

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

BEFORE DR. BRR KUMAR, VICE PRESIDENT
And
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 332/AHD/2024
निर्धारण वर्ष/Asstt. Year: 2017-2018

Harsh Nareshbhai Patel, C/O. MS Chhajed & Co. CA, "Kamal Shanti", Near Sardar Patel Statue, Ahmedabad-380014. PAN: BOCPP1618C	बनामVs	The Income Tax Officer, Ward 3(3)(2), Ahmedabad.
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(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)
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Assessee by :	Ms Preyashi Tated, AR
Revenue by :	Shri C Dharani Nath, Sr. DR

सुनवाई की तारीख/Date of Hearing : 19/11/2024
घोषणा की तारीख/Date of Pronouncement: 04/12/2024

आदेश/ORDER

PER SUCHITRA KAMBLE, JM:

The captioned appeal has been filed at the instance of the Assessee against the order dated 26.12.2023 passed by the National Faceless Appeal Centre(NFAC)/CIT(A), arising in the matter of assessment order passed under s. 144(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

1. *The order passed by the Ld.CIT(A) is against law, equity & justice.*
2. *The Ld. CIT (A) has erred in law and facts in upholding not allowing deduction claimed by appellant of Rs.30,37,469/- u/s.57 of the Act.*
3. *Your appellant craves liberty to add, amend alter or modify all or any grounds of appeal before final appeal.*

3. The assessee filed his return of income for Assessment Year 2017-18 on 31.10.2017, declaring total income of Rs.12,77,150/-. The case of assessee was selected for scrutiny with the reasons of "Large deduction claimed u/s.57". Accordingly, notice u/s. 143(2) o the Income-tax Act, 1961 was issued. Subsequently, statutory notices were issued for which the assessee did not file any reply or written submission. The Assessing Officer issued show-cause notice dated 20.11.2019, and in response to said show-cause notice, the assessee furnished balance sheet, profit and loss account, assesee's capital accounts in firms where he claimed to have been a partner, ledger of income showing interest paid to the extent of Rs.5,30,509/- only to Chandrakant P Patel, Ushaben Nareshbhai Patel. The AO observed that no written reply explaining the allowability of deductions claimed u/s.57 of the Act was furnished. The assessee did not furnished bank account statements, bank loan statements, ledger confirmation with PAN of the depositor parties, rate of interest charged from loan parties and their confirmations. Thus, the AO made the addition of Rs.30,37,469/- thereby disallowing claim of assessee u/s.57 of the Act.

4. Being aggrieved by the assessment order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A), dismissed the appeal of the assessee.

5. The Ld.AR submitted that the Ld.CIT(A) has erred in law and on facts in upholding not allowing the deduction claimed by the assessee of Rs.30,37,469/- u/s.57 of the Act. The Ld.AR has submitted a summary of interest income and interest expenses as under:

Particulars	Rate of Interest	Principal Amount	Interest Amount	Amount
INTEREST INCOME				
Interest income from partnership firms				
Aangan Developers	12%	17,28,978	1,14,069	
Shree Rang Organisers	4%	5,23,171	25,037	
Shree Ang Aawas Corp.	12%	1,11,95,248	11,99,556	13,38,662
Interest Income from others				
Naresh P Patel	12%	3,00,58,080	31,12,813	
Kama Harsh Patel	12%	1,25,440	13,440	31,26,253
TOTAL INTEREST INCOME		4,36,30,917		44,64,915
INTEREST EXPENSE				
Indus Ind Bank Term Loan	12%	1,63,88,888	21,36,651	
Indus Ind Bank OD Account	12%	49,58,673	3,70,309	
Chandrakant P Patel	12%	23,61,947	2,53,065	
Ushaben N Patel	12%	51,78,518	2,77,444	
TOTAL INTEREST EXPENSE		2,88,88,026		30,37,469
NET SURPLUS INTERST INCOME				14,27,446

6. As per this record there is surplus interest income, question of disallowance by invoking section 57 of the Act does not arise, as per the contention of the Ld.AR. The assessee is having interest free capital of Rs.1,63,39,484/- and if there are fund available both interest free and overdraft and loans are taken then a presumption would arise that investments would be out of the interest free fund generated or available with the company. If the interest free fund are sufficient to meet the investment then in the instant case the said presumption would established considering the fact which was totally ignored by the Ld.CIT(A). The Ld.AR relied upon the following judicial precedents:

1. Hon'ble high court of Gujarat in the case of Commissioner of Income Tax v. Amod Stamping (P.) Ltd [2014] 45 taxmann.com 427 (Gujarat)
2. Hon'ble Gujarat High court in the case of Assistant Commissioner of income-tax, Bharuch Circle v. Gujarat Narmada Valley Fertilizers Co. Ltd. 42 taxmann.com 579 (Gujarat)
3. Hon'ble Bombay High Court in the case of Commissioner of Income-tax vs. Reliance Utilities & Power Ltd [2009] 178 Taxman 135 (Bombay)
4. Hon'ble ITAT Ahmedabad in the case of Swagat Infrastructure Ltd. Vs. Joint Commissioner of Income-tax, Range-8 [2013] 37 taxmann.com 83 (Ahmedabad - Trib.)
5. Hon'ble ITAT Ahmedabad in the case of Income Tax Officer Vs. Karnavati Petrochem (P) Ltd. ITA No. 2228/AHD/2012 had held that:

7. The Ld.AR has also given the details related to parties from whom the amount of received during the year as well as part of utilization:

Name	Amount Received during the year	Date of Receipt	Interest Exp	Utilization of funds	Date of utilization	Particulars of utilization	Repayment
Chandrakant Patel	-	-	2,53,065	-	-	-	-
Ushaben Patel	50,00,000	06/10/2016	2,77,444	44,00,000	15/10/2016	Given To Nareshbhai Punjiram Patel	
				6,00,000		Repayment of term loan along with interest	
Indusind Term loan	-	0	21,36,651				54,69,984
Indusind OD Account	77,15,000	01/04/2016-31/03/2017 (refund of loans from NP Patel)	3,70,309	25,00,000	23/08/2016	Given To Nareshbhai Punjiram Patel	
	7,500	08/03/2017 (Loan Processing charges)		44,00,000	15/10/2016	Given To Nareshbhai Punjiram Patel	
	50,00,000	06/10/2016 (Receipt from Ushaben Shah)		54,69,984	01/04/2016-31/03/2017	Repayment of term loan along with interest	
				14,375	30/12/2016	Loan Processing fees	
Total	1,77,22,500			1,73,84,359			

	Opening Balance of borrowings		Opening Balance of loans and advances
Indus ind term loan	1,97,22,222	Balance with partnership firm	1,15,20,690
Chandrakant Patel	21,08,882	Nareshbhai Punjiram Patel	2,80,90,267
Ushaben Patel	-98,926	Kama harch Patel	1,12,000
Bank OD	49,26,504		
Total (A)	2,66,58,682		
Balance out of own capital (B)	1,30,64,275		
Grand Total(A+B)	3,97,22,957		3,97,22,957

8. The Ld.DR submitted that the assessee has not furnished the bank account statements, bank loan statements, ledger confirmation with PAN of

the depositor parties before the AO and therefore the AO has rightly made the disallowance which was claimed u/s.57 of the Act. The Ld.DR further submitted the assessee failed to establish the nexus as required u/s.57 of the Act, related to the expenses claimed which have been incurred to earn the income of such expenses were wholly and exclusively made to earn such income. Thus, the Ld.CIT(A), has rightly rejected the claim of expenditure of the assessee.

9. We have heard both the parties and perused the material available on record. It appears that the assessee has given details relating to the fund flow statements as well as bank statements including that of confirmation of Ushaben Patel and Chandrakant P Patel including their ITR and bank statements the certificate of interest of Indusind bank, OD account Indusind term loan were also submitted before the Ld.CIT(A). The calculation given by the assessee during the hearing related to expenditure has been taken on record and it is found that the assessee has rightly claimed the expenditure as per the section 57 of the Act and has established the nexus to earn the income and expenses incurred. Thus the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 04th December, 2024 at Ahmedabad.

**Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

(True Copy)

अहमदाबाद/Ahmedabad, दिनांक/Dated 04/12/2024

Manish, 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)-(NFAC)
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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