

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA No. 5347/Del/2013
AY: 2009-10**

Sh.Ajay Kumar Gupta vs. ACIT, Range 2
Prop. M/s Gee Emm Steel Industries New Delhi
B 274, Nehru Round, NIT
Faridabad

PAN: AAQPG 1172 M
(Appellant)

(Respondent)

Appellant by : Sh.Ved Jain, C.A.
Respondent by : Sh. K.K.Jaiswal, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, A.M.

This is an appeal filed by the Assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals), Faridabad dated 29.7.2013 pertaining to the Assessment Year (A.Y.) 2009-10.

2. Facts in brief:- The assessee is an individual and is in the business of trading in Ferrous items like Angles, Channels, Plates, Flat Sheets etc. The issue in dispute before us is the disallowance of interest on investments to the tune of Rs.4,76,421/-. The assessee had made an advance for allotment of property. The AO held that the investment of Rs.42,15,688/- made in respect of the property/assets, which was never put to use for business purposes during the year and hence the proportionate interest cannot be allowed in view of Proviso to S.36(1)(iii) of the Act. He also held that the assessee has not filed any documentary evidence or bank statements, to prove the nexus that the for loans/advances were utilized to make investments in these assets. He also observed that the personal capital a/c of the assessee is a negative figure.

3. On appeal the First Appellate Authority upheld the order of the AO. Reliance was placed by the assessee on the decision of Hon'ble Supreme Court in the case of DCIT vs. Core Health Care Ltd. (2008) reported in 215 CTR 1(SC) was held as misplaced, for the reason that the impugned A.Y. was 2009-10 i.e. after the coming into effect the Proviso to S.36(1)(iii). Aggrieved the assessee is in appeal before us.

4. We have heard Shri Ved Jain, the Ld.Counsel for the assessee and Shri KK Jaiswal, Ld.Sr.D.R. on behalf of the Revenue.

4.1. The Proviso to S.36(1) (iii) of the Act reads as under:

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession.

(Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (for extension of existing business or profession) (whether capitalized in the books of account or not), for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction).

4.1. The words "for extension of existing business or profession" has been deleted by the Finance Act, 2015 prospectively. As during the impugned A.Y., there is no extension of existing business of the assessee, the Proviso to S.36(1)(iii) is not attracted in this case. The A.O. has not contradicted the contentions of the assessee that the properties were purchased for the existing business of the assessee.

4.2. The Ld.CIT(A) for the preceding A.Y. 2008-09, on the very same facts allowed the grounds of the assessee on this issue.

5. In view of the above discussion we delete the impugned addition and allow the appeal of the assessee.

6. In the result assessee's appeal is allowed.

Order pronounced in the Open Court on 29th January, 2016.

Sd/-

(A.T.VARKEY)
JUDICIAL MEMBER

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 29th January, 2016

**manga*

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar