

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" A " BENCH, AHMEDABAD

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.154/Ahd/2022  
निर्धारण वर्ष /Assessment Year : 2017-18

Gautam Nipinbhai Nagarsheth D-37, Aaryaman Bungalows Nr.Railway Crossing Opp. Anand Niketan School Thaltej Shilaj, Thaltej Ahmedabad - 380 059	<u>बनाम/</u> <u>v/s.</u>	The Pr.CIT-3, Ahmedabad
स्थायी लेखा सं. / PAN: AAKPN 7077 J		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :		Shri Manish Rajvaidya, CA
Revenue by :		Shri R.N. Dsouza, CIT-DR

सुनवाई की तारीख/Date of Hearing : 12/09/2024  
घोषणा की तारीख /Date of Pronouncement: 23/09/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

The present appeal has been filed by the assessee against the order dated 11-03-2022 passed by the Principal Commissioner of Income Tax-3, Ahmedabad (hereinafter referred to as "PCIT") under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the Assessment Year (AY) 2017-18. The assessee is aggrieved by the order of the PCIT, wherein the assessment order passed by the Assessing Officer (hereinafter referred to as "AO") under Section 143(3) of the Act has been set aside on the

grounds that the order was erroneous and prejudicial to the interests of the Revenue.

**Facts of the case:**

2. The assessee is an individual and filed his return of income for the A.Y. 2017-18 on 01-08-2017 declaring total income of Rs.33,84,400/- and agricultural income of Rs.4,23,572/-, which was processed u/s. 143(1) of the Act. Later on, the case was selected for the scrutiny under CASS by issuing notice u/s.143(2) of the Act. During the course of assessment, the AO observed that the assessee has borrowed some amounts from various parties amounting to Rs.2,23,54,000/- and total income under all heads of income amounted to Rs.1,05,29,442/- totaling to Rs. 3,28,83,442/-, whereas the total credits in bank accounts amounted to Rs.17,89,40,550/-. The assessee was asked to explain the source of such difference in credit entries of Rs.14,60,57,108/--(Rs.17,89,40,550/-less Rs.3,28,83,442/-) by issuing a show-cause notice. In reply to the same, the assessee submitted various details of parties from whom the loan was borrowed which amounted to Rs.2,19,00,000/-. The assessee also clarified that the total of credits in all the bank accounts including a joint account with brother of the assessee amounted to Rs. 19,64,32,643/- and not Rs. 17,89,40,550/-. The assessee could not submit the documents such as confirmations, return of income and bank statements from such parties. The AO also tabulated various credits including the amounts borrowed from various parties which totalled to Rs.8,19,34,779/-. The AO added Rs.11,44,97,864/- being difference in total of credit entries in bank accounts and details as submitted by the assessee (Rs.19,64,32,643/- less Rs. 8,19,34,779/-) u/s.68 of the Act and completed the assessment u/s.143(3) of the Act.

2.1. Thereafter, the PCIT observed that the assessee declared a gross interest income of Rs.50,11,078/-, which included interest from various sources such as banks, income tax refunds, and loans given to group companies and family members and against this interest income, the assessee claimed deductions totaling to Rs.49,33,577/- under Section 57(iii) of the Act, citing that the interest expenses were incurred for earning interest income. The PCIT noted that the assessee failed to substantiate the nexus between the interest-bearing loans taken from financial institutions and the advances made to group companies or relatives. The interest rate of loans borrowed (12.75%) was higher than the interest earned (12%), resulting in an excess claim of Rs.7,48,718/-, for which no satisfactory explanation was provided. The PCIT also concluded that the AO failed to make proper inquiries or verifications during the assessment, resulting in an erroneous order prejudicial to the interests of the revenue. Therefore, PCIT issued notice and passed his order u/s.263 of the Act.

3. Aggrieved by the order of PCIT, the assessee is in appeal before us with following grounds of appeal:

1. *The Assessee has claimed actual interest of Rs.40,56,026/- towards loan repayment during F.Y. 2016-17 A.O. has disallowed 7,48,718/- interest expenses paid by assessee, details submitted were not considered.*
2. *The A.O. has wrongly addition in income of Rs.11,44,97,864/- on account of unexplained cash credits appearing the bank, submission of assessee not considered.*

3.1. Subsequently, the assessee requested for admitting following revised grounds of appeal:

1. *WRONGLY REOPENING THE CASE OF THE APPELLANT U/S. 263 OF THE I. T. ACT, 1961 WHILE OBSERVING THAT THE THEN A.O. IN THE ORIGINAL ASSESSMENT PROCEEDINGS HAS NOT VERIFIED OF INTEREST CLAIM U/S. 57 (iii) OF THE I. T. ACT, 1961 BY THE LEARNED A.O. IN THE ORIGINAL ASSESSMENT PROCEEDINGS:*

*The learned Pr. CIT, while passing the order u/s. 263 of the I. T. Act, 1961 has misunderstood that the then A.O. in the original assessment proceedings has already verified the issue regarding the allowability of Interest us. 57 (iii) of the I. T. Act, 1961 and had also issued notices u/s. 142 (1) for enquiring the same, however, the Pr. CIT, on surmises and conjectures has reopened the case of the appellant u/s. 263 of the I. T. Act, 1961.*

2. *WRONGLY DISALLOWANCE FROM RENT INCOME:*

*The learned Pr. CIT, while passing the order u/s. 263 of the I. T. Act, 1961 has misunderstood that the then A.O. in the original assessment proceedings has already verified the issue regarding the Interest claimed against the rent income and allowed the same.*

**On the revised grounds of appeal:**

3.2. During the course of hearing before us, the Authorised Representative (AR) of the assessee stated that the assessee is a Director in the companies to whom he has advanced loans on interest at the rate of 12% p.a. and the assessee has borrowed these funds from various finance companies at the interest rate of 12.75%. The AR also stated that the assessee has not claimed the excess interest of Rs.7,48,718/- as concluded by PCIT. To support his contention, the AR submitted the detailed statement of interest paid and received and reconciled the same with the computation of income. The AR argued that the AO has already inquired into the aspect of interest paid and received during the course of the assessment proceedings. The AR took us

through the notices issued by the AO u/s. 142(1) of the Act and replies to the same as submitted by the assessee. The AR also stated that the PCIT, in his order u/s.263 has made only passing reference to the notional rent relating to property - Mayuresh Elanza, owned by the assessee and partly set aside the order of AO and asked him to pass a fresh assessment order.

4. The Departmental Representative (DR) relied on the order of the PCIT.

5. We have heard the contentions of the parties and perused the material available on records. As per the notice issued u/s. 142(1) of the Act on 13-08-2019, the assessee was asked to justify the claim of deduction made u/s. 57 amounting to Rs.49,33,577/- (as per clause-13 of the Annexure to the notice). In the same notice, the AO also asked the assessee to furnish all the details of loans/advances/deposits given with rate of interest charged thereon along with the name, address, confirmations, bank statement and return of income of such persons. We note that the assessee has submitted all the details as required by the AO as per his notice u/s. 142(1) of the Act. The assessee once again replied to the AO giving details of loans and justification of interest claimed u/s 57 of the Act as required by the AO vide notice u/s. 142(1) of the Act dated 11-11-2019.

5.1. The power of revision under Section 263 of the Act can be exercised only if the order passed by the AO is both erroneous and prejudicial to the interests of the Revenue. To satisfy these conditions, the PCIT must demonstrate that the AO failed to conduct proper inquiries or verifications which should have been made in the assessment proceedings. Upon examination of the records, it is evident that the AO issued notices under

Section 142(1) of the Act dated 13-08-2019 and 11-11-2019, specifically questioning the allowability of the interest claimed under Section 57(iii) of the Act. The AO asked the assessee to provide details of the loans and advances, the rate of interest charged, and other supporting documents. The assessee responded to these notices with detailed submissions, including a reconciliation of interest paid and received, and the justification for claiming the interest expenses.

5.2. The PCIT's conclusion that the AO failed to conduct adequate inquiries is factually incorrect. The records indicate that the AO had verified the claim of interest expenses through detailed inquiries. The PCIT has merely substituted its opinion for that of the AO without identifying any specific error in the AO's findings or procedure. The PCIT's observation that the assessee has claimed excess interest of Rs.7,48,718/- is also factually incorrect. In fact, the assessee has restricted its claim on interest paid on loans to actual interest received from various parties to whom the amount was advanced for interest income of Rs.49,33,577/-. As explained by the AR the details of interest income and interest expense, as offered for taxation under the head income from other sources, are as given below:

Sr	Interest Received	Rs.	Rs.
1	<b>Other Interest Received</b>		
	Poggenamp Nagarsheth Powertronics Pvt. Ltd.	1625993	
	POSCO Poggenamp Elec. Steel Pvt. Ltd.	2456271	
	NKP Infrastructure Pvt. Ltd.	71933	
	Gauttam HUF	194845	
	Poma G Nagarsheth	194845	
	Parshva G Nagarsheth	194845	

	Param G Nagarsheth	194845	<b>4933577</b>
2	Interest on IT Refund		52742
3	Interest from Savings Bank account		16506
4	Interest from Govt. Securities		8253
	<b>Total Interest Received</b>		<b>5011078</b>
	<b>Interest Paid</b>	<b>Total Paid Rs.</b>	<b>Claimed u/s 57 in Rs.</b>
1	Febbank Financial Services Ltd. (50% - share)	305102	287155
2	Hinduja Leyland Finance	459927	459927
3	Fulleton India Credit Co. Ltd.	5494641	4056026
4	Interest Paid to HDFC	130469	130469
	<b>Total Interest claimed u/s 57</b>		<b>4933577</b>

5.3. It was observed that the assessee has borrowed loan from various financial institutions against the mortgage of properties at the rate of interest more than 12% p.a. and since the interest earned from various parties is at the rate of 12% p.a., the assessee has restricted the claim of interest expense u/s. 57 of the Act to 12%.

5.4. So far as passing reference of notional rent in his order u/s 263 of the Act, the AR stated that the assessee has disclosed rental income from the property - Mayuresh Elanza in his return of income which is Rs.23,35,200/-. The same is verified with the copy of return of income filed and found to be correct. Thus, the contention of PCIT relating to notional rent is also factually incorrect.

5.5. It is well-settled proposition of law by the Hon'ble Supreme Court in the case of **Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC)** that the power of revision under Section 263 cannot be exercised to correct each and

every error committed by the AO, but only those which render the assessment order erroneous and prejudicial to the interests of the Revenue. The revisionary authority cannot invoke Section 263 of the Act merely because it has a different view on the matter. In the present case, the PCIT has failed to demonstrate that the AO's order was erroneous due to inadequate inquiry. The AO conducted the necessary inquiries and applied his mind to the facts presented during the assessment proceedings. As demonstrated by the assessee, there is no any prejudice caused to the Revenue. The order of the PCIT is, therefore, unsustainable in law.

5.6. In light of the above findings, we hereby quash the order passed by the PCIT under Section 263 of the Income Tax Act, 1961 and assessee's grounds of appeal are allowed.

6. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Open Court on 23 September, 2024 at Ahmedabad.**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated

23/09/2024

टी.सी. नायर, व.नि.स./T.C. NAIR, Sr. PS

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)/The Pr.CIT-3, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad