

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1095/KOL/2023
Assessment Year: 2016-17**

Bani Broto Banerjee (Appellant)	Vs.	ACIT, Circle-58(1), Kolkata (Respondent)
PAN: ABPPB0424P		

Appearances:

Assessee represented by : None.

Department represented by : Santanu Ghosh, (Sr. D.R).

Date of concluding the hearing : 11-August-2025

Date of pronouncing the order : 06-November-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17 dated 10.08.2023, which has been passed against the assessment order u/s 143(3) of the Act, dated 08.12.2018.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1 That the Ld. Lower Authorities erred in law and in fact by disallowing an expense of INR 42,38,818 under section 57 of the Act even after recognising that the assessee had incurred such interest and other direct expenses was directly related to interest earning on Fixed deposit offered to tax under the head other sources.

2. That your appellant prays to add, delete or modify the grounds of appeal in the course of hearing."



3. Brief facts of the case are that the assessee is an individual earning income from business/profession and income from other sources and had filed the return of income showing total income of ₹35,12,350/-. The case was selected for complete scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS'). Accordingly, notices u/s 143(2) and 142(1) of the Act were issued and served through e-mail, in response to which the assessee submitted details and documents online which were examined with reference to the return, the 26AS details and the expenses claimed by the Assessing Officer (hereinafter referred to as Ld. 'AO'). The Ld. AO disallowed the claim of expenses under the head 'income from other sources' being bank interest of ₹42,38,818/- and added the same to the income of the assessee and assessed the total income of the assessee at ₹77,51,170/- u/s 143(3) of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who went through the assessment order, grounds of appeal and the submissions made by the assessee. The Ld. CIT(A), relying upon the judicial pronouncements in the cases of **Commissioner of Income-Tax vs V.P. Gopinathan [SC - 248 ITR 449 SC]** and **Jaipur Spinning and Weaving Mills Ltd. Vs DCIT (Rajasthan HC - Appeal No. 104 of 2004)** dismissed the appeal of the assessee by holding as under:

“6.12 In the instant case, the appellant has not filed any details for end use of funds and taxability of surplus generated out of end use of interest bearing borrowed funds. Unless it is proved that the interest on borrowed loan is paid for earning interest from investment in saving bank or FDR, that too along with documentary evidences, the deduction of any expenses including interest paid on loans cannot be allowed as deduction U/s 57(iii).

6.13 As stated above, the appellant has not filed any such trail demonstrating that loan borrowed is utilized for creating FDRs, appellant is found to fail to discharge his primary onus of substantiating own claim.



6.14 *In view of the above and having regard to judicial pronouncements I am of the considerate opinion that the claim of appellant is not maintainable since the FDRs are used as security to opt for loan and not vice versa. Therefore, the addition made by the learned AO is found to be correct and being upheld.*

6.15 *Accordingly, the appeal of appellant is dismissed.*

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. None appeared on behalf of the assessee; therefore, the appeal was heard with the assistance of the Ld. DR.

6. The Ld. DR stated that the assessee was provided opportunities of being heard, but as is mentioned in para 6.5 of the order of the Ld. CIT(A), the assessee filed similar submissions which are reproduced in the order of the Ld. CIT(A). Our attention was also drawn to para 6.9 of the order of the Ld. CIT(A) in which it is mentioned that the assessee had neither provided details of the profession nor furnished details about end use of interest-bearing borrowed funds. Further, the assessee had also not submitted any further documentary evidence to show that the borrowed amount was utilized to earn the interest income. He also drew our attention to para 6.13 of the appeal order in which it is mentioned that the assessee had also not filed any such trail demonstrating that the loan borrowed was utilized for creating FDRs and the assessee was found to have failed to discharge the primary onus of substantiating the claim. The assessee had a home loan from the ICICI Bank as per the details mentioned in the assessment order, and there were overdrafts from the State Bank of India. The loan given was less, thereby implying that the assessee had sufficient own funds. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.



7. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). After examining the facts of the case and the law, we deem it appropriate in the interest of justice to allow one more opportunity to the assessee before the Ld. CIT(A) to correlate that the borrowed funds were used for earning interest income so as to allow the deduction claimed as proper submission was not made. The assessee shall correlate that the borrowed funds were utilised for earning the interest/income from other sources so as to justify the deductions claimed. We, therefore, set aside the order of the Ld. CIT(A) and restore the appeal to the Ld. CIT(A) for disposal of the grounds of appeal taken by the assessee on merits by passing a speaking order. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments and rule 46A of the I.T. Rules, 1962 shall also be followed and an opportunity of being heard may be provided to the Ld. AO, if required. Accordingly, the grounds taken by the assessee in this appeal are partly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 6th November, 2025.

Sd/-

[George Mathan]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 06.11.2025

Bidhan (Sr. P.S.)

Copy of the order forwarded to:



1. **Bani Broto Banerjee, Flat – 3A, 148, Sanskriti Rash Behari Avenue, Near Deshapriya Park, Kolkata, West Bengal, 700029.**
2. **ACIT, Circle-58(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata