

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

**BEFORE SHRI BR BASKARAN (ACCOUNTANT MEMBER) AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 603/MUM/2024  
Assessment Year: 2016-17**

Maaz Mohammed Yusuf Shaikh,  
A-1308, 13<sup>th</sup> floor, Ozone Biz Centre,  
Bellasis Road, Boman Behram Marg,  
Mumbai-400 008.

**PAN NO. AXPPS 2316 F**  
**Appellant**

Assessing Officer, Ward-17(2)(3),  
Mumbai-400012.

**Vs.**

**Respondent**

Assessee by : Mr. Jayant Bhatt  
Revenue by : Mr. Umesh Chandra Sinha

Date of Hearing : 13/11/2024  
Date of pronouncement : 27/11/2024

**ORDER**

**PER BR BASKARAN, AM**

The assessee has filed this appeal challenging the order dated 11-12-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of interest expenditure of Rs.21,84,655/-.

2. The facts relating to the case are discussed in brief. The assessee is an Individual. He is a partner and director in various firms and companies, which are engaged in real estate business and gym. The AO noticed that the assessee has declared interest income of Rs.12,81,420/-, but claimed interest



expenditure of Rs.29,95,285/- u/s 57 of the Act. Hence the AO asked the assessee to offer justification for claiming above interest expenditure.

3. It was submitted that the total interest expenditure incurred during the year under consideration was Rs.50,96,212/-. However, the assessee voluntarily disallowed a sum of Rs.21,00,926/-, since the same was attributable to the interest free advances given by the assessee. It is stated that the borrowed funds on which interest was claimed as deduction has been invested in M/s Excellent Realtors Developer (ERD), M/s Gurukrupa Developers, N/s Navkar Habitat P Ltd and M/s Rio Space. It was noticed that the assessee has received interest only from M/s Gurukrupa Developers, and did not receive any interest income from M/s Excellent Realtors Developer (ERD), N/s Navkar Habitat P Ltd and M/s Rio Space. In the absence of interest income, the AO took the view that the interest expenditure cannot be allowed as deduction u/s 57 of the Act. Accordingly, he disallowed interest expenditure claim of RS.29,95,285/-.

4. In the appellate proceedings, the Ld CIT(A) held that the interest expenditure relating to the interest income earned by the assessee from M/s Gurukrupa Developers should have been allowed as deduction. The Ld CIT(A) computed the same as Rs.8,10,630/-. Accordingly, he restricted the addition to Rs.21,84,655/- (Rs.29,95,285/- (-) Rs.8,10,630/-). Still aggrieved, the assessee has filed this appeal.

5. The Ld A.R submitted that the assessee had given majority amount of loan to M/s Excellent Realtors Developer and the assessee had received interest of Rs.24,62,400/- from it in the immediately preceding year relating to AY 2015-16. Referring to the order dated 11-12-2023 passed by Ld CIT(A) for Asst. year 2015-16, the Ld A.R submitted that identical disallowance made in that year was deleted by Ld CIT(A) on the specific reasoning that the assessee



had received interest income in that year. The Ld A.R submitted that the above said party has defaulted in payment of interest in this year and the recovery of principal is in doubt. Hence the assessee did not account of interest income in this year. He submitted that the assessee has, however, incurred interest expenditure and the same is allowable as deduction even if the interest income has not been received. In support of this proposition, he placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Rajendra Prasad Moody (115 ITR 519)(SC).

6. The Ld D.R, on the contrary, supported the order passed by Ld CIT(A).

7. We heard the parties and perused the record. We notice that the assessee has received interest income from M/s Excellent Realtors Developer in the immediately preceding year and did not receive interest income in this year. The disallowance of interest expenditure has been made by the AO only for the reason that the assessee did not earn interest income in this year. Once it is accepted that the money has been borrowed for the purpose of making investment, then non-receipt of income cannot be a ground to disallow interest expenditure. It has been so held by Hon'ble Supreme Court in the case of Rajendra Prasad Moody (115 ITR 519)(SC). The relevant discussions made by Hon'ble Supreme Court in the above said case are extracted below:-

*“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 the 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. It may be pointed out that an identical view was taken by this Court in [Eastern Investments Ltd. v. Commissioner of Income tax](#), where interpreting the corresponding provision in [section 12\(2\)](#) of the Income Tax Act, 1922 which was ipsissima verba in the same terms as [section 57\(iii\)](#), Bose, J., speaking on behalf of the Court observed: "It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned". It is indeed difficult to see how, after this observation of the Court, there can be any scope for controversy in regard to the interpretation of [section 57\(iii\)](#).*

*It is also interesting to note that, according to the Revenue, the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year, but if there is some income, howsoever small or meagre, the expenditure would be eligible for deduction. This means that in a case where the expenditure is Rs. 1000/-, if there is income of even Re. 1/-, the expenditure would be deductible and there would be resulting loss of Rs. 999/- under the head 'Income From Other Sources'. But if there is no income, then, on the argument of the Revenue, the expenditure would have to be ignored as it would not be liable to be deducted. This would indeed be a strange and highly anomalous result and it is difficult to believe that the Legislature could have ever intended to*



*produce such illogicality. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, X or Y or nil, would be credited. And the ultimate profit or loss would be found. We fail to appreciate how expenditure which is otherwise a proper expenditure can cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of [section 57\(iii\)](#) cannot be different. The deduction of the expenditure cannot, in the circumstances, be held to be conditional upon the making or earning of the income.*

*It is true that the language of [section 37\(1\)](#) is a little wider than that of [section 57\(iii\)](#), but we do not see how that can make any difference in the true interpretation of [section 57\(iii\)](#). The language of [section 57\(iii\)](#) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that [section 57\(iii\)](#) should be given a narrow and constricted meaning not*



warranted by the language of the section and in fact, contrary to such language.

*This view which we are taking is clearly supported by the observations of Lord Thankerton in Hughes v. Bank of New Zealand where the learned Law Lord said: "Expenditure in the course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense." We find that the same view has been taken by the Madras High Court in [Appa Rao v. Commissioner of Income tax](#), and [Mohamed Ghouse v. Commissioner of Income-tax](#), the Bombay High Court in [Ormerods \(India\) Private Ltd. v. Commissioner of Income-tax](#), the Allahabad High Court in [Chhail Beharilal v. Commissioner of Income-tax](#), the Madhya Pradesh High Court in [Commissioner of Income-tax v. Dr. Fida Hussain G. Abhasi](#), the Kerala High Court in [M. N. Ramaswamy Iyer v. Commissioner of Income-tax and the Orissa High Court in Commissioner of Income-tax v. Gopal Chand Patnaik](#). This view is eminently correct as it is not only justified by the language of [section 57\(iii\)](#) but it also accords with the principles of commercial accounting. The contrary view taken by the Patna High Court in [Maharajadhiraj Sir Kameshwar Singh v. Commissioner of Income-tax](#) and the Calcutta High Court in [Madanlal Sohanlal v. Commissioner of Income-tax](#) must in the circumstances be held to be incorrect."*

The Hon'ble Supreme Court has held 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 the 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. Hence non-receipt of interest income cannot be a ground to disallow the interest expenditure on the loans which have been taken for making investment. In the instant case also, there is no dispute that the loan has been borrowed for the purpose of making investment in firms for the purpose of earning interest income. Accordingly, non-receipt of income cannot be a ground to disallow the interest expenditure claim.

8. We notice that the AO did not enquire as to why the interest income was not received during the year under consideration from the loans given to the three firms by the assessee. Hence the cause of action lied in that line, which the AO had failed to do so.

9. In view of the foregoing discussions, we are of the view that the balance amount of interest expenditure of Rs.21,84,655/- also is also allowable as deduction. Accordingly, we modify the order passed by Ld CIT(A) and direct the AO to delete the disallowance of interest expenditure made by him.

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

**Order pronounced in the open Court on 27/11/2024.**

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

Sd/-  
**(BR BASKARAN)**  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 27/11/2024  
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**