

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI SANJAY ARORA, AM
आयकर अपील सं./I.T.A. No. 268/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Deepak Nagji Vira 11, Harichand Mill Compound, L.B.S. marg, Vikroli (W), Mumbai-400 079	बनाम/ Vs.	ITO-10(2)(4), Aaykar Bhavan, M. K. Road, Marine Lines, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABPV 1228 N		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Jay Gala
प्रत्यर्थी की ओर से/Respondent by	:	Shri Bharati Singh
सुनवाई की तारीख / Date of Hearing	:	04.11.2015
घोषणा की तारीख / Date of Pronouncement	:	20.11.2015

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-21, Mumbai (‘CIT(A)’ for short) dated 08.10.2014, dismissing the assessee’s appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 (‘the Act’ hereinafter) for the assessment year (A.Y.) 2011-12 vide order dated 30.12.2013.

2. The background facts of the case are that the assessee, an individual, lent monies to a company, Purple Creation P. Ltd., at 12% p.a., during the year, earning interest at Rs.23,82,523/-. The same were, however, financed by borrowed capital, on which interest stood incurred at Rs.31,39,579/-. Besides, the borrowing being through

agency of finance brokers, another sum of Rs.1,33,954/- was incurred toward brokerage charges. Claim of these expenses against interest income, assessable u/s. 56 of the Act, resulted in a loss of Rs.8,87,532/-; the assessee also earning some bank interest. It is the claim for deduction of this excess expenditure, which is u/s. 57(iii), which is the subject matter of dispute. The assessee claims that the nexus of the borrowed funds with that advanced to the lendee-company and, thus, the purpose for which the loans were undertaken and expenditure on interest (as well as brokerage) incurred in its respect, is not in doubt. The Id. CIT(A) is wrong in doubting the same, and which forms the basis of his confirmation of the impugned disallowance of Rs.8.88 lacs. The Hon'ble Apex Court has in *CIT vs. Rajendra Prasad Moody* [1978] 115 ITR 519 (SC) clarified that it is only the 'purpose' that is relevant, and not the actual earning of the income, which may well be uncertain. As long as, therefore, the expenditure is for the purpose of earning income, the allowance of expenditure cannot be denied. The Revenue's case is based on the inference that in-as-much as the interest income is pre-defined, being admittedly in pursuance to an arrangement whereby the company allows interest to its shareholders – the assessee being a director and shareholder in the borrower company, at 12% p.a., the loss is self inflicted. No prudent person could incur a higher expenditure to earn a known, lower income. This was also the sum and substance of the arguments of the parties before the Bench; this being the only issue arising in this appeal.

3. The parties were heard, and the material on record stands perused.

Without doubt, there is no doubt with regard to the nexus – both with regard to interest on borrowed capital and brokerage charges - that being the premise on which the expenditure, in its entirety, stands claimed. The doubt sought to be raised by the Id. CIT(A) in this regard is misplaced, with even the Id. Departmental Representative (DR) not raising any objection in the matter. So, however, the assessee's plea, made with reference to the decision by the apex court in *Rajendra Prasad Moody* (supra), is misconceived. Surely, where the quantum of receipt is a function of several variables

and, thus, uncertain, the same cannot govern the extent to which the expenditure incurred is to be allowed, being incurred in its totality for the stated purpose, i.e., earning of income. There is also no doubt with regard to the expenditure claimed being incurred *bona fide*. The concurrence with the assessee's argument, however, stops here. The answer is simple. The monies are borrowed, incurring brokerage charges for the purpose, only for lending the same to a company at a predefined, agreed rate of interest, i.e., 12% p.a. That is, the assessee, even prior to undertaking the arrangement, is conscious/aware that the same shall result in a loss in-as-much as the interest rate contracted on the borrowing/s is higher. Surely, the same (loss) has the same character as of positive income, but the point is how could it at all be said that the expenditure was suffered for earning 'income' - it (income) by definition being only after setting off/adjusting all the related expenditure? The Revenue, after all, has disallowed only the excess expenditure and not the entire of it. It is not the assessee's case that any other benefit, apart from interest income, flows to him on the said loan/s. There is no contention to that effect, much less being proved or substantiated. Rather, as observed by the Bench during hearing, that the assessee as well as the lende-company being only aware of the going interest rate (in the market), the same (arrangement) only amounted to the assessee bearing the interest burden (of the company) to that extent (i.e., to the extent of difference), or the company diverting – by way of curtailing, its losses to that extent. The Id. AR would, upon this, submit that the company having incurred losses, an arrangement limiting the interest rate which it would allow to its shareholders (12% p.a.) was put in place. This, rather, only confirms what stands stated above. That the loss stands incurred not with a view to earn a positive return – irrespective of its extent, but to contain the losses of the investee-company. The matter is to be looked at from the stand-point of the assessee in-as-much as it is the law as applicable to him that is to be seen. Reference to the decision in the case of *Rajendra Prasad Moody* (supra) by the assessee is, again, misplaced. The same nowhere approves of premeditated losses. It

has already been clarified that no other benefit enures to the assessee from the said loan/s. A company cannot oblige the shareholders to extend loans, much less at a concessionary rate of interest. It is only where the actual earning of income is not certain, with the purpose of expenditure being toward earning the same, that the deduction in its respect cannot be denied. In the facts and circumstances of the case, the impugned expenditure is only to contain the losses of the borrower-company, by diverting it to the shareholders to that extent.

The assessee's claim is without merit, and the Revenue's stand in disallowing the excess expenditure (refer para 3 & 4 of the assessment order) is, for the fore-going reasons, is upheld. I decide accordingly.

4. In the result, the assessee's appeal is dismissed.

परिणामतः निर्धारिती की अपील खारिज की जाती है ।

Order pronounced in the open court on November 20, 2015

Sd/-

(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 20.11.2015

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai