

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 1989/MUM/2024  
Assessment Year: 2014-15**

Om Sri Maa Shakti Naman,  
Shop No. 8, Salooni Apartment, TPS  
56<sup>th</sup> Road, Borivali West,  
Mumbai-400092.

**PAN NO. AACFO 1856 C  
Appellant**

Asst. CIT Circle -32(2),  
Bandra East,  
Mumbai-400051.  
**Vs.**

**Respondent**

Assessee by : Mr. Laxman Suthar  
Revenue by : Mrs. Pradnya R. Gholap, Sr. DR

Date of Hearing : 20/08/2024  
Date of pronouncement : 27/09/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee has been preferred against order dated 28.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2014-15, raising following grounds:

- i. *The legitimate claim on account of Interest Expense Rs. 1,97,13,918/- is a genuine and bonafide claim of your appellant.*



- The Ld. ACIT has not raised any observation or disagreement on legitimate claim of Interest expenses in the impugned order.
- ii. Your appellant has established the nexus between the impugned redevelopment project undertaken and the funds borrowed and the funds advanced as witnessed by the Balance Sheet as on 31/03/2014. It has also proved the nexus between FD taken from Bank with the impugned redevelopment project.
  - iii. In the result the treatment of interest income of Rs. 1,45,82,918/- and FD interest of Rs.7,90,124/- netted off with the Interest Expense of Rs. 1,97,13,918/- resulting into net interest expense claim of Rs. 43,40,876/- debited in the P & L A/c is justifiable and does not require any correction/adjustment in the computation of business income.
  - iv. The H'ble Calcutta HC in the case of CIT v. Kanoria Investments Pvt. Ltd. [1998] 232 ITR 7 (Cal.) and the H'ble Delhi HC in the case of CIT v. Kabridas Investment Co. Pvt. Ltd. [2001] 249 ITR 776 (Del.) held that "where funds borrowed for business purposes yield Business Income as well as Income from Other Sources, the entire interest paid is to be allowable u/s 36(1)(iii). The H'ble Calcutta HC has gone a step forward and held that Interest u/s a 36(1)(iii) cannot be disallowed on the ground that the money lent out of the borrowed amount is written off as irrecoverable. CIT v. H. P. Lohia [1993] N 203 ITR 928 (Cal.)
  - v. Your honour may refer pt no. v of Statement of Facts in your appellants case given above which are completely identical with the facts of the case of CIT v. Kanoria Investments Pvt. Ltd. [1998] 232 ITR 7 (Cal.) and in the case of CIT v. Kabridas Investment Co. Pvt. Ltd. [2001] 249 ITR 776 (Del.)
  - vi. Relying on the aforesaid decisions of H'ble Cal. & Delhi High Courts, your appellant strongly contends that the treatment given in P & L A/c is fully justifiable and no adjustment is required in computation of taxable income. In other words the claim on account of net interest expense of Rs. 43,40,876/- is fully deductible as business expense u/s 36(1)(iii).
  - vii. The Ld. ACIT has cited the decision in case of Tuticorin Alkali Chemicals (1997) 93 Taxmann 502 (SC) by the H' ble Supreme Court to justify the interest income for its taxability under the head "Income from Other Sources". vide para 4.3 of his order.

However in the same judgment the H'ble Supreme Court has further stated that "The question of allowing deduction has to be decided according to the principles of law and any other provisions of the Act. In other words the claim of your appellant towards interest expenses of Rs. 1,97,13,918/- is allowable against the interest income taxed under the head "Income from Other Sources".

- viii. The H'ble Supreme Court in the case of Seth R. Dalmia v. CIT [1997] 110 ITR 644 (SC) has categorically stated that "In computing the taxable income under the head "Income from Other Sources" the assessee is entitled to deduct u/s 57 from the gross



amount, expenses of revenue nature subject to fulfillment of the following basic conditions:

- a) *The expenditure must have been incurred wholly and exclusively for the purpose of earning income or making profit.*
- b) *The expenditure should not be in the nature of a capital expenditure.*
- c) *The amount in question should not be in the nature of personal expenses of the assessee.*
- d) *There must be a clear nexus between the expenditure incurred and the income sought to be earned.*
- e) *The expenditure should be incurred during the accounting year.*

*The dominant purpose of the expenditure incurred must be to earn income. The connection between the expenditure and the earning of income need not be direct even an indirect connection could prove the nexus between the expenditure incurred and the income.*

- ix. *According to the above observations of H'ble Supreme Court the legitimate claim on account of interest expense is fully eligible for deduction in case of your appellant. The Ld. ACIT grossly erred in merely adding the gross interest earned without allowing the interest expense claim while taxing the interest under the head "Income from Other Sources".*
- x. *The Ld. ACIT further erred in interpreting the judgment of H'ble Supreme Court in the case of Govinda Choudhary and Sons [1995] 203 ITR 881 (SC). The correct interpretation of the judgment says that Interest can be assessable under the head "Income from Other Sources" only if it cannot be brought within one or the other of the specific heads of income. Your appellant has established the nexus between business activity, Interest paid and Interest earned. The Net Interest expense of Rs. 43,40,876/- is therefore aptly considered as business expenses allowable u/s 36(1)(ii) under the head "Business Income".*
- xi. *The Ld. ACIT referred the judgment of H'ble Rajasthan High Court in the case of Kaviraj Mahipat Singh (2002) 123 Taxmann 700 where the assessee (carrying on business) has taken loan against Fixed Deposit in Bank and utilized the funds for construction of a house and therefore the gross interest from bank was taxed. Here the purpose of loan is construction of house i.e. personal purpose and therefore deduction was denied.*
- xii. *The facts of your appellant reveal that gross interest earned from loans advanced and the Bank FDs and the interest paid on loans borrowed are directly linked to each other and therefore according to the H'ble Supreme Court guidelines given in para viii above,*



*your appellant is eligible to claim interest expense from the interest income.*

- xiii. *Your appellant draws your honour's attention to grounds of appeal pt. vii to pt. xii as alternate to the original claim of your appellant that the treatment of interest in P &L A/c is fully justified. The alternate claim of your appellant is if the interest income Rs. 1,53,73,042/- is taxed under the head "Income from Other Sources", the legitimate claim of interest expenses of Rs. 1,97,13,918/- is deductible therefrom.*

*The taxable income from Other Sources should be recomputed as under:*

*Interest Income Rs. 1,53,73,042/-*

*Less: Interest Expense Rs. 1,97,13,918/-*

*Loss from Other Sources Rs. 43,40,876/-*

*The Taxable Income from Business or Profession should be recomputed as under:*

*Income from Business or Profession : Rs. 70,48,951/-*

*Add :- Disallowance of Interest Rs. 43,40,876/-*

*(Taxable under Other Sources)*

*Taxable Income from Business or Profession Rs. 1,13,89,827/-*

- xiv. *The other alternate claim of your appellant (arising as a consequential effect to treating the gross interest received as taxable under the head Income from Other Sources") is to recompute the taxable business income as under:*

*Taxable Business Income As per computation Rs. 70,48,951/-*

*Less: Interest Taxable under Other Sources U/s 56 Rs. 1,53,73,042/-*

*Eligible Business Loss Rs. 83,24,091/-*

- xv. *Ld. ACIT and Ld. CIT(A) grossly erred in appreciating the fact that addition of Interest Income under the head "Income from Other Sources" of Rs. 1,53,73,042/- is resulting in double addition of Income. Interest is already taxed in the Business Income of Rs. 70,48,951/- and without giving effect as specified in point no. xiv above income added under the head "Income from Other Sources"*

2. We have heard rival submission of the parties and perused the relevant material on record. The assessee is engaged in the business of building and development. In the profit and loss account for the year under consideration, the assessee reported interest expenses amounting to Rs.43,40,876/- having details as under:

**“Interest Expenses**

Particulars	Amount in INR
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Interest paid	1,97,13,918
Less: Interest Received from others	1,45,82,918
Less: Interest on FD	7,90,124
Interest Expenses Reported in Profit & Loss Statement and claimed under section 36(1)(iii)	43,40,876

2.1 The assessee filed return of income for the year under consideration on 30.11.2014 declaring total income at Rs.69,86,450/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. During the assessment, the Assessing Officer was of the view that interest income earned by the assessee amounting to Rs.153,73,042/- should be assessed under the head 'income from other sources' as same was earned from the loans advanced by the assessee to various persons out of surplus available and not earned from the business activity. However, the Assessing Officer did not reduce the said income from the profit and gains of the business and thus resulting into double addition of the amount of Rs.153,73,042/-. The assessee filed further appeal before the Ld. CIT(A) however did not reply to the various notices issued by the Ld. CIT(A). Accordingly, the Ld. CIT(A) dismissed the appeal of the assessee observing as under:

***"Finding and decision:***

*All the grounds of the appeal of the appellant are related with the addition made under the head Income from Other Sources, hence the adjudication in this appeal is being made collectively.*



*During the course of Assessment period it was noticed that the Appellant had work in progress of the project at Rs. 8,15,00,000/- and had shown nil sales. The appellant in its P&L account has debited interest expenses of Rs. 43,40,876/- which included interest paid amounting to Rs. 1,97,13,918/- and interest received at Rs. 1,45,82,918/- and FD interest received at Rs. 7,90,124/-. The AO during the course of assessment proceedings as called for the explanation in this regard as under:*

*"The assessee firm is a builder and has shown WIP at Rs.8,15,00,000/-. The assessee firm has shown interest income amounting to Rs. 1,45,82,918/- on loan advanced and has paid interest amounting to Rs.1,97,13,918/- on loans taken. The assessee has netted the interest paid against interest income and balance amount of Rs.43,40,876/-claimed as interest expenses in the P&L account. The interest income earned is in the nature of income from other sources, hence, interest paid on loan taken for business purpose is not allowable to be netted against interest income. In this respect, you are requested to show cause as to why interest income shown at Rs. 1,45,82,918- should not be treated as income from other sources and brought to tax accordingly."*

*The appellant in its submission had submitted certain ledger account and certain loan confirmation in support of the claim made in P&L account which was not satisfactory explanation to the show cause as to why the interest income should not be charged under the head 'Income from Other Sources'. The AO was right in taking decision of disallowances of interest income from the head 'Income from Business' to the head 'Income from Other Sources'*

*The Appellant during the course of appellate proceeding in its written submission has stated that during the year relevant to the AY 2014-15, had borrowed unsecured loan to the tune of Rs. 19,32,68,911/- for the purpose of its business. The Appellant has also stated that during the year relevant to the AY 2014-15 had given loan and advances to the tune of Rs 17,99,31,452/- out of borrowed unsecured loan, which beyond prospect of nature of business of the appellant. The appellant has also stated that the impugned project of redevelopment was delayed due to various litigation and other factors and hence resulted in surplus borrowed fund.*

*Requirement of borrowing fund (unsecured loan) is required when the requirements of funds actually arise for the business. Here the appellant borrowed the fund and shown as utilised for Loan and advances in order to earn interest income. Therefore, purpose of borrowing funds was not established properly. By doing so, the*



*appellant has routed the unaccounted money, which needs to be taxed separately. As the appellant has earned interest income on routed money, such interest income to be taxed as per provision under IT Act.*

*The appellant in its ground of appeal has claimed that borrowed fund was surplus as it could not be utilised for the reason for delay in re-development project due various litigation and other factors. No any individuals/Firm/Company could have surplus borrowed fund unless it is required for the purpose of business. The appellant could have returned the surplus fund (unsecured loan) to the concerned parties, if at all there was no requirement of such borrowed funds for any reason for the purpose of business, for which it was borrowed, instead of giving the same as loan and advance in order to earn interest income.*

*The appellant being a partnership firm engaged in the business of Builders and developers and during the year under concerned, the appellant was engaged in the project of Redevelopment of Marve Apartment at Marve Rod, Malad(West), Mumbai. It is pertinent to mention that the project, in which the appellant was engaged during the year under concerned, was re-development of a litigated project Marve Apartment. The appellant was well aware above the existence litigation of re-development project, instead the appellant borrowed the money, which was not at all required for the purpose of the business. The intention of the appellant behind borrowing huge fund was only to netting off the interest income earned by appellant on unaccounted money towards payment of interest on borrowed funds in order to hide interest income for payment of due taxes.*

*Further, the appellant did not submit the substantial explanation on earned interest income on loan and advances at the time of hearing during the course of assessment proceedings or in response to show cause notice, except certain ledger account and certain loan conformation, which indicates that, non-availability valid substantial proof with the appellant, which could be placed. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Hence the appeal of the appellant is dismissed.”*

3. We have heard rival submission of the parties and perused the relevant material on record. We find that the issue in dispute is that once the Assessing Officer has treated the interest income received by the assessee from various loans and the advances and the fixed



deposit as under the head 'income from other sources' but simultaneously he did not reduce the same amount out of profit and gain business or profession. But we find that the assessee did not file various submissions establishing the nexus of the interest income earned as well as the interest expenditure incurred and therefore in the facts and circumstances of the case, we feel it appropriate to restore this issue back to the file of the Ld. CIT(A) for deciding afresh after considering submissions of the assessee. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.

4. In the result appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 27/09/2024.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 27/09/2024  
Rahul Sharma, Sr. P.S.

**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,  
(Assistant Registrar)  
**ITAT, Mumbai**