

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

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER  
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No. 2821/Del/2014**

**AY: 2008-09**

Sh. Raj Kumar Jain                      vs.     Dy.CIT, Circle 24(1)  
A 2/31, Safdarjung Enclave             New Delhi  
New Delhi 110 029

PAN: AAGPJ 5125 R

**(Appellant)**

**(Respondent)**

**Appellant by**     : Sh. Gautam Jain, C.A.

**Respondent by** : Sh. Anil Kr. Sharma, Sr.D.R.

**ORDER**

**PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

This is an appeal filed by the assessee directed against the order of the Ld.CIT(A)-XXVIII, New Delhi dated 14.02.2014 pertaining to the Assessment Year (A.Y.).

**2. Facts of the case:-** The assessee is an individual. He filed his return of income on 26.9.2008 declaring total income of Rs.87,30,210/-. The Assessing Officer (AO) completed the assessment u/s 143(3) of the Income Tax Act, 1961 (the Act) on 20.12.2010 determining the total income at Rs.1,50,80,939/- inter alia, disallowing the claim of Rs.63,50,729/-, which

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

is interest paid on a loan taken by the assessee of Rs.5,50,00,000/- from HDFC Bank in March, 2007. The interest of Rs.63,50,729/- was claimed as a deduction u/s 24(b) of the Act.

**2.1.** The assessee carried the matter before the Ld.CIT(Appeals). Before the Ld.CIT(A) the assessee took additional grounds and also moved an application under Rule 46A for admission of additional evidence. The assessee made a claim for deduction of the interest u/s 36(1)(iii) of the Act or in the alternative u/s 57(iii) of the Act. Remand reports were called for by the Ld.CIT(A) from the A.O. Thereafter he noted down the facts at page 12 of his order. At page 13 the Ld.CIT(A) at para 2 of his order disallowed the claim of the assessee by observing as follows.

*“The claim of the appellant is thus to be considered on the following accounts:*

*(1) As interest income against income from house property: It is clear that the loan taken from HDFC bank has not been used for either purchase or construction of the property at Safdarjung Enclave. The appellant’s ground that interest on loan should be allowed as an expense against income from house property can therefore not be accepted.*

*(2) As interest income against business income: This is not admissible as –*

- The loan has been partly used for repayment of advance taken from M/s Shiv Shakti Apartments against sale of property at Sardarjang Enclave and for repayment of other outstanding creditors. M/s Shiv Shakti Apartments is also owned by the appellant.*

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

- *The appellant does not have any business or business income.*
- *The counter claim of the appellant that the loan has been utilised for purchase of shares of M/s Galaban Hotels P.Ltd. and as a result of which he has controlling interest in the said company and M/s Shiv Shakti Apartments has been paid off by M/s Galaban Hotels P.Ltd. can also not be accepted as the appellant is not in the business of purchasing hotels or in purchasing shares.*
- *The loan taken from HDFC bank has been utilized for investment in purchase of shares of M/s Galaban Hotels P.Ltd. the appellant does not have any income from M/s Galaban Hotels P.Ltd. the only possible income, even in future from this company, is either dividend income or salary income. Against both these sources of income the interest expense is not an eligible deduction. Further, the main asset of M/s Galaban Hotels P.Ltd. is property owned by it in Safdarjang Enclave. The appellant has purchased shares of this company mainly for getting ownership of this property. Had the loan been taken by the company, interest expense would have been an admissible expense in the hands of the company, but in the case of the appellant the same is not an admissible deduction.”*

He dismissed the case of the assessee.

**3.** Aggrieved the assessee is in appeal before us on the following grounds.

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

- “1. That the learned Commissioner of Income Tax (Appeals)-XXVIII, New Delhi has grossly erred both in law and on facts in upholding disallowance of sum of Rs. 63,50,729/- representing expenditure incurred on interest by the appellant in the instant assessment year.
- 2 That the learned Commissioner of Income Tax (Appeals) has upheld the disallowance by failing to appreciate the fact and circumstances of the case of the appellant, statutory provisions of law and evidence on record, including the submissions filed by the appellant.
- 2.1 That the learned Commission of Income Tax (Appeals) has failed to appreciate that borrowed funds had been utilized by the appellant for acquiring controlling interest in the course of business of the appellant and as such interest paid was eligible for deduction U/S 36(1 )(iii) of the Act an-d in the alternative was eligible for deduction U/S 57(iii) of the Act.
- 2.2 That the finding of the learned Commissioner of Income Tax (Appeals) that since appellant has no business income or appellant is not in the business of purchasing hotel or purchasing share and as such interest paid is not an eligible deduction is based on fundamental misconception of facts and law and as such unsustainable.
- 3 That without prejudice to the aforesaid and in the alternative, interest paid and claimed is eligible for deduction U/S 24(b) of the Act.
- 4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 5,66,9031- under section 234B and Rs. 19,565/- under section 234D of the Act which are not

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

*leviable on the facts and circumstances of the case of the appellant.*

*It is therefore prayed that, it be held that, disallowance made by learned Assessing Officer and, sustained by the learned Commissioner of Income Tax (Appeals) along with interest levied may kindly be deleted and appeal of the appellant be allowed.”*

**4.** The Ld.Counsel for the assessee Mr.Gautam Jain made threefold submissions which are as follows.

(a) Rule of consistency should be applied as in the succeeding Assessment Years 2011-12 and 2012-13, the claim of the assessee was allowed by the A.O. He specifically drew the attention of the Bench to the assessment order for the A.Y. 2012-13, which is an order passed u/s 143(3) of the Act and relied on the following cases.

(i) CIT vs. Excel Industries Ltd. 358 ITR 295 (S.C.)

(ii) CIT vs. JK Charitable Trust 308 ITR 161 (S.C.)

(b) That the amount of loan taken was utilized for purchase of controlling interest of M/s Garabond Hotels Pvt.Ltd. He argued that when funds are borrowed for acquiring controlling interest in an enterprise, the interest paid on such funds is allowable as deduction, as acquiring controlling interest in companies and managing, administrating, financing and rehabilitating companies, is for the purpose of business. For these propositions he relied on the following cases.

(i) CIT vs. Rajeeva Lochan Kanoria 115 ITR 616 (Cal.)

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

- (ii) CIT vs. Jardine Hendaritors 210 ITR 981 (Cal.)
- (iii) CIT vs. Phil Corpn. Ltd. 244 CTR 226 (Bom.)
- (iv) CIT vs. Srishti Securities (P) Ltd. 321 ITR 498 (Bom.)
- (v) CIT vs. Panaji Goa vs. Phil Corpn. Ltd. 244 CTR 526 (Bom.)

He argued that, the finding of the Ld.CIT(Appeals) that acquiring controlling interest in a hotel cannot be considered as business of the assessee is against the propositions of law laid down by various Hon'ble Courts.

(c ) He submitted that even if the Ld.CIT(A) was wrong in denying the claim of deduction of the assessee on the ground that the assessee does not have any income from M/s Galabon Hotels Pvt.Ltd. by relying on the judgement of Hon'ble Apex Court in the case of CIT vs. Rajeeva Lochan Kanoria(supra).

He also relied on certain other judgement for the proposition that interest should be allowed though there is no income during the year.

**5.** The Ld.D.R. on the other hand relied on the order of the Ld.CIT(A) and submitted that the assessee does not have any business or income. He argued that the assessee's claim that it has acquired controlling interest in M/s Galabon Hotels Pvt.Ltd., cannot be accepted as the business of the assessee, as the assessee is not in the business of purchasing hotels or in purchasing shares.

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

**5.1.** He reiterated the finding of the Ld.CIT(A) that the loan taken from HDFC has been used for purchasing shares of M/s Galabon Hotels and as the assessee does not have any income from M/s Galabon Hotels P.Ltd., and as the only possible future income from this company is either dividend income or salary, the interest income cannot be allowed. He submitted that the assessee purchased shares of this company mainly to acquire ownership of the property. He prayed that the order of the First Appellate Authority be upheld.

**6.** After hearing rival contentions and considering of papers on record, orders of the authorities below, case laws cited, we hold as follows.

**7.** The sole issue argued before us is whether interest income in question paid on a loan taken from HDFC Bank, for acquisition of controlling interest in M/s Galabon Hotels P.Ltd. is allowable as a deduction u/s 57(1)(iii) of the Act or in the alternative u/s 36(1)(iii) of the Act. The Ld.CIT(A) has recorded the facts at page 12 of his order that the assessee took loan of Rs.5,50,00,000/- under non residential premises equity loan scheme against the property from HDFC bank. This loan was utilized for acquiring controlling interest in M/s Galabon Hotels Pvt.Ltd. Rs.2,52,50,000/- was paid to M/s Galabon Hotels Pvt.Ltd. for purchase of shares and M/s Galabon Hotels Pvt.Ltd. in turn returned the advance taken by it from M/s Shivashakthi Apartments. Further the assessee

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

purchased 9990 shares of M/s Galabon Hotels Pvt.Ltd. of Rs.2,22,27,750/-

The balance was utilized for payment of the existing creditors. The question is whether acquiring controlling interest in a hotel can be considered as business activity of the assessee. If it is business activity of the assessee, then the interest expenditure is allowable u/s 36(1)(iii) of the Act.

**7.1.** The Hon'ble Calcutta High Court in the case of CIT vs. Rajiv Lochan Kanoria (supra) held as under.

*“The only enquiry that is to be made for allowing deduction for interest is whether the payment of interest was respect of capital borrowed for the purpose of the assessee's business or profession. There is no dispute that capital was borrowed in the instant case and interest was paid on the borrowed capital. It is to be established the amount was borrowed for the purpose of business or profession. The amount borrowed may be utilised for purpose of acquisition of stock-in-trade or for the purpose of acquisition of capital assets. But so long as the money is utilised for business purposes the interest will have to be allowed as deduction. It is well-settled that business expenditure is not confined to expenses incurred on revenue account. Capital expenditure may not be allowed as a deduction under s. 37 because the section specifically bars any deduction of expenditure of capital nature. But s.is differently worded. There is no bar in s. 36(1) (iii) to allowance of interest paid in respect of capital borrowed which has been utilised for purchase of a capital asset. The*

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

*assessee was admittedly a director of several controlling companies. Even otherwise, the activity of controlling, managing, administering and financing companies is nothing but a business/professional/vocational activity. The Revenue has not challenged as perverse the finding of Tribunal that the assessee's business activity consisted of acquiring shares for managing, controlling rehabilitating different companies. A businessman like the assessee in this case does not purchase shares of different companies for acquiring controlling interest therein only for earning dividends. There is nothing to suggest that s.36(1)(iii) prohibits allowance of unremunerative expenditure by way of interest even if the interest was in respect of capital borrowed for the purposes of the business or profession. Tribunal was therefore justified in holding that interest payment could not be disallowed as per provisions of s.36(1)(iii) – India Cements Ltd. vs. CIT (1966) 60 ITR 52 (S.C.); State of Madras vs. GJ Coelbo (1964) 53 ITR 186 (SC), Nabadwip Chandra Roy vs. CIT (1962) 44 ITR 591 (Assam), CIT vs. Indian Bank Ltd. (1965) 56 ITR 77 (SC) and P.Krishna Menon vs. CIT 35 ITR 48 (SC) relied on; CIT vs. Model Mfg. Co. P.Ltd. (1980) 122 ITR 767 (Cal.) distinguished.”*

**7.2.** The Hon’ble Bombay High Court in the case of CIT vs. Panaji Goa vs. Phil Corpn. Ltd. 244 CTR 526 (Bom.) held as follows :

*“Section 36(1)(iii) of the Act – Interest on borrowed capital – assessee took loan from overdraft account and invested it into sister/subsidiary concern and claimed deduction u/s 36(1)(iii) in respect of interest payable to bank*

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

*which was disallowed by revenue authorities – Tribunal found that overdraft was not used for mere investment in shares of sister/subsidiary company to earn dividend but was used to have control over that company and further that such an investment was integral part of business of assessee – Whether assessee was entitled to deduction of interest paid on overdraft u/s 36(1)(iii) of the Act.”*

**7.3.** The Hon’ble Calcutta High Court in the case of CIT vs. Jardine Hendaritors (Cal.) 210 ITR 981 held as follows.

*“Sec.37(1) of the Act – business expenditure – allowability – A.Y. 1971-72 – Assessee company which carried on business of managing agency and a trading department borrowed money from time to time through several overdraft accounts with banks – In addition to business income assessee also had income from interest on securities, property and dividends – Tribunal found that borrowed funds were utilized for purpose of purchase of shares, which were necessary to retain managing agency – Whether interest paid on aforesaid borrowings was allowable as business expenditure – Held Yes.”*

**7.4.** The Hon’ble Delhi High Court in the case of Eicher Goodearth Ltd. vs. CIT (2015) 60 Taxman.com 268 (Delhi) held as follows.

*“In the facts of the present case, that principle, in the opinion of Court, would squarely apply. If indeed the assessee had invested and subscribed to the rights issue in order to retain the control, it originally did in HS Tractors Ltd,*

*it can still be said that the expenditure was towards promotion of business, and, therefore, properly entitled to be treated as such u/s 36(1)(iii) of the Act. This Court, therefore, is of the opinion that the law declared by Supreme Court in such cases if the expenditure is incurred for the purpose of promotion of business and more specifically as in facts of this case to retain the control or part of the strategic investment of the assessee/company such expenses can by way of interest outgo would have to be treated u/s 36(1)(iii) and not u/s 56 of the Act.”*

**8.** Applying the propositions laid down in the above referred cases, to the facts of the present case, we have to necessarily to uphold the claim of the assessee for deduction of interest paid on loan borrowed to acquire controlling interest in M/s Galabon Hotels P.Ltd. This should be allowed u/s 36(1)(iii) of the Act. The finding of the Ld.CIT(A) that the assessee is not in the business of purchasing hotels and hence he does not have any business, is not correct.

**9.** The second finding of the Ld.CIT(A) that the assessee cannot claim deduction of interest expenditure, as it does not have any income from M/s Galabon Hotels Pvt.Ltd., is also to be reversed in view of the judgement of Hon'ble Supreme Court in the case of CIT vs. Rajendra Prasad Moddy (supra) wherein it is held as follows.

*"It is also interesting to note that, according to the Revenue, the expenditure would disqualify for deduction only if no income results from such expenditure in a particular*

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

*assessment year, but if there is some income, howsoever small or meagre, the expenditure would be eligible for deduction. This means that in a case where the expenditure is Rs. 1000/-, if there is income of even Re. 1/-, the expenditure would be deductible and there would be resulting loss of Rs. 999/- under the head 'Income From Other Sources'. But if there is no income, then, on the argument of the Revenue, the expenditure would have to be ignored as it would not be liable to be deducted. This would indeed be a strange and highly anomalous result and it is difficult to believe that the Legislature could have ever intended to produce such illogicality. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil; whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, X or Y or nil, would be credited. And the ultimate profit or loss would be found. We fail to appreciate how expenditure which is otherwise a proper expenditure can cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of section 57(iii) cannot be different. The deduction of the expenditure cannot,*

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

*in the circumstances, be held to be conditional upon the making or earning of the income. It is true that the language of section 37 (1) is a little wider than that of section 57(iii), but we do not see how that can make any difference in the true interpretation of section 57(iii). The language of section 57(iii) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that section 57(iii) should be given a narrow and constricted meaning not warranted by the language of the section and in fact, contrary to such language. This view which we are taking is clearly supported by the observations of Lord Thankerton in Hughes v. Bank of New Zealand where the learned Law Lord said: "Expenditure in the course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense."*

**10.** The contentions of the assessee that, he is in the business of real estate and has controlling interest in a number of companies and that if the Ld.CIT(A)'s factual finding is that the assessee acquired shares in M/s Galabon Hotels Pvt.Ltd. for the purpose of acquiring controlling interest in the property owned by this Hotel in Safdarjung Enclave, then also, as this is the business of the assessee, deduction should be allowed u/s 36(1)(iii) has to be accepted. We agree with these submissions. We also find that

**ITA No. 2821/Del/2014**

**A.Y. 2008-09**

**Shri Raj Kumar Jain**

the A.O. in the A.Y. 2012-13 in a scrutiny assessment allowed the same claim of the assessee for deduction of interest u/s 36(1)(iii) of the Act. Thus even on the principle of consistency, this claim of the assessee has to be allowed. In view of the above discussion we direct the A.O. to allow the claim of the assessee for deduction u/s 36(1)(iii) of the Act.

11. In the result the appeal is allowed.

Order pronounced in the Open Court on 23<sup>rd</sup> Sept.2016.

Sd/-

**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Sd/-

**(J. SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 23<sup>rd</sup> Sept. 2016

- *Manga*

**ITA No. 2821/Del/2014**  
**A.Y. 2008-09**  
**Shri Raj Kumar Jain**

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
**ITAT, New Delhi**