

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

**BEFORE SHRINARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.2356/Mum/2024
(Assessment year: 2017-18)**

Shantilal Bachubhai Rita C-33, Sai Baba Enclave Building No.3, S.V. Road, Near Citi Centre, Goregaon West, Mumbai-400 104 PAN: AETPR2071R	vs	ITO, Ward 31(1)(9), Mumbai Room NO.536, 5h Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla complex, Bandra (E), Mumbai-400 051
		RESPONDENT

Assessee by : Shri S.D. Chheda
Respondent by : Shri Bhangarpatil Pushkaraj Ramesh
Sr. AR
Date of hearing : 02/04/2025
Date of pronouncement : 09/04/2025

ORDER

Per Anikesh Banerjee (JM):

The instant appeal was filed by the assessee against the order of the National Faceless Appeal Centre, (Delhi) (NFAC) [in short, 'Ld.CIT(A)'], passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for A.Y. 2017-18, date of order 15-03-2024. The impugned order emanated from the order of the Ld. Income-tax Officer, Ward 31(1)(9), Mumbai, passed under section 143(3), date of order 26/12/2019.

2. The assessee has taken the following grounds of appeal:-

"1) The learned CIT(A) has erred in law and in facts to confirm disallowance of interest inspite of fact that the Learned A.O had not granted proper, sufficient and adequate opportunity of being heard to the Appellant while framing the assessment by issuing show cause notice for addition alongwith reasons and evidences.

2)The learned CIT(A) has erred in law and in facts to confirm disallowance of interest expenses of Rs.1,20,39,731/- claimed under income from other sources under sec 57(iii) of Income tax act.

3) The learned CIT(A) has erred to held that claiming deduction under sec 57(iii) of income tax act is a colorable device without bringing anything on record.

4)The learned CIT(A) has erred in law and in facts to confirm disallowance of interest inspite of fact that the learned AO has not considered submission and explanation provided.

5) The learned CIT(A) has erred in disallowing interest expenditure on wrong facts as observed para 6.5 & 6.6. of appeal order.

6) The learned CIT(A) has erred in disallowing interest expenditure on the ground of human probability.

7)The learned CIT(A) has erred in disallowing interest expenditure on the wrong fact that there is no claim of expenditure u/s 57(iii) for A.Y 2016-17.

8)The appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing."

2. The brief facts of the case are that the assessee is an individual and during the year under consideration, the assessee had earned income from salary, income from business and income from other sources. The assessee was the director of two companies wherefrom he earned the director's remuneration and

partners of LLIP where the assessee earned the interest on capital and the partners' remuneration. The assessee filed the return in alleged assessment year by declaring total income at Rs.3,66,480/-. Subsequently, the case was selected for scrutiny and the Ld.AO noticed that the assessee has earned interest of Rs.20,39,731/- and on the other hand claimed expenses U/s 57(iii) of the Act on interest amount to Rs.1,20,39,731/- that resulted into Nil income under the head 'Income from other sources'. After detailed discussion in the assessment order, the Ld.AO completed the assessment under section 143(3) of the Act by disallowing the expenditure to the extent of Rs.1,20,39,731/- which was claimed as expenses under section 57(iii) of the Act in the return of income. Aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) passed an order and upheld the impugned assessment order. Being aggrieved on the alleged appeal order, the assessee filed an appeal before us.

3. The Ld. AR has filed a written submission comprising pages 1 to 80, which has been taken on record. At the outset, the Ld. AR submitted a computation detailing the adjustment of interest income, wherein it was explained that the assessee had earned:

Interest income attributable to property,

Interest income from business activities, and

The remaining portion of interest income was earned from the investment of borrowed funds in a company.

The details of the computation are as follows:

<u>"WORKING OF TOTAL INTEREST"</u>	(Rs.)
<i>Interest against property income</i>	8,37,810/-
<i>Interest against business income</i>	5,71,487/-

Balance interest	<u>1,43,73,800/-</u>
Total interest paid	<u>1,57,87,161/-</u>
	=====
Claimed from interest income	<u>1,20,39,731/-</u>
	=====
Already disallowed by assessee	<u>23,34,069/-</u>
	=====
Proportionate deduction 143,73,800 *13,85,79,921 / 16,25,13,013 = 1,22,56,989	
TOTAL INTEREST * INTEREST BEARING LOAN GIVEN / INTEREST BEARING LOAN TAKEN"	

During the course of the hearing, the Ld. AR submitted that the total unsecured loans availed by the assessee from various entities amounted to Rs. 18,68,37,305/-. These loans comprised two components — one interest-bearing and the other non-interest-bearing. It was further submitted that the assessee had extended loans to various companies, the aggregate amount of which stood at Rs. 14,81,30,686/-.

The details of these transactions, as submitted by the assessee, are as follows:

Total unsecured Loan	Rs.18,68,37,305.00
Less: Interest bearing fund	<u>Rs.17,45,12,305.00</u>
Non-interest-bearing loan	Rs. 1,23,25,000.00

LOAN GIVEN

Total Loan given	Rs.14,81,30,686.00
Interest bearing loans	<u>Rs.13,85,79,921.00</u>
Non-interestbearing loan	<u>Rs. 90,50,765.00</u>

The assessee had obtained loans for the purpose of maintaining the capital structure of a company in which the assessee serves as a director, and the borrowed funds were subsequently advanced to the said company. The average interest rate on the unsecured loans from creditors ranged between 9% and 12%, which was also the prevailing rate for the loans extended to the company. Out of

the total interest, a sum of Rs. 23,34,069/- was suo motu disallowed by the assessee in the computation of income, on the ground that the amount of loans received exceeded the amount of loans advanced. This issue was previously raised and adjudicated in favour of the assessee by the ITAT, Mumbai Bench-G, in the assessee's own case for Assessment Year 2020–21. In support, the Ld. AR placed respectful reliance on the decision of the Co-ordinate Bench of ITAT, Mumbai Bench "G" in **ITA No. 3406/Mum/2024**, dated **06/01/2025**.

The relevant portion of the said order, specifically paragraphs 8 to 12, is extracted below:

"8. Therefore, under section 57(iii) of the Act, any expenditure which is not in the nature of capital expenditure and has been expended wholly and exclusively for the purpose of earning income chargeable under the head "income from other sources" is allowable as a deduction. In the present case, there is no dispute regarding the nature of expenditure and the Revenue has only disputed that the interest expenditure claimed under the aforesaid section has no nexus for the purpose of earning the interest income. In the present case, it is pertinent to note that no material has been brought on record by the Revenue to show that the loan received by the assessee on which the assessee incurred an interest expenditure of Rs.1,15,89,437/- was utilized for any purpose other than giving the loan to her family members and or related firms. Further, there is no material on record to show that there was any impediment on the assessee to give the money as a loan to her family members or related firms. Thus, there is no material to dispute the fact that the assessee utilized the interest-bearing borrowed funds for advancing the loans to her family members or related firms. In the present case, the Revenue has emphasized on the aspect of business prudence in advancing the loans to the sister concern at lower rates than the rate at which the funds were borrowed by the assessee. In this regard, it is pertinent

to note that it is trite law that the test of commercial expediency/business prudence is required to be judged from the point of view of the businessman and not the Revenue. Therefore, we do not find any basis for restricting the interest expenditure claimed by the assessee under section 57(iii) of the Act.

9. During the hearing, the learned DR placed reliance upon the decision of the Hon'ble Supreme Court in CIT vs. Dr. V.P. Gopinathan, reported in (2001) 248 ITR 449 (SC). From the perusal of the aforesaid decision, we find that in the facts of the case, the taxpayer did not rest its case upon the provisions of section 57(iii) of the Act. Therefore, we find that the reliance placed by the learned DR on the aforesaid decision is completely misplaced.

10. The learned DR also placed reliance upon the decision of the Hon'ble Kerala High Court in Mathew Joseph vs. ACIT, reported in (2017) 87 taxmann.com 317 (Kerala) and the decision of the Hon'ble Jurisdictional High Court in CIT vs. United Wire Ropes Ltd. reported in (1980) 121 ITR 762 (Bom). From the perusal of the aforesaid decisions, it is evident that the loan was given to the taxpayer for a specific purpose for which interest was payable and thus there was no permission by the bankers for the usage of the amount for a purpose other than for which it was given. Accordingly, the Hon'ble Courts denied the deduction claimed under section 57 of the Act. In the present case, no material has been brought on record to show that the assessee was barred by the loan lenders from further transferring the funds to the family members or related firms on loan. Thus, we are of the considered view that the transaction in this case stands entirely at a different footing and therefore, the aforesaid decisions relied upon by the learned DR are factually distinguishable.

11. Further, the learned DR placed reliance upon the decision of the Hon'ble Karnataka High Court in the case of Karnataka Forest Plantations Corporation Ltd. vs. CIT, reported in (1985) 156 ITR 275 (Karnataka). From the perusal of the aforesaid decision, we find that the Hon'ble Court disallowed the deduction claimed under section 57(iii) of the Act on the basis that the surplus funds arising

on account of the amount borrowed by the taxpayer from the State Government and banks from time to time for its business operation got deposited by the assessee in the bank for short period and interest was earned on such deposit. Accordingly, the Hon'ble High Court held that the interest paid by the taxpayer to the bank cannot be considered as incurred wholly and exclusively for the purpose of earning the interest income on surplus funds deposited with the bank. However, in the present case, as noted above, the loan availed by the assessee on interest was used to lend funds to the sister concern on interest and the interest expenditure incurred was claimed as a deduction under section 57(iii) of the Act. Therefore, we are of the considered view that the aforesaid decision is factually distinguishable and is thus not applicable to the present case.

12. Therefore, in view of the facts and circumstances of the present case as noted above, we are considered opinion that the assessee is entitled to claim a deduction under section 57(iii) of the Act in respect of interest expenditure while computing the income under the head "income from other sources". Accordingly, the impugned disallowance made by the AO and upheld by the learned CIT(A) is deleted."

4. The Ld. DR vehemently argued the matter and primarily relied upon the findings of the lower revenue authorities. A written submission dated 01/04/2025 was also filed by the Ld. DR, wherein it was contended that the assessee was not engaged in any business activity and had not earned any business income during the relevant period. The only income earned by the assessee was in the form of remuneration and interest on capital from an LLP. It was further submitted that the interest paid on unsecured loans lacked any commercial purpose, as the borrowed funds were diverted to another company for the purpose of earning interest, which, according to the Ld. DR, did not justify the necessity or purpose of

taking such a loan. Accordingly, it was argued that the interest disallowed by the Ld. AO was fully justified and ought to be sustained.

The relevant paragraphs of the Ld. DR's written submission are reproduced below:

"The CIT(A) in para 6.5 also noted the assessee filed ITR-2 (for individuals not having proprietary business) in A.Y. 2017-18, whereas he had filed ITR-3 (business return) earlier. The assessee's grievance on this point is unclear, but nothing turns on it except to evidence that the assessee had no self-run business in 2017-18. This aligns with the assessee's status as an individual with income from salary, house property, and other sources. There is no dispute here to resolve - CIT(A) did not disallow the claim because of the ITR form used, but simply used it to emphasize the lack of business activity.

- Ground 5's reference to "wrong facts in para 6.5 & 6.6" appears to allude to CIT(A)'s quantification of loans and their usage. In para 6.6, CIT(A) observed (in substance) that out of 220.42 crore borrowed, only about 714.64 crore was given as interest-bearing loans, while 25.78 crore went into non-income-yielding investments. The figure "214.64 lacs" in one line is a typographical error in the order it should read ₹14.64 crore, given the context (220.42 crore minus 25.78 crore). The actual underlying data (loans to various parties summing to 214.64 crore, as per the loan schedule submitted by the assessee) is not disputed. Thus, the numerical facts are correct: approximately 71.7% of the borrowed funds were loaned out on interest, and 28.3% were utilized elsewhere. These proportions underscore the lack of exclusivity in purpose, as discussed. There is no wrong fact; at best a minor clerical mistake (lacs vs crore) which is evident on the face of the order and does not prejudice the assessee.*
- Importantly, even if for the sake of argument the assessee had deployed 100% of the borrowed funds into interest-earning loans, the deduction still would not be automatic the Gopinathan and United Wire principles would still apply if the borrowing's underlying motive was to raise funds for the assessee's own concerns, and the interest income was incidental. In this case, the presence of significant non-*

interest use (nearly 26 crore) only fortifies the Revenue's case. But the disallowance is not solely contingent on that; it is based on the broader reasoning of lack of exclusive purpose and the dubious nature of the arrangement. Therefore, any quibble the assessee has with CIT(A)'s fact-finding is immaterial to the result. The onus was on the assessee to demonstrate the allowability of such an unusually large deduction. He failed to discharge this onus with credible evidence or explanation. Ground 5, attacking CIT(A)'s fact analysis, does not detract from the substantial reasons for disallowance which remain unrebutted.

In conclusion, the factual narrative assembled by the lower authorities is consistent and compelling: The assessee orchestrated a loan-in, loan-out scheme with related parties, aiming to claim a deduction that is not intended by law. No factual error of any significance has been shown that would warrant overturning the concurrent findings of the AO and CIT(A).

In view of the facts and legal positions discussed, the Revenue submits that the disallowance of ₹1,20,39,731/- under Section 57(iii) is fully justified. The assessee's interest expenditure was not incurred solely for earning the interest income in question, but largely served personal/business purposes. Allowing the deduction would sanction a tax-avoidance arrangement, contrary to the intent of the law and numerous judicial pronouncements. The AO's order (as upheld by CIT(A)) is a reasoned one, backed by Supreme Court and High Court rulings, and does not suffer from any procedural unfairness or factual mistake that would warrant interference.

We pray that the Hon'ble ITAT be pleased to dismiss the assessee's appeal, and uphold the addition of ₹1,20,39,731/- to the assessee's total income. This will ensure that the assessee is taxed on the real income (gross interest) as mandated by law, without the shelter of an illusory deduction.”

5. We have heard the rival submissions and perused the documents available on record. Upon examination, we find that apart from interest income from property and business amounting to Rs. 8,37,810/- and Rs. 5,71,487/- respectively, the assessee also earned interest income from loans amounting to Rs. 1,43,73,800/-.

It is observed that the assessee had borrowed funds exceeding the amount lent. Accordingly, the assessee computed a proportionate interest expense of Rs. 23,34,069/-, which was voluntarily disallowed suo motu in the computation of income. The Revenue has relied on the judgment of the Hon'ble Supreme Court in **CIT vs. V.P. Gopinathan (214 ITR 449)**, wherein the Apex Court held that the temporary deployment of surplus funds for earning interest income would render such income assessable under the head "Income from Other Sources." This proposition was duly cited by the Ld. DR during the course of arguments.

However, we find that the facts of the present case are distinguishable from those in the decision of the Hon'ble Supreme Court. We respectfully place reliance on the order of the Co-ordinate Bench in the assessee's own case for Assessment Year 2020-21 in **ITA No. 3406/Mum/2024**, dated **06/01/2025**, wherein the Tribunal had already distinguished the said judgment. In the present case, the assessee had availed of unsecured loans and paid interest thereon. The borrowed funds were directly invested in the company, and the interest payment was duly adjusted against the corresponding loan. Accordingly, following the findings of the Co-ordinate Bench in the assessee's own case (supra), we hold that the addition made by the Assessing Officer is unsustainable.

Consequently, the order of the learned CIT(A) is set aside, and the addition of Rs. 1,20,39,721/- made by the Ld. AO is deleted.

6. Since relief has been granted to the assessee on the merits of the case, the remaining grounds raised are rendered academic in nature and are therefore left open for adjudication.

7. In the result, the appeal of the assessee bearing **ITA No.2356/Mum/2024** is allowed.

Order pronounced in the open court on 09th day of April 2025.

Sd/-

sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 09/04/2025

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

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(Asstt. Registrar), ITAT, Mumbai