrated Coreinfra Limited SC	5,47,480.00
		Integrated Estate Management Pvi Ltd	4, 1 6 72,400.00
		SC Integrated Spaces Limited	2,00,61,750.00
		SC-Pranay Home Creators Pvt.Ltd.	1,25,010.00
		SC-Reve-Tech(l) Pvt. Ltd	1,85,000.00
		SC-Shah Oil Tech(l) Pvt Ltd	25,000.00
		SC-Sixth Sensor Technology	<u>19.00</u>
<b>Total</b>	<b>9,22,64,139.75</b>	<b>Total</b>	<b>9,22,64, 139.75</b>

8. Thus, if assessee had secured and unsecured loans of more than Rs.1.83 Crores and capital account of more than Rs.3.86 Crores and also capital from the partnership firm then to presume that all the loans taken from M/s. Savla Associates has been deployed only for shares of the Indian Company so as to disallow the claim of interest cannot be fully justified. If the case of the ld. CIT(A) is that the borrowed funds have been deployed for investment in shares from which no income has been earned and therefore, the claim of interest paid cannot be allowed, then in that case the only provision on which disallowance can be made on account of interest is u/s.14A. It is not the case of the ld. AO or ld. CIT (A) that interest has been disallowed by invoking the provision of Section 14A. Be that as maybe it is an undisputed fact that assessee has deployed the funds for running income either by way of interest or by way of income

from other sources as stated in the letter filed before the Id. AO incorporated in the foregoing paragraph 4, then interest expenditure incurred has to be allowed. The interest has been paid to the partnership firm as per the terms and conditions provided in the partnership deed and if the capital has been withdrawn and used for earning of interest or for strategic investment, then same has to be allowed. As long as there is a nexus between the income earned by that in the form of interest or dividend, this is taxable under the head 'income from other sources, then expenditure incurred for earning such income has to be allowed. Accordingly, we hold that interest paid has to be allowed or netted off against the interest income.

9. Since we have allowed the claim of interest in the computation of income, the ground No.2 also gets covered in that.

**10. In the result, appeal of the assessee is allowed.**

Order pronounced on 26<sup>th</sup> August,2024.

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 26/08/2024  
KARUNA, sr.ps

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**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,

(Asstt. Registrar)  
**ITAT, Mumbai**