

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'J' MUMBAI.

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

ITA NO 327/Mum/2014  
Assessment year: - 2009-10

Shri Jiten P. Mathuria 1702-4, Panchaseel Heights, Mahavir Nagar, Kandivali (W) Mumbai - 400 067.	Vs.	ACIT - 25(3), Mumbai, C-11, 3 <sup>rd</sup> Floor, Bandra Kurla Complex, Bandra (East) Mumbai - 400 051.
PAN/GIR No. AOBPS7066K		
Appellant		Respondent

Assessed By	Shri Biren Gabhawala
Revenue By	Shri Naveen Gupta

Date of hearing	01.09.2015
Date of pronouncement	06.01.2016

### ORDER

**Per Rajesh Kumar, AM**

This appeal by the assessee is directed against the order dated 18.11.2013 of CIT (A) for A.Y. 2009-10. The assessee has raised following grounds of appeal:-

1. *On the facts and circumstances of the case an in law the learned Commissioner Of Income Tax (Appeals) erred in upholding the disallowance of interest Rs.3,97,244/- claimed as deduction u/s 57(iii) of Income Tax Act against interest income of Rs.16,08,399/- disclosed under the head "Income from other Source".*
- 1.1 *On the facts and circumstances of the case an in law the learned Commissioner Of Income Tax (Appeals) erred in ignoring the provisions of Sec57(iii) of the Income Tax Act according to which any expenditure ( not being the nature of capital expenditure or personal expenditure) laid out or expended wholly and exclusively for the purpose of making or earning of such income is allowable as a deduction in computing the income under the head "Income from other Sources".*
- 1.2 *On the facts and circumstances of the case an in law the learned Commissioner Of Income Tax (Appeals) erred in failing to appreciate that the facts of Supreme Court decision in the case of CIT Vs. Dr. V.P. Gopinathan (2001) 116 Taxman 489(SC) is distinguishable from the facts of your appellant's case and hence is not applicable.*
- 1.3 *On the facts and circumstances of the case an in law the learned Commissioner Of Income Tax (Appeals) erred in failing to appreciate that the Hon. Supreme Court in the case of Seth R. Dalmia v. CIT(1977) 110 ITR 644 has held that the nexus between the expenditure incurred and the income earned need not be direct and even an indirect connection could prove the nexus between the expenditure incurred and the income earned. He ought to have followed this decision and allowed the appeal.*
- 1.4 *On the facts and circumstances of the case an in law the learned Commissioner Of Income Tax (Appeals) erred in ignoring the explanation of your appellant that the interest on the opening balance of Rs.25,00,000/- as well as additional*

*loan of Rs.23.50 Lakhs taken during the year from M/s. Amco Land & Marine Service and m/s. Mayur Gems were legitimate expenses for earning the income from Other Sources as these borrowings were exclusively used for advancing the loans to the companies from where the appellant earned interest income.*

*2. Your appellant prays that the disallowance of interest of Rs3,97,244/- made by the learned Assessing officer may kindly be deleted.*

2. The common issue raised in all the grounds of appeals is against the confirmation of addition of Rs. 3,97,244/- by CIT(A) made by the AO by rejecting the claim of the assessee u/s 57(iii) of the Act

3. Facts in brief are that the assessee an individual was engaged in the business of trading in plastic granules and derived income from various sources of income such as salary, capital gain and income from other sources. During the year under reference, the assessee filed his return of income on 29.09.2009 declaring an income of Rs. 38,96,730/- under various heads of income. The assessee had shown Rs. 15,99,664/- as income under the head income from other sources which was received on the loans given to various companies and against the said income the assessee claimed deduction u/s 57(iii) of Rs. 3,97,244/- as interest on the money raised for repayment/ advancing loans to other companies.

4. The AO framed the assessment u/s 143(3) of the Act vide order dated 17.10.2011 at Rs. 42,93,975/- by rejecting the submissions of the assessee dated 16.08.2011 as incorporated in the assessment order at page no. 2 by holding that the interest of Rs. 3,97,244/- was not directly connected with the earning of interest income.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). The appeal of the assessee was dismissed by rejecting the contention of the assessee that interest paid on money raised was admissible u/s 57(iii) of the

Income Tax Act by relying upon the various decisions as incorporated in para 6 of the CIT(A) order.

6. The Id AR for the assessee submitted that interest of Rs. 3,97,244/- paid by the assessee on the funds borrowed to return the existing loans and to advance to loans to other companies at higher rate and therefore the interest paid of Rs. 3,97,244/- was an admissible expense u/s 57(iii) of the Act. The Id AR also submitted that the money was borrowed at the rate of 9% and the same was utilized to return the existing loans and for advancing loans which were @ rate of 12%. The assessee filed detailed statement showing the nexus of loans taken, loans advanced, interest earned and interest paid on page no. 1 of the paper book. The assessee also filed copy of bank statement through which money was raised and distributed which is filed at page no. 2 to 7 of the paper book. The balance-sheet of the assessee which showed that the unsecured loans as on 31.03.2009 were at Rs. 2,98,23,849/- and loan & advances were at Rs. 2,05,01,790/- and the corresponding figures of the previous year were 1,70,21,272/- and 1,72,64,952/- respectively. The balance-sheet is filed at page no. 15 of the paper book. The Id AR submitted before us that that the decisions relied on by the AO and CIT(A) were distinguishable and were wrongly applied to the assessee,s case. The Id Counsel for the assessee strongly relied on the decision Seth R Dalmia (1977)110ITR644 (SC), CIT Vs HH Maharani Shri VijayKuerba Sahib of Morvi (1975)100TR67 (Bom).It was agrued that the interest paid constituted the expenses incurred indirectly to earn the interest of Rs. 15,99,664/- on loans advanced to various companies and in fact represented input cost and prayed for allowing the interest paid.The Id DR relied on the orders of authorities below.

7. We have heard the rival submissions and perused the materials on record. The issue before us is whether the assessee is entitled to deduction of Rs. 3,97,244/- on the money raised by him and claimed u/s 57(iii) of the Act. The relevant extracts of the provisions are reproduced as under:-

The income chargeable under the head "Income from other sources "shall be computed after making following deductions, namely:-

(i)...

(ii).....

(iii) any other expenditure(not being in the nature of capital expenditure) liad out or expended wholly and exclusively for the purpose of making or earning such income;

We find that the assessee had raised money during the year which was utilized either to lend or to repay the loans of the assessee as per details at page no. 1 of the paper book. The bank statement of the assessee which was filed at page no. 2 to 4 of the paper book also shows the nexus between the borrowings and lending's/repayments. We also note that the money raised was paid interest @ 9% whereas the money lent/repaid was @ 12% rate of interest. The balance-sheet of the assessee at page no. 15 of the paper book shows the increase in unsecured loan (liabilities) and also increase in loans & advances (assets) in comparison corresponding figures in the preceding year. In our opinion the case relied upon by the revenue CIT Vs Dr VP (2001) 116 Taxman 489(SC) is distinguishable on facts. In the said case the assessee made an FDR with the bank and against that FDR the assessee raised a bank loan. The Hon'ble Court held that interest on the said loan was not deductible from the amount of bank interest on FDR as there was no provision in law for the same whereas in the instant case the assessee had interest income from money lending to various companies to the tune of Rs. 15,99,664/- and he had also paid interest of Rs. 3,97,244/- on loans taken by the assessee for the purpose of lending/repayments of existing loans. Thus there is direct nexus between the taking loans and lending to others or repaying the loans taken at higher rate. Thus the facts of the assessee case are totally different from that considered by the Hon'ble Apex Court. On the other hand the decisions relied on by the Id AR namely Seth R Dalmia (1977)110ITR644 (SC), CIT Vs HH Maharani Shri VijayKuerba Sahib of Morvi (1975)100ITR67 (Bom). In the first case the Hon'ble court has held that the expenses incurred for the purpose of eaning income and which are not of capital nature or or personal nature the same are deductible. In the second case, the Honble Court has held that that the purpose of incurring the expenses should be to earn income and connection between the income and the expenses need not be direct. It may be indirect but there must be a

nexus or connection between the income and the expenditure. In the case of the assessee, we are of the opinion that there is a direct nexus between the money raised and utilized and the expenses by way of interest is also not of capital nature. During the instant year the assessee earned interest income of Rs. 15,99,664/- and claimed deduction of interest paid on borrowings to the tune of Rs. 3,97,244/- u/s 57(iii) of the Act. We in agreement with the submissions of the Id AR of the assessee that the interest paid constitute the input cost of the fund and therefore has to be reduced while determining the income from other sources which is the spirit of the provision of section 57 (iii) of the Act . In view of these facts, we reverse the order of CIT(A) by allowing the appeal of the assessee. The AO is directed accordingly.

8. In the result appeal of the assessee is allowed.

Order pronounced in the open court on the 06<sup>th</sup> day of January, 2016.

Sd/-

(Amit Shukla)  
(Judicial Member)

Sd/-

(Rajesh Kumar)  
(Accountant Member)

Mumbai dated 06-01-2016

SKS Sr. P.S

Copy to:

*The Appellant*

*The Respondent*

*The concerned CIT(A)*

*The concerned CIT*

*The DR, "G" Bench, ITAT, Mumbai*

ITA NO 327/Mum/2014  
Assessment year: - 2009-10

By Order

Assistant Registrar  
Income Tax Appellate Tribunal,  
Mumbai Benches, MUMBAI