

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

**BEFOR SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
MISS PADMAVATHY S. ACCOUNTANT MEMBER**

**ITA No. 6544/Mum/2024
(Assessment year : 2010-11)**

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|---|-----------|-------------------------------------|
| Global Tradex Limited 5th Floor, 525-527, Nav Vyapar Bhawan, 49, P.D. Mello Road Carnac Bunder, Mumbai-400 009 PAN : AACCN5795L | vs | ACIT, Circle 7(1)(1), Mumbai |
| APPELLANT | | RESPONDENT |

Assessee by : Shri Ajay Tulsian & Ms. Ruchira
Singhal
Respondent by : Shri Rajesh Sakhardande – Sr.AR
Date of hearing : 06/05/2025
Date of pronouncement : 09/05/2025

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2010-11, date of order 29.11.2024. The impugned order was emanated from the order of the Ld.Assistant Commissioner of Income-tax, Panvel

Circle, Panvel passed under section 143(3) read with section 147 of the Income-tax Act, 1961 (in short, 'the Act'), date of order 21/03/2023.

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

"1. That the Ld. CIT(A) erred in upholding the action of the Learned AO of initiating the re-assessment proceedings u/s 147/148 by rejecting all the propositions taken by the appellant challenging the initiation of the proceedings. That on the facts and in the circumstances of the case, the re-assessment proceedings initiated and the consequential order passed are wrong, without jurisdiction and not in accordance with law and are prayed to be quashed.

2. The Learned CIT(A) erred in confirming the addition made by the Learned AO of Rs. 2,73,09,676/- under section 57 on account of interest expenses. That on the facts and in the circumstances of the case and in law the addition made is wrong and is prayed to be deleted.

3. That the Learned CIT(A) also erred in rejecting the alternate plea of the appellant of allowing the deduction of interest of Rs. 2,73,09,676 paid in respect of credit facilities availed from banks as an expense u/s 36(1)(iii) related to the business activities of the appellant. That on the facts and in the circumstances of the case and in law the Learned CIT(A) ought to have allowed the deduction of the said interest as a business expenditure.

4. That the appellant craves leave to add, to alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arises."

3. The brief facts of the case is that the assessee filed the return declaring total income at Rs.2,64,97,544/-/-. The assessment under section 143(3) was completed on 28/03/2013 determining assessee's income at Rs.5,30,76,900/-. The notice under section 148 was issued for reopening of the impugned assessment order on 31/03/2017. The reasons were duly recorded by the Assessing Officer on 03/03/2017. The assessment was reopened on the ground that the assessee did not offer interest income amounting to Rs.2,74,22,331/-

being the difference between the income on which TDS was deducted and claimed and the income offered by the assessee as interest. Finally, the assessment was completed under section 143(3) read with section 147 of the Act and the interest amount to Rs.2,73,09,676/- was added to the total income of the assessee. The assessee claimed that the assessee received interest income of Rs.3,10,93,442/- and interest paid to bank was Rs.2,73,09,676/-, which was duly adjusted with the interest received and the net interest income of Rs.2,17,37,496/- was offered for tax. So none of the income was concealed by the assessee in the return of income filed and only adjustment related to the business income in respect of interest payment and interest received was done in the return of income. The Assessing Officer, however, did not agree with the assessee and made the addition amounting to Rs.2,73,09,676/-. Aggrieved assessee filed an appeal before the CIT(A). The Ld.CIT(A), however, upheld the impugned assessment order. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR argued and filed a paper book containing pages 1 to 152. The Ld.AR stated that the assessee is a trader of various iron and steel products and filed the return of income and the assessment was completed under section 143(3) of the Act. During the course of assessment proceedings, the addition was made under different heads. Finally, the reopening was made beyond 4 years and the income which is taken to be concealed in the recorded reasons was already declared in the return of income filed. The Ld.AR invited our attention at page 72 of APB and explained that the assessee earned interest from Fixed Deposit which was already placed in the bank as security deposit for the business loan. So the assessee received interest from this investment amount to Rs.5,10,93,342/- which

is containing interest from bank amount to Rs.4,90,47,172/- and other interest amount to Rs.20,46,270/-. The assessee paid interest to bank related to business transaction amount to R Rs.2,73,09,676/- which was adjusted with the interest income amount to Rs.4,90,47,172/- and the balance amount of Rs.2,17,37,496/- was offered directly in the return of income. So the entire adjustment is related to the business and the interest paid to different banks is duly annexed in APB pages 73 to 96 and the said adjustment is also mentioned in the audit report. The Ld.AR prayed that the addition of the adjusted interest amount of Rs.2,73,09,676/- is unjustified. The Ld.AR further submitted as below:-

DISALLOWANCE U/S 57 OF RS.2,73,09,676/- MADE ON ACCOUNT OF INTEREST EXPENSES.

3.1 The Ld. AO erred in making a disallowance of Rs. 2,73,09,676/- under section 57 on account of interest expenditure by stating that the interest expense were not necessarily incurred in order to earn the interest income.

3.2 During the course of assessment proceedings, it was explained that the appellant has earned the interest income of Rs. 4,90,47,172/- from the fixed deposits with banks. The said deposits were also kept as collateral security and margin money against various credit facilities availed by the appellant on which the interest of Rs. 2,73,09,676/ was paid. The net interest income of Rs. 2,17,37,496/ (Rs. 4,90,47,172/- less Rs. 2,73,09,676/-) was shown as 'Interest received from Bank' under the head 'Other Income of Schedule 12 of Profit & Loss Account. The same was also offered for tax under the head 'Income from other sources' in the Computation of Income. The same can be verified from the ledgers

and calculations sheet submitted through submission dated 11.12.2017. Copy of the same are enclosed at page no 97 to 103 of the paper book.

3.3 The AO has stated in Para 3 of the assessment order that it was found that the amount of Rs. 2,73,09,676/- was interest paid on utilization of credit facilities arranged from banks which amount was claimed as an expense against the income from interest on fixed deposits under the head income from other sources. The AO concluded in Para 5 of the assessment order that the said interest expenditure cannot be said to be necessary for earning FD interest, indeed it is opposite as FD is required to be maintained as collateral for the purpose of issuing of credit by bank. Holding so the interest claimed u/s 57 was disallowed.

3.4 In this respect, it is submitted that the appellant has given similar treatment to the net interest income received on FDs and offered the same as income from other sources in the return filed u/s 139 which was also assessed as such in the regular assessment order passed u/s 143(3). From the above, it is evident that the interest expenses incurred were related to the corresponding interest income earned therefore the disallowance of interest expenditure u/s 57 made by the Ld. AO is wrong and uncalled for and ought to be deleted.

3.5 It is further submitted that the Learned AO proceeded on a very incorrect premises, on surmises and conjectures that the appellant has claimed any deduction u/s 57. The appellant has not claimed any expenditure under section 57 which fact is evident from the return form i.e. ITR-6 filed under section 139

already enclosed at page no. 01 to 28 and also from the Computation of Income filed under section 148 already enclosed at page no. 29 to 34 of PB. It is so that the appellant has treated the interest received to the extent of interest paid as business income and also claimed the interest paid as business expenditure. Only the balance interest income was offered as Income from Other Sources'. Apparently and evidently no claim of deduction under section 57 was ever made by the appellant. Therefore, the disallowance so made by the AO is patently wrong and uncalled for.

3.6 The interest incurred by the appellant in respect of bank borrowings is undisputedly a business expenditure and was so claimed and also rightly allowed as an expenditure in the regular assessment proceedings.

3.7 Even otherwise, the interest expenditure incurred by the appellant in respect of bank borrowings is genuine and incurred for the purpose of business which fact is undisputed and is also admitted by the Learned AO in para 3 of the assessment order passed u/s 143(3) r.w.s. 147 where it is stated that the interest claimed by the appellant u/s 57 of Rs. 2,73,09,676/- is an expenditure related to the business activity of the appellant. Therefore, in any case the said expenditure ought to have been allowed as deduction suo-moto by the AO.

3.8 It is a settled law that the legitimate claims of the assessee should be allowed in order to determine the true and proper taxable income and to levy the tax in accordance with law. Such claims ought to have been allowed suomoto by the AO.

5. The Ld.DR filed a written submission, containing pages 1 to 128 where the Ld.DR placed that the interest adjusted by the assessee was duly unjustified and it should be offered for tax. The part of interest earned by the assessee should be offered in the total income, so the adjustment is not permitted. The Ld.DR relied on the order of the Hon'ble Supreme Court in the case of CIT vs Dr.V.P. Gopinathan (2001) 248 ITR 449 (SC) wherein it is held that interest on a loan taken against a fixed deposit cannot be set off against interest earned on that fixed deposit; there is no provision permitting such netting. The Ld. DR thus relied on the orders of the lower authorities.

6. We heard the rival submissions and considered the documents available in the record. We find that the assessee is a business entity. The assessee offered the fixed deposit for security purpose for enhancing loan security and bank guarantee. The assessee was paying interest related to the bank loan and also the bank charges. The adjustment was made in between the interest paid and interest received. If we find that the said adjustment was not done, this amount of Rs. 2,73,09,676/- will be adjusted in the P&L Account. So adjustment is tax neutral. On the one hand, the disallowance is made from interest received and on the other hand, the said amount is eligible for adjustment with the business income. So the entire adjustment has no tax effect on the assessee, i.e. it is tax neutral. The Ld.DR in argument has respectfully relied on the order of the Hon'ble Apex Court in the case of **CIT vs Dr.V.P. Gopinathan (supra)** which is factually distinguishable. We find that the said additions made by the Ld.AO amount to Rs. 2,73,09,676/- is unjustified and liable to be deleted. Accordingly,

the impugned appeal order is set aside and grounds 2 & 3 of the assessee are allowed.

7. As the appeal is adjudicated in favour of the assessee on the factual grounds, so the legal ground raised by the assessee is kept open for academic purpose.

8. In the result, the appeal of the assessee bearing **ITA No.6544 /Mum/2024** is allowed.

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

Sd/-

(MISS PADMAVATHY S.)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 09/05/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

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. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai