

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

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

आयकर अपील सं./ITA. No. 460/JPR/2024
निर्धारण वर्ष / Assessment Years : 2016-17

Sh. Magendra Singh Rathore Ganga Niwas, Bank colony, Alwar.	बनाम Vs.	The ACIT, Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIYPR0804M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. No. 483/JPR/2024
निर्धारण वर्ष / Assessment Years : 2017-18

Sh. Magendra Singh Rathore Ganga Niwas, Bank colony, Alwar.	बनाम Vs.	The DCIT, Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIYPR0804M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargiya (Adv.) &
Shri Devang Gargiya, (Adv.)
राजस्व की ओर से / Revenue by : Shri Anup Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 03/09/2024
उद्घोषणा की तारीख / Date of Pronouncement : 23/09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals are filed by the assessee and are arising
out of the order of the Learned Commissioner of Income Tax

(Appeals)-4, Jaipur both dated 06.02.2024 & 27.03.2024 [Here in after referred as “Ld. CIT(A)”] for the assessment years 2016-17 & 2017-18 respectively, which in turn arise from the orders dated 18.12.2019 & 04.12.2019 passed under section 143(3) r.w.s. 153A of the Income Tax Act (Here in after referred as “Act”) by the ACIT, Central Circle-2, Jaipur.

2. Since the facts of these cases are identical and of the same assessee, we have heard these cases together with the consent of the parties and decide both the appeal by common order. For the present the facts and grounds are taken from the folder of Shri Magendra Singh Rathore in ITA No. 460/JPR/2024 and that case is taken as lead case for deciding the issue raised in these appeals.

2.1 In ITA No. 460/JPR/2024 the assessee has raised following:-

“1. The impugned order passed u/s 143(3) r.w.s. 153A dated 18.12.2019 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. Rs.10,00,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance made by the Id. AO u/s 57(iii) of difference of interest expenditure upto Rs. 10,00,000/- computed @ 10% (18% claimed less 8% allowed) as against the claim made u/s 36(1)(iii) and also without any justified basis. The disallowance so

made and confirmed, being contrary to the provisions of law and facts hence, kindly be deleted in full.

3. Rs. 84,635/-: The Id. CIT(A) erred in law as well as on the facts of the case in partly confirming the denial towards the deductions claimed under chapter VI-A upto Rs. 84,635/- (Rs. 1,50,000/- claimed Rs. 65,635/- allowed). The denials of the deductions claimed and confirmed by the CIT(A) being contrary to the provisions of law and facts of the case. Hence, the same kindly be allowed in full.

4. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A and 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

5. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

2.2 In ITA No. 483/JPR/2024 the assessee has raised following:-

“1. The impugned order passed u/s 143(3) r.w.s. 153A dated 04.12.2019 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.

2. Rs. 10,00,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the disallowance made by the Id. AO u/s 57(iii) of difference of interest expenditure upto Rs. 10,00,000/- computed @ 10% (18% claimed less 8% allowed) as against the claim made u/s 36(1)(iii) and also without any justified basis. The Id. CIT(A) also seriously erred in recording incorrect and perversed finding of fact that no P/L account was filed and the computation do not show interest expenditure which is nothing but misconception of law once interest expenditure was debited to P/L account and net profit is the starting point, how the assessee could have once again shown/claimed the interest expenditure in the computation of total income separately. This is serious misconception of law and facts. The disallowance so made and confirmed, being contrary to the provisions of law and facts hence, kindly be deleted in full

3. Rs. 99,365/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the denial towards the deductions claimed under chapter VI-A upto Rs. 99,365/-. The denials of the deductions claimed

and confirmed by the CIT(A) being contrary to the provisions of law and facts of the case. Hence, the same kindly be allowed in full.

4. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234B of the Act. The appellant totally denies its liability of charging of any such interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.

5. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

ITA No. 460/JP/2024

3.0 At the outset of hearing, the Bench observed that there is delay of 4 days in filing the appeal by the assessee for which the Id. AR submitted a prayer to condone the delay which reads as under:

“1. That in the aforesaid matter, the Id. CIT(A)-4, Jaipur passed the Order u/s 153C r.w.s. 143(3) on dated 06.02.2024 (hereinafter referred as "impugned order") and the same was received on mail on dated 28.02.2024, Accordingly, the appeal was to be filed on/before dt. 28.04.2024 however, the same has been filed on dated 10.04.2024. Thus, the appeal was filed within the time. However, considering the date of the order 06.02.2024 as date reciet there is minor 4 days.

2.1 Reasonable Cause Exist: In this connection, it is humbly submitted that the papers duly signed were handed to the audit staff namely in the office of the Id. counsel, however Mr. Akshansh Jain proceeded an outstation audit leaving behind a papers in a drawer which, came to the knowledge when the assessee enquired. The appeal, was immediately filed.

3.1 Supporting Case Laws: It is submitted that the Hon'ble Supreme Court in the case of Collector, Land & Acquisition v. Mst. Katiji & Others (1987) 167 ITR 471 (SC) has advocated for a very liberal approach while considering a case for condonation of delay. The following observations of the Hon'ble Court are notable:

“The legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits'. The

expression 'sufficient cause employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy."

The said judgment is a leading case on the subject and has a binding force on all the officers subordinate thereto.

Also, in the case of India Capacitor Ltd. (1989) 180 ITR 641 (Cal. HC), Autoser (P.) Ltd. (1998) 101 Taxman 70 (Cochin) (Mag.) & Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi (1979) 118 ITR 507 (SC)

2.7 Thus, the minor delay in filing of the instant appeal was not at all deliberate or intentional but arose due to circumstances beyond the assessee's control, who was not going to gain anything.

It is, therefore, humbly prayed that:

- a. This application may kindly be allowed by condoning the delay, taking a sympathetic view, in the interest of justice.
- b. Any other order, which this Hon'ble ITAT deems fit and proper, be also passed in favour of applicant assessee."

Based on the above contention Id. AR of the assessee prayed to take sympathetic view in the interest of justice.

3.1 Ld. DR submitted that the reasons advanced are not sufficient to condone the delay. But at the same time did not object to the facts so argued by the Id. AR of the assessee.

3.2 We have heard both the parties and perused the materials available on record. The bench noted that the assessee handed over the signed paper to the audit staff in the office of the counsel who then went on another assignment out of town and thereby

there has been a delay of 4 days in filling the appeal. Based on the set of facts we concur with the submission of the assessee and condone the delay of 04 days in filing the appeal by the assessee as the assessee has sufficient cause.

We get support for taking a lenient view on the matter from the decision of the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) wherein it was directed the other courts to consider the liberal approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

4. The brief facts of the case in ITA No. 460/JPR/2024, as culled out from the records are that a search and seizure action u/s 132 of the Act and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Kiran Fine Jewellers Group on 02-08-2017 of which the assessee is one of the members. The jurisdiction over the case was assigned to Central Circle 2, Jaipur by the Pr. Commissioner of Income Tax, Alwar by means of an Order u/s 127 of the Act circulated vide Pr. GIT/Alw/ITO(Hqrs)/T-1015Trf of case u/s 127/2016-17/2244 dated

28-11-2017. Notice under section 153A of the Act dated 11-01-2019 was issued and served upon the assessee by speed post on 16-01-2019 requiring it to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules, 1962 within 30 days of the service of the said notice. In response to the said notice(s), a return declaring an income of Rs. 8,15,400/- was filed by the assessee on 12-02-2019. In the return of income originally filed by the assessee u/s 139(1) of the Act on 01-03-2017 an income of Rs. 8,15,400/- was declared. However, in the return of income filed in response to notice u/s 153A of the Act no undisclosed income pertaining to the relevant year has been declared by the assessee.

4.1 The assessee primarily derives his income from Business and other sources. The proceedings of assessment of income were commenced by issue of notice u/s 143(2) of the Act on 18-02-2019. Later notice u/s 142(1) dated 22-02-2019 was also issued to the assessee and information and details pertaining to the case relevant to assessment of his income were called by means of a questionnaire. Later queries were raised vide notices under section 142(1) and/or Order Sheet Entries wherever deemed

fit. In response to the above referred notice(s), Ld. AR of the assessee attended the hearings. The information furnished by the assessee was examined and placed on record.

4.2 On perusal of the profit and loss account the Id. AO noted the assessee has offered net interest income amounting to Rs. 72,343. The Id. AO asked to furnish the details of interest, income and interest expenditure so claimed, during the assessment proceedings as the assessee has shown interest expenditure which Id. AO asked the assessee to show cause as why same should not be disallowed for not being incurred, wholly and exclusively for the purpose of business. The assessee furnished explanation vide letter dated 25-11.2019 stating that they have availed a term loan amounting Rs. 1,00,00,000 from Malviya Urban Co-operative bank and that rate of interest on that loan was @ 18% per annum. Assessee has taken that loan in previous year which continued to current year. The loan was advanced to partnership firm of the assessee M/s. Goldendunes Homes LLP. That firm pays the assessee interest as per permissible rate of 12 % and assessee cannot charge higher interest for the investment

made in that firm. Ld. AO considered the reply of the assessee but not found convincing by the assessing officer. He noted that no prudent person will take loan on higher interest rate and advance at lower rate so as to have the loss.

Furthermore, the assessee is shown interest, receipt from partnership firm, ₹18,45,180. The Id. AO on perusal of the account of M/s. Goldendunes Homes LLP noted that from that firm the interest was given @ 8 % only. Thus, excess interest @ 10 % paid on loan of Rs. 1 cr obtained from Malaviya Urban Co-operative Bank for an amount of Rs. 10,00,000/- was considered to be excess claim and that claim of interest was disallowed as per provision of section 57(iii) of the Act and was considered as income of the assessee.

The assessee has claimed deduction under chapter VIA for a sum of Rs. 1,50,000, however, as the assessee has not furnished the evidence in respect of LIC, Investment in Mutual fund and tuition fee etc., paid to justify the claim of deduction same was not allowed to the assessee. Apart from that 97,00,000/- was also added being the sale price of property.

5. Aggrieved by the above order of the Assessing Officer the assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised by the assessee, the relevant finding of the Id. CIT(A) is as under:-

“In this case the search action took place on 02.08.2017. Appellant had filed his original return of income u/s 139(1) of the Act, on 01.03.2017 for the AY 2016- 17 declaring a total income at Rs. 8,15,400/-. Therefore when the search action took place the time limit to issue notice u/s 143(2) of the Act was available. Accordingly, the case is to be considered in the "abated" category.

The law in this regard is settled that in case of abated assessments the assessment is not restricted in scope and the assessing authority can make the addition even without any incriminating material found during the search.

Thus there is no need to go into the merits of the argument of the appellant regarding the nature and extent of the material seized during the course of search and seizure action. Further the appellant has raised some legal issues which are not pertaining to the facts of the appeal. The appellant has also referred to merits of the additions which are dealt with in the specific grounds of appeal.

Accordingly, this ground of Appeal is hereby dismissed.

Ground No. 2.

It is noted by the Id. AO that on perusal of the profit and loss account of the assessee it is found that the assessee has shown interest income amounting to Rs 72343/- after netting the interest expenditure. The appellant submitted explanation dated 25-11-2019 that he had taken a term loan amounting to Rs. 1,00,00,000/- from Malviya Urban Cooperative bank @ 18% per annum in previous years which continued to current year also and the loan was advanced to partnership firm of the assessee M/s Goldendunes LLP @ 12% The Id.

AO has further stated that "the assessee has shown interest receipt from partnership firm at Rs. 18,45,180/- which is mere than Rs. 12,00,000/- if, the interest is charged @ 12% on Rs. 1,00,00,000/-. And also stated that "It will be worthwhile to mention here that during the course of scrutiny proceeding in the case of M/s Goldendunes Homes LLP wherein ledger account of the assessee found wherein in the narration interest has been charged at 8% only." From this it appears that appellant has shown interest income of Rs. 18,45,180 whereas the payer firm has booked interest of Rs. 8,00,000. It appears that appellant is receiving interest income from more than one partnerships. The appellant has not addressed the factual position in the submissions.

It is also noticed in the assessment order that "the assessee has shown loan and advances amounting to Rs 2,87,84,854/ in the balance sheet. The assessec asked for details of the loans and advances during the assessment stage. However, same was not furnished which clearly shows that the loan has been advance other than the partnership firm also and assessce failed to establish nexus that borrowed fund has been advanced to partnership firm". The appellant has not addressed the factual position in the submissions. The appellant has not furnished the details and how the loan to the firm was reflected if it was reflected) in the balance sheet of the appellant is not shown.

Apparently, the Id. AO has used the benchmark of 8% in view of facts not being made available and as there is no other basis made available.

I agree with the legal submissions of the appellant that if the appellant is substantive partner in M/s Goldendunes Homes LLP during the year under appeal and the loan was advanced to partnership for business purposes and the interest expense is claimed by the appellant as the business expense u/s 3 then the difference and resultant addition worked out by the id. AO in the assessment order would not be sustainable.

However in the present case the interest disallowance has been made u/s 57) of the LT. Act. The interest expense has not been claimed by the appellant as business expense. Other conditions discussed in pre-

paragraph are also not satisfied. Hence the legal submissions made are not applicable to the facts of the case.

As per section 57, deduction of interest is available only when the assessee shows that interest expenses has been incurred wholly and exclusively for the purposes of earning the interest income chargeable under the head other sources.

If the loan has been given to further the business interest as is claimed in the present appeal such loan and pertaining interest cannot be said to be wholly and exclusively for the purposes of earning the interest income. Scope of section 57(ii) is narrower than section 36[1]/37(1) of the Act. It is held by the Hon'ble ITAT 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] as under:-

"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 other hand 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 NEETU 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 live nexus between the expenditure and the corresponding income, the Revenue Authorities have rightly disallowed the claim of interest expenses having regard to the narrower scope of deductions eligible under section 57(iii) of the Act. We thus decline to interfere with the action of the Assessing Officer and the First Appellate Authority."

In view of the above, this ground of appeal is hereby dismissed.

Ground No. 4

The Id. AO has disallowed of deduction claimed under chapter VI-A of the I.T. Act, amounting to Rs. 150000/- after observing that the assessee had not furnished evidence in respect of LIP, Mutual Fund and Tution fees for the year and the LIP furnished for Rs. 65635/- has not been paid during the year but on 13-02-2019.

On perusal of submissions it is found that during the assessment proceedings the appellant had furnished the copy of LIP of Rs. 65,635/- before the Id. AO. On perusal of the premium certificate dated 13.02.2019 it is found that the date of payment mentioned in the certificate are 06.01.2015 and 25.01.2016. Hence it is appear that the Id. AO has not appreciate the fact that the payment has been made by the appellant during F.Y. 2015-16. Accordingly, the deduction under chapter VIA is allowed to the extent of Rs. 65,635 on this ground.

The appellant has also submitted that the AO denied the eduction mainly on the ground that the supporting evidences were not submitted. The appellant has further stated that the matter was very old and it was difficult for the appellant to have produced each and every receipt and voucher in support of the deduction claimed. The appellant has claimed that some of the document has been submitted before the AO and some more supporting evidences are being A furnished now. No further evidences have been submitted. Having perused the submissions, no justification has been made out for making a case under Rule 46A in this regard. No relief is allowed in this regard.

It is noted that during the assessment proceedings the appellant has not submitted any other documentary evidences regarding his claim of balance amount of Rs 84,635/-(1,50,000-65,635). Hence, the disallowance made by the AO is upheld extent to Rs 84,635/--

Accordingly, this ground of appeal is partly allowed.”

6. Feeling dissatisfied on the sustained addition, assessee preferred the present appeal on the grounds as stated herein

above. In support of the grounds so taken by the assessee, the Id. AR for the assessee has submitted his written submission and the same reads as under:-

“Brief General Facts: The assessee, an individual derives income from real estate business and income from other sources. The Appellant e-filed its return of income (ROI) u/s 139 for the subjected Assessment Years on dates and declaring total income as shown in the chart in para 2.1 of this written submission. It appears that a Search & Seizure action u/s 132 of the Income Tax Act, 1961 (*herein after referred to as “the Act”*) was carried out by the Income Tax department on the members of Kiran Fine Jewelers Group on 02.08.2017 alleging that the assessee is one of the members of this group.

However, the assessee was not a member but merely acting as Chief Financial Officer of FS reality group. A Search & Seizure was also carried out at the place of the appellant u/s 132 on 02.08.2017. There apart, a Survey u/s 133A of the I.T. Act was also carried out at business premises of one M/s F.S. Housing Private Limited, Jaipur during the course of which some papers were found and impounded and thereon impugned additions have been made.

Accordingly, notices u/s 153A of the Act dated 11.01.2019 were issued to the assessee, in response to which return declaring the same total income as was declared in the original return was filed by the assessee on dated 12.02.2019.

Subsequently, the AO issued notices u/s 142(1) dated 22.09.2019 seeking details and information from the assessee, in response to which the assessee filed various detailed submission taking legal and factual submissions/ objections with the alternative plea. The Id. AO however, not feeling satisfied with the explanations so furnished, made the additions and disallowances on account of:

- (i) Disallowance of interest expenditure u/s 57(iii).
- (ii) Denial of deductions claimed under Chapter VI-A

Feeling aggrieved, the assessee filed appeal in CIT(A) but did not find his favor. Hence, this appeal.

GOA 2: Disallowance of interest u/s 57(iii):

(CIT(A) Pg.21 Pr.5.2)

Facts: This aspect has been dealt with by the AO as under:

“7 Disallowance of interest expenditure

On perusal of the profit and loss account of the assessee it is found that the assessee has shown interest income amounting to Rs. 72343/- after netting the interest expenditure. The assessee was asked to furnish detail of interest income and interest expenditure so claimed vide note sheet entry and show cause as how the interest expenditure is incurred wholly and exclusively for the purpose of business income or to earn interest income and show caused as why the interest expenditure should not disallowed for not been incurred wholly and exclusively for the business purpose or to earn interest income.

In reply of the same the A/R of the assessee furnished written explanation dated 25-11-2019 wherein the assessee submitted that he had taken a term loan amounting to Rs. 1,00,00,000/- from Malviya Urban Cooperative bank @ 18% per annum in previous years which continued to current year also and the loan was advanced to partnership firm of the assessee M/s Goldendunes LLP @ 12% as partnership firm cannot charge interest more than 12%.

The reply of the assessee is duly considered not found convincing as no prudent person will take loan on higher interest rate and advanced at lower rate to earned loss.

Furthermore, the assessee has shown interest receipt from partnership firm at Rs. 18,45,180/- which is more than Rs. 12,00,000/- if, the interest is charge @ 12% on Rs. 1,00,00,000/-

It will be worthwhile to mention here that during the course of scrutiny proceeding in the case of M/s Goldendunes Homes LLP wherein ledger account of the assessee found wherein in the narration interest has been charged at 8% only. The scan copy of the same is as under:

In addition to above the assessee has shown loan and advances amounting to Rs. 28784854/- in the balance sheet the assessee asked for details of the loans and advances. However, same was not furnished which clearly shows that the loan has been advance other than the partnership firm also and assessee failed to establish nexus that borrowed fund has been advanced to partnership firm.

Hence it is evident that the argument given by the assessee is contrary to the fact and an afterthought and interest expenditure

so claimed has not been incurred for the purpose of interest income and difference of interest expenditure at Rs. 10,00,000/- computed at @ 10% (18%-8%) of Rs. 1,00,00,000/- is hereby disallowed u/s 57(iii) of the I.T. Act and added to the total income of the assessee.”

The CIT(A) also confirmed the disallowance made by the AO holding as under:

“5.2..... I agree with the legal submissions of the appellant that if the appellant is substantive partner in M/s Goldendunes Homes LLP during the year under appeal and the loan was advanced to partnership for business purposes and the interest expense is claimed by the appellant as the business expense u/s 36 then the difference and resultant addition worked out by the Id.AO in the assessment order would not be sustainable.

However in the present case the interest disallowance has been made u/s 57(iii) of the I.T. Act. The interest expense has not been claimed by the appellant as business expense. Other conditions discussed in pre-paragraph are also not satisfied. Hence the legal submissions made are not applicable to the facts of the case.”

Hence this ground.

Submissions:

1.1 Finding of the AO, vague and contradictory: While making the impugned disallowance, the AO made the allegations that the argument given by the assessee is *contrary to the fact and an afterthought*. However, he completely failed to demonstrate as to what contrary he found in such contentions and what was the afterthought. The Id.AO asked the Assessee to furnish the details of the interest income and interest expenditure and secondly, how such interest was incurred wholly & exclusively for business purposes or to earn interest income, to which the assessee replied, vide letter dated 25.11.2019 (PB-5-10). Relevant part is reproduced for ready reference:

“3. Explanation for interest expenses claimed against interest income:

Below is the summary of interest income and interest expenses claimed by me, during the relevant assessment year (ledger of interest income and expenses is attached for your reference):

<i>Particulars</i>	<i>Amount</i>
<i>Interest received from Goldendunes LLP</i>	<i>18,45,180/-</i>

<i>Interest received from Ramnath Buildcon</i>	<i>76,432/-</i>
<i>Less: Interest Paid on MUCB term loan</i>	<i>18,49,269/-</i>
<i>Net Interest Income shown in PL</i>	<i>72,343/-</i>

From our reply for AY 2015-16, it is evident that the term loan taken from MUCB bank has been utilized as follows:

<i>S. No.</i>	<i>Name of Person</i>	<i>Amount advanced</i>	<i>Date of advance</i>	<i>Rate of interest, if any</i>
<i>1.</i>	<i>Goldendunes Homes LLP</i>	<i>40,00,000/-</i>	<i>March 22, 2014</i>	<i>Interest @ 12% is charged.</i>
<i>2.</i>	<i>Goldendunes Homes LLP</i>	<i>60,00,000/-</i>	<i>May 20, 2014</i>	
	<i>Total</i>	<i>1,00,00,000/-</i>		

During the year, I have paid interest amounting to Rs.18,49,269/- on MUCB term loan (Ledger and MUCB statement is attached).

I have received interest amounting to Rs.18,45,180/- from Goldendunes Homes LLP (ledger of Goldendunes Homes LLP and interest calculation is attached for your reference).

I have received interest amounting to Rs.76,432/- from Ramnath Buildcon (ledger of Ramnath Buildcon and interest calculation is attached for your reference).

During the relevant assessment year, I was partner in Goldendunes Homes LLP. I have charged interest @12% on loan advanced to Goldendunes Homes LLP because as per Section 40(b)(iv), I cannot charge interest more than 12% from firm, otherwise the same would be disallowed and would be taxable in the hands of LLP. So, there is restriction on interest rate that can be charged by a partner from its loan in firm.

Moreover, since I was partner in firm and my motive was to earn profit from investment in firm. The firm required fund for conduct of its business operations, then only my motive will get fulfilled. Therefore, I have loan from various sources and invested the same in firm so that I can get profit in future....”

Thus, the details of interest income and interest expenditure both, were duly supplied as required.

1.2. The appellant also submitted the purpose behind providing loan. However, the dispute was confined only to the interest paid or loan taken @18% from the bank and the same advance to a firm @12%, which was based on making the impugned addition.

1.3 The undisputed facts of the case are that the appellant, out of loan of Rs. 1,00,00,000/- taken from Malviya Urban Corporative Bank Ltd. ("MUCB" in short), was transferred to the M/S Goldendunes Homes LLP, a partnership firm wherein, the appellant continued as a partner having 35% of share. This is also not disputed that it was not a completely interest free loan advanced but the appellant did charge interest @ 8% p.a.. As per AO, the only dispute is that whereas, the appellant paid interest @ 18%, it charged only @ 8% from the said firm Goldendunes Homes LLP and therefore, the difference of 10% on the amount of Bank loan of Rs.1,00,00,000/- was disallowed by the AO u/s 57(iii) of the Act.

1.4 It may be clarified that the appellant had taken loans (with or without interest) from other sources also and had further advanced to said LLP. On 01.04.2015 there was an outstanding balance due from LLP at Rs. 27,45,601/- whereas, as on 21.03.2016 the same was of Rs.2,60,27,781/- which included the said Rs. 1 Crore also.

2. Loan advanced out of business expediency for business purpose and interest claimed exclusively for business purposes u/s 36(1)(iii) r/w 37(1) of the Act:It is submitted that the peculiar admitted facts of the case clearly shows that the loan so advanced to Goldendunes Homes LLP was given completely out of commercial expediency and such interest expenditure was incurred exclusively for business purposes falling u/s 36(1)(iii) and/or u/s 37(1) of the Act.

The borrower was also a real-estate firm and the appellant became a partner right from the very inception i.e. from dated 19.09.2013 was having substantial interest by holding initial 50% share and thereafter, 35% in A.Y. 2016-17 & A.Y. 2017-18 in profit & loss of the firm. The said firm, was in need of finances towards its proposed or ongoing real-estate projects. The appellant, being a reputed person having knowledge and expertise in the field of real estate, instead of carrying out any real estate business individually on its own, decided to form an LLP (wherein he was holding 50% share and thereafter 35% in A.Y. 2016-17). Moreover, since the said borrower was in its initial stage and because of its weak financials and also because it was a new entrant in the real-estate business, the LLP was not able to get any loan/the loan of suitable amount from the banks.

On the other hand, Shri Magendra Singh Rathore was having good reputation in the real-estate field therefore it was arranged that the appellant should get loan from the bank from where it was practical and possible and to transfer the said loan to the borrower LLP. The appellant being a partner and having substantial share therein, it was not abnormal, to have agreed for the proposal.

Unfortunately, the borrower having commenced from A.Y. 2014-15 was not doing well and started incurring huge losses which continued even in the subjected assessment A.Y. 2016-17 & A.Y. 2017-18. This was a serious cause of worry for the appellant as to whether he would be able to recover back the huge amount of loans of Rs. 2.60 Cr transferred to the said borrower and having become apprehensive, the appellant now adopted a defence mode so that it could minimise the possible loss. The prime question for the appellant was of the recovery of the principal and thereafter the recovery of the interest at the desired/demanded rate. But finding the fact that the LLP was sinking and could have become bankrupt, the appellant had ultimately to compromise at whatever rate of interest the said borrower could pay the appellant. The borrower was having upper hand and the appellant stood like a beggar. In these peculiar fact & circumstances therefore charging of interest as the desired rate was secondary and the question of recovery of the principal amount was of prime importance.

The Appellant therefore felt fortunate even in making recovery of the interest @ 8% (though agreed @ 12% as stated in the partnership deed). Continuing with this dilemma, the appellant ultimately had to leave the firm and finally in A.Y. 2017-18, he took retirement with effect from dated 15.02.2017. Fortunately, later on the appellant was able to get the principal amount (of Rs. 1,00,00,000/-) back from the borrower which was then repaid to the Malviya Urban Corporative Bank Limited.

It cannot be denied that the Appellant, transferred the funds with the expectation of earning profits/huge profits from the projects with the borrower but by one reason or other, he ultimately failed and the appellant had to feel satisfied at the interest of 8% only as against 12%. It may be clarified that the borrower, being a firm could not have paid more than 12% as per the present tax laws therefore, the AO wrongly expected 18% and hence, there can't be any accrual of income in the hands of the assessee of the balance 4%. Thus, the Appellant acted as a prudent businessman. In the peculiar circumstances the appellant did what any other prudent businessman could and should have done.

3. Notional charging of interest- not permissible: Even assuming, the appellant could have charged interest @ 12% or say @18% by passing necessary entries in its books of accounts and debiting the account of the said borrower but it could be a mere case of a hypothetical income

and the law is well settled that income tax is a tax on real income but not on hypothetical income. Thus, by merely passing entries to please the income tax department was of no use.

In this case, the AO made the disallowance of interest claimed by comparing the rate of interest 8% paid against 18% which the appellant should have charged in the opinion of the AO and therefore the differential rate of interest 10% has been disallowed. Thus, it is clear that AO wanted the appellant to charge interest @ 18% which it failed. It is submitted that the law is well settled that no interest can be charged on notional basis as held in the case of Shoorji Vallabdas & Co. 46 ITR 144 (SC) followed in Godhra Electricity Co. Ltd. vs. CIT (1997) 225 ITR 746 (SC).

There is nothing to show on record that the appellant was bound or the borrower had agreed to make payment @ 18% to the appellant. Therefore, the AO could not have presumed more interest than agreed which amounts to taxation of the notional interest.

4. Businessman is the best judge:

It will be appreciated that the decision as to what rate of interest should have been paid/charged, is a decision to be taken by businessman, who is the best judge to take care of its interest. The law is settled that the AO cannot sit on the arm chair of the businessman. The allowability of claimed interest therefore should have been allowed accordingly. For this proposition, kindly refer J.K. Woollen Mfg. vs. CIT [1969] 72 ITR 612 (SC).

5. Supporting Case Laws:

5.1 In the facts of the present case, a useful reference can be made to the celebrated decision of Hon'ble Apex court in the case of S. A. Builders Ltd. Vs. CIT(A), Chandigarh reported in 288 ITR 1 where it was held as under:

“18. We have considered the submission of the respective parties. The question involved in this case is only about the allowability of the interest, on borrowed funds and hence we are dealing only with that question. In our opinion, the approach of the High Court as well as the authorities below on the aforesaid question was not correct.

19. In this connection we may refer to section 36(1)(iii) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') which states that "the amount of the interest paid in respect of capital borrowed for the purposes of the business or

profession" has to be allowed as a deduction in computing the Income-tax under section 28 of the Act.

20. In Madhav Prasad Jatia v. CIT AIR 1979 SC 1291, this Court held that the expression "for the purpose of business" occurring under the provision is wider in scope than the expression "for the purpose of earning income, profits or gains", and this has been the consistent view of this Court.

21. In our opinion, the High Court in the impugned judgment, as well as the Tribunal and the Income-tax authorities have approached the matter from an erroneous angle. In the present case, the assessee borrowed the fund from the bank and lent some of it to its sister concern (a subsidiary) on interest free loan. The test, in our opinion, in such a case is really whether this was done as a measure of commercial expediency.

22. In our opinion, the decisions relating to section 37 of the Act will also be applicable to section 36(1)(iii) because in section 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby."

6.2 The Hon'ble Delhi High Court, in the case of Punjab Stainless Steel Inds. Vs. CIT 324 ITR 396, has further elaborated stating that:

"The commercial expediency would include such purpose as is expected by the assessee to advance its business interest and may include measures taken for preservation, protection or advancement of its business interests, which has to be distinguished from the personal interest of its directors or partners, as the case may be."

Also kindly refer Pr. CIT v. Reebok India Company* [2018] 98 taxmann.com 413 (Delhi) and CIT Vs. Shree Benzophen Industries Ltd. (2018) 405 ITR 185 (Guj).

The principal propounded in the above decisions directly applies on the facts of the present case because some loan was advanced to a relative does not empower the AO to make a disallowance but the aspect of commercial expediency has to be looked into.

6.3 Moreover, the fact of earning of income is not a condition precedent for allowing an expenditure. In the case of *Madhav Prasad Jatia v. CIT AIR 1979 SC 1291*, it was held that the "purpose of business" is wider in its scope than for the "purpose of earning" of the income or profits or

gains. The Hon'ble Apex Court in S.A. Builders Ltd. (supra) has also taken note of the same in para 20. This suitably also answers the disallowance made by the AO by wrongly invoking s.57(iii) of the Act.

7.1 As regards the observations of the Id. CIT(A) (Pg.21-23 of Order for A.Y. 2016-17) submitted that, from the facts submitted to the AO reproduced above clearly shows that entire interest of Rs. 18,45,180/- was received from the said M/s Goldendunes Homes LLP only. However, the observation that the payer firm booked only Rs. 8 Lakhs, was only w.r.t the interest-bearing loan of Rs. 1 Crore taken from MUCB whereas there were more amounts advanced to said firm as stated above. Further, out of total amount of Rs. 2.88 Crore, the major amount of loan advance was of Rs. 2.60 Crore to the said LLP only and the AO not having asked for these details, the appellant could not be blamed.

7.2 It is clarified that the ITR was filed online and in the ITR from itself all the figures of the balance-sheet as also P&L account were given therefore, it is wrong to say that applicant didn't furnish the relevant details. On the contrary, it was for the authorities below to have gone through the same carefully.

7.3 Lastly, (at Pg 23 of order) he relied upon the decision in the case of RRPR Holding Pvt. Ltd. Vs. DCIT (2023) 152 taxmann.com537 (Del. ITAT) which is however, based on different facts which are not available in the present case and therefore, the same is completely distinguishable.

8. Expense claimed u/s 36 (1) (iii) only: The appellant never made a claim u/s 57(iii) and therefore there was no occasion for the AO to have allowed or disallowed the claim under that provision. Admittedly the appellant made a claim under the head profits & gains of business & professions therefore, the only provisions was s. 36(1)(iii) and/or u/s 37(i) of the Act but not s. 57(iii) in any case. The AO cannot change the head of income on its own. Kindly refer computation of total income (PB1-3).

9. There is no contradiction as wrongly understood by the AO. The deed provided interest @ 12% but the appellant could charge @ 8% only as already submitted in detail here and above.

10. Virtually relief allowed by CIT(A): A close reading of the order of the CIT(A) shall make it clear that in Para 5.2, (reproduce herein above), he has already held that if such a claim was made u/s 36 then the resultant addition was not sustainable. The Id. CIT(A) did not appreciate the facts, despite making a specific submission before him that in fact, it was a claim made u/s 36(1)(iii) and there was no claim made u/s 57(iii).

Hence the impugned disallowances deserve to be deleted in full.

GOA 3: Denial of deductions under Chapter VI-A:(CIT(A) Pg. 47 Pr. 7.2)

Facts: This aspect has been dealt with by the AO as under:

“9 The assessee has claimed deduction under chapter VI-A of the I.T. Act amounting to Rs. 150000/-. However, the assessee has not furnished evidence in respect of LIP, Mutual Fund and Tution fees and the LIP furnished for Rs. 65635/-has not been paid during the year but on 13-02-2019 and same cannot be allowed during the year. Hence the claim of deduction remains non substantiated by the documentary evidences which hereby disallowed and added back to the total income of the assessee.”

The CIT(A) partly confirmed the denial towards the deductions to the extent of Rs. 84,635/- holding as under:

“7.2... It is noted that during the assessment proceedings the appellant has not submitted any other documentary evidences regarding his claim of balance amount of Rs. 84,635/- (1,50,000-65,635). Hence, the disallowance made by the AO is upheld extent to Rs 84,635/-.”

Hence, this ground.

Submission:

1. The following submission were made before the Id. CIT(A):

“It is submitted that the AO denied the deduction mainly on the ground that the supporting evidences were not submitted. It may be appreciated that this is very old matter and it is difficult now for the assessee to have produce each and every receipt and voucher in support of the deduction claimed. Although the assessee has submitted some of the document before the AO and some more supporting evidences are being furnished now in the chart shown under:

Chart showing documents for deductions claimed in various AY

<i>Date</i>	<i>Amount</i>	<i>Details</i>	<i>PB</i>
<i>FOR AY 2016-17</i>			
<i>7.12.2015</i>	<i>8,808</i>	<i>LIC OF VIKRAM SINGH RATHORE</i>	<i>89</i>
<i>25.01.2016</i>	<i>25,323</i>	<i>LIC OF MAGENDRA</i>	<i>88</i>

6.5.2015	25,445	SINGH RATHORE	
6.5.2015	2,727		
6.5.2015	2,613		
6.5.2015	2,509		
6.5.2015	2,419		
6.5.2015	2,337		
6.5.2015	2,262		
19.08.2015	12,507	APPOLO MEDICAL INSURANCE	90-91
31.03.2015	35,300	TUITION CHALLAN	92
6.10.2015	35,300	TUITION CHALLAN	93
157,550			

With a humble prayer to admit the same under Rule 46A because the facts are covered by the clauses thereof. However, taking a practical and sympathetic view, it is prayed that the deduction as claimed may be allowed. Because the assessee is being continuously making payment and sometime deduction is allowed and sometime denied for want of evidence. But continuity of the payment is not denied therefore, as a consistent practice, deduction may kindly be allowed fully.”

2. The Id. CIT(A) however appears to have ignored the same. He did not discuss the prayer so made nor he considered the evidence made before AO. Although, all the supporting evidence were furnished towards deduction of Rs.1,57,550/-.

Hence, the deduction so claimed deserves to be allowed in full.

The above submissions have been made based on the instructions and the information provided of/by the client.”

7. To support the various contentions so raised in the written submission the Id. AR of the assessee relied upon the following evidences: -

S. No.	Particulars	Page No.
1.	Return of income and computation filed for AY 2016-17	1-3
2.	Return of income filed for AY 2016-17 in response to notice u/s 153A	4
3.	Written submissions before AO dated 25.11.2019 and dated 04.12.2019	5-10
4.	Bank Statement of Malviya Urban Cooperative Bank A/c No. 002311000005804	11-12
5.	Statement reflecting payment of LIC premium paid during the year u/s 80C	13-14
6.	Receipt from Apollo Munich reflecting payment of medical insurance u/s 80D	15-16
7.	Tuition fee challan	17-18
8.	Interest on loan ledger account in the books of Maghendra Singh Rathore	19
9.	Written submission filed before CIT(A) dated 14.06.2023	20-46

8. During the course of hearing, the Id. AR of the assessee in addition to the written submission vehemently argued that while examining the claim of interest receipt and paid, Id. AO failed appreciate the assessee has offered the interest income [excess of interest income then paid] under the head profit & gains of business or profession and not as other income as propose to add the interest u/s 57(iii) is against the provision of the law. It is not under dispute that money so borrowed by the assessee is invested in the firm M/s. Goldendunes Homes LLP. The Id. AO noted that the assessee is in receipt of interest @ 8% only whereas the assessee has paid interest @ 18% on a loan taken from Malviya Urban Cooperative Bank for an amount of Rs. 1,00,00,000/-. As

loan was taken for the purpose of business, income is shown under the head profit and gains of business and profession the disallowance of alleged excess interest as per provision of section 57(iii) is not correct. When the matter was carried to Id. CIT(A), though he observed that the contention of the assessee has merits on the legal ground raised but he has confirmed the finding of the Id. Assessing Officer only on the ground that there is no claim by the assessee as the interest paid under the head income from other sources and thereby addition was sustained by Id. CIT(A).

To counter this facts, Id. AR of the assessee drawn our attention to page 6 of the paper book wherein the reply dated 25.11.2019 given to the Assessing Officer wherein all the details related to the claim was given, the relevant extract as explained is reproduced for the sake of brevity:-

“3. Explanation for interest expenses claimed against interest income: Below is the summary of interest income and interest expenses claimed by me, during the relevant assessment year (ledger of interest income and expenses is attached for your reference):

Particulars	Amount
Interest received from Goldenduness LLP	18.45.180/-
Interest received from Ramnath Buildcon	76,432/-
Less: Interest paid on MUCB term loan	18,49,269/-
Net interest income shown in PL	72,343/-

From the reply for AY 2015-16, it is evident that the term loan taken from MUCB bank has been utilized as follows:-

S. No.	Name of person	Amount	Date of advance	Rate of Interest, if any
1.	Goldendunes Homes LLP	40,00,000/-	March22,2014	Interest @ 12% is charged
2.	Goldendunes Homes LLP	60,00,000/-	March20,2014	
	Total	1,00,00,000/-		

During the year, I have paid interest amounting to Rs. 18,49,269/- on MUCB term loan (Ledger and MUCB statement is attached).

I have received interest amounting to Rs.18,45,180/- from Goldendunes Homes LLP (ledger of Goldendunes Homes LLP and interest calculation is attached for your reference).

I have received interest amounting to Rs.76,432/- from Ramnath Buildcon (ledger of Ramnath Buildcon and interest calculation is attached for your reference).

During the relevant assessment year, I was partner in Goldendunes Homes LLP. I have charged interest @12% on loan advanced to Goldendunes Homes LLP because as per Section 40(b)(iv), 1 cannot charge interest more than 12% from firm, otherwise the same would be disallowed and would be taxable in the hands of LLP. So, there is restriction on interest rate that can be charged by a partner from its loan in firm.

Moreover, since I was partner in firm and my motive was to earn profit from investment in firm. The firm required fund for conduct of its business operations, then only my motive will get fulfilled. Therefore, I have loan from various sources and invested the same in firm so that I can get profit in future.

Further to substantiate my claim, I want to submit that in the case of Atir Textile Industries (P.) Ltd. Vs. Deputy Commissioner of Income-tax [2015] 55 taxmann.com 380 (Gujarat), Hon'ble Gujarat High Court held that:

"Whether while considering assessee's case to extend benefit under section 57(ill) competent authority has to consider transaction as a whole and for that reason, competent authority cannot split transaction in more than one part and select any particular part so as to say that such part is illegal or illegitimate or impermissible and deny to extend benefit in respect of same - Held, yes"

"Whether even otherwise, once primary transaction of lending, borrowing and payment of interest was found to be genuine, merely because it resulted into less or equal amount of income, would not become a colourable device and consequently earning any disqualification - Held, yes"

Further in the case of Commissioner of Income-tax Vs. Rajendra Prasad Moody [1978] 115 ITR 519 (SC) Hon'ble Supreme Court has held that:

"what section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. Section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."

You are requested to take above submission on record."

8.1 As regards ground No. 3, the assessee has placed on record all the details related to deduction claimed under chapter VIA, however, he has no objection if the matter be remanded back to the file of Id. AO to verify the claim of deduction made by the assessee.

9. Per contra, Id. DR relied on the finding recorded in the order of the lower authorities. The Ld. DR relying at page 21 in para 5.2 wherein Id. CIT(A) noted that as per provisions of section 57 of the Act as claimed of interest expenses is only available when the fact that the assessee shown that the interest expenditure has been incurred wholly and exclusively for the purpose of earning interest income chargeable under the head of income from other source and therefore, he has thought this scope of Section 57(iii) is narrower than section 36(1)(iii)/37(1) of the Act and therefore, Id. CIT(A) has rightly sustained the addition. As regards ground No. 3, Id. DR has not raised any specific objection to restore the matter back to the file of the AO.

10. In the rejoinder, the Id. AR of the assessee submitted that if the applicability of Section 57(iii) of the Act is considered then the Revenue is drawing to make a new case which there does not exist the Id. AO as well as Id. CIT(A) has not disputed the fact that the money so obtained by the assessee from Malviya Urban Cooperative Bank is not for the purpose of the business of the firm and therefore, if any disallowance is required to be made u/s 36(1)(iii)/37(1) of the Act and the Revenue cannot be make a new

case for which there do not exist the fact and arguments in the show cause notice issued to the assessee. To drive home to this contention, Ld. AR of the assessee relied upon the written submission and stated that the addition cannot be sustained u/s 57(iii) of the Act.

11. We have considered the rival contentions, perused the material available on record.

Ground no. 2 raised by the assessee is in relation to the disallowance of interest of Rs. 10,00,000/- confirmed by Id. CIT(A), made by the Id. AO u/s 57(iii) of the Act. The Id. AO while doing Considering that the argument given by the assessee is contrary to the fact and an afterthought and interest expenditure so claimed has not been incurred for the purpose of interest income and difference of interest expenditure at Rs. 10,00,000/- computed at @ 10% (18% paid on loan taken-8% received on the amount given to partnership firm) of Rs. 1,00,00,000/- was disallowed u/s 57(iii) of the Act.

The bench noted that the assessee has borrowed a sum of Rs. 1,00,00,000/- from the Malaviya Urban Co-operative Bank. The said money was invested in M/s. Goldendunes Homes LLP in the

previous year and not in the year under consideration. The assessee has borrowed that money @ 18 %. Since that money was invested in the firm M/s. Goldendunes Homes LLP the maximum amount that the assessee can received is 12 Per Year, and in fact in the year under consideration the assessee has received @ 8 % only. Ld. AO noted that the since the assessee has not offered income from other sources corresponding to the interest received, the interest expenditure claim on the said amount borrowed from Malaviya Urban Co-operative Bank was considered as disallowable u/s. 57(iii) of the Act, while doing so Id. AO disallowed only 10 % of the excess amount as not allowable and therefore, the same was added as income of the assessee.

Ld. CIT(A) while dealing with the grounds of the assessee observed noted as under;

I agree with the legal submissions of the appellant that if the appellant is substantive partner in M/s. Goldendunes Homes LLP during the year under appeal and the loan was advanced to partnership firm for business purposes and the interest expenses is claimed by the complainant as the business expenses under section 36, then the difference and resultant addition worked out by the Id. AO in the assessment order would not be sustainable.

However, in the present case, the interest allowance has been made under section 57 (iii) of the income tax act. The interest expenses has not been claimed by the appellant as business expenses. Other

conditions discussed in the pre-paragraph are also not satisfied. Hence the legal submission made are not applicable to the fact of the Case

We note from the above observation of the Id. CIT(A) that he has agreed to the submission of the assessee that the claim of the assessee cannot be denied. Merely Id. AO disallowed the claim u/s. 57(iii) of the Act he has denied to the legal submission of the assessee and confirmed the addition.

Before us, now the non-disputed fact are that the assessee has borrowed the money from the bank, that money so borrowed were invested in the firm where the assessee is partner, the net interest is duly offered as business income of the assessee.

Thus, now the limited issue that whether the excess interest paid by the assessee over and above the amount received is disallowable u/s. 57(iii) of the Act or not? The bench noted that since the assessee has already offered the interest income (net of income and expenditure) under the head income from business or profession the Id. AO should have disallowed the interest in accordance with the provision of section 36(1)(iii) of the Act and not as per provision of section 57(iii) of the Act as the assessee has already offered the income under the head income from business

or profession. The provision of section both these sections are extracted for the sake of convenience;

Deductions.

57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—

(i) in the case of dividends, or interest on securities, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee;

(ia) in the case of income of the nature referred to in sub-clause (x) of clause (24) of [section 2](#) which is chargeable to income-tax under the head "Income from other sources", deductions, so far as may be, in accordance with the provisions of clause (va) of sub-section (1) of [section 36](#);

(ii) in the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of [section 56](#), deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of [section 30](#), [section 31](#) and sub-sections (1) and (2) of [section 32](#) and subject to the provisions of [section 38](#);

(iia) in the case of income in the nature of family pension, a deduction of a sum equal to thirty-three and one-third per cent of such income or fifteen thousand rupees, whichever is less.

Explanation.—For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death;

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;

(iv) in the case of income of the nature referred to in clause (viii) of sub-section (2) of [section 56](#), a deduction of a sum equal to fifty per cent of such income and no deduction shall be allowed under any other clause of this section:

Provided that no deduction shall be allowed from the dividend income, or income in respect of units of a Mutual Fund specified under clause (23D) of [section 10](#) or income in respect of units from a specified company defined in the *Explanation* to clause (35) of [section 10](#), other than deduction on account of interest expense, and in any previous year such deduction shall not exceed twenty per cent of the dividend income, or income in respect of such units, included in the total income for that year, without deduction under this section.

Other deductions.

36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in [section 28](#)—

(i) the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession;

(ia) the amount of any premium paid by a federal milk co-operative society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk raised by its members to such federal milk co-operative society;

(ib) the amount of any premium paid by any mode of payment other than cash by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by—

(A) the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government; or

(B) any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(ii) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;

(iia) *[Omitted by the Finance Act, 1999, w.e.f. 1-4-2000;]*

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :

As is not disputed that the money borrowed by the assessee were invested in the business of the assessee and since the section 36(1)(iii) of the Act do not cast any other responsibility upon the assessee the claim of interest on the amount borrowed for the purpose of investment made as partner of the firm cannot be denied to the assessee and that too in part.

Based on these observations ground no. 2 raised by the assessee is allowed.

12. Ground no. 1, being general in nature and therefore, does not require our adjudication.

13. Ground no 3 relates to an addition of Rs. 84,635 relates to the denial of deductions claimed by the assessee. Before us, the Id. AR of the assessee prayed that the Id. CIT(A) has in appreciation of the fact that Life Insurance Premium receipt placed before Id. AO was considered as allowable deduction and for the balance deduction for which the Id. CIT(A) denied the relief that the assessee has not moved any application u/r 46A for admitting the additional evidence. Ld. AR of the assessee there is no requirement in ITR to file the proof and the Id. AO was given opportunity to assessee by giving specific notice the same remained to be placed on record and in the interest of justice the assessee prayed that for the balance amount sustained the matter be remanded back to the file of the Id. AO. We find force in the arguments of the Id. AR of the assessee and thus restore the matter to the file of the Id. AO who will after perusing the records

for the deduction under chapter VIA decide the issue in accordance with law. Based on these observation ground no. 3 raised by the assessee is allowed for statistical purposes.

14. Ground no. 4 raised by the assessee relates to the charge of interest u/s. 234A and 234B of the Act. The charging of the interest under this section consequential and mandatory in nature and the Id. AO will give effect to the same in accordance with law.

15. Ground no. 5 raised by the assessee being general in nature and does not require our adjudication.

In the result the appeal of the assessee is partly allowed.

16. The fact of the case in ITA No. 483/JPR/2024 is similar to the case in ITA No. 460/JPR/2024 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 483/JPR/2024 are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various

grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 460/JPR/2024 for the Assessment Year 2016-17 shall apply mutatis mutandis in the case of Shri Magendra Singh Rathore in ITA No. 483/JPR/2024 for the Assessment Year 2017-18.

In the result, the appeals of the assessee in ITA no. 460/JPR/2024 and 483/JPR/2024 are partly allowed.

Order pronounced in the open Court on 23/09/2024.

Sd/-

Sd/-

(डा० एस. सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिक सदस्य / Judicial Member

(राठोड कमलेश जयन्तभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23/09/2024.

***Santosh**

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

1. अपीलार्थी / The Appellant- Sh. Magendra Singh Rathore, Alwar.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-2, Jaipur.
DCIT, Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 460 & 483/JPR/2024 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar