

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

I.T.A .No.-3083/Del/2018
(ASSESSMENT YEAR- 2014-15)

RAJ KUMAR SHARMA, 157, DDA OFFICE COMPLEX, JHANDEWALAN EXTENSION, NEW DELHI – 110 055 PAN No. AQCP590521 (APPELLANT)	vs	ACIT, CIRCLE 61(1), NEW DELHI . (RESPONDENT)
Appellant by	Shri Ved Jain, Adv. Mrs. Surbhi Goyal, CA	
Respondent by	Ms. Ekta Vishnoi, Sr. DR.	

ORDER

This appeal by the assessee has been directed against the order of Ld. CIT(Appeals)-20, New Delhi dated 31.03.2018 for the AY 2014-15 on the following grounds of appeal:

- 1. On the facts and circumstances of the case, the order passed by the Ld. CIT(A) is bad, both in the eye of law and on the facts.*
- 2 (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the disallowance to the extent of Rs. 14,48,731/- made by AO on account of expenditure claimed by the assessee under section 36(1)(iii) of the Act.*
(ii) That the above said disallowance has been confirmed despite the fact that the expenditure was incurred wholly and exclusively for the purpose of business and profession.
(iii) That the above said disallowance has been confirmed rejecting the detailed explanation and evidences furnished by the assessee.
- 3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in holding that*

amount borrowed by the assessee was not utilized for the purpose of business or profession.

4(i) Without Prejudice to the above, in the alternative, Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the expenditure incurred by the assessee is otherwise eligible for deduction under section 57(iii) of the Income Tax Act.

5. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. The brief facts of the case are that assessee filed his return of income declaring income of Rs. 19,12,580/- on 22.7.2014. The case of the assessee was selected for scrutiny for compulsory category for complete scrutiny of the basis of reasons: "*Large interest expenses relatable to exempt income u/s. 14A's*". Notice u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") dated 23.9.2015. Notice u/s. 142(1) of the Act dated 4.11.2016 fixing the case for 10.11.2016 was also issued to the assessee. In response to the notices, the AR of the assessee attended the proceedings from time to time and filed necessary details information etc. as required. Books of accounts and vouchers were also produced during the course of assessment proceedings which were examined. The Assessee is an Advocate by profession and derive income from house property, income from business and profession and income from other sources as in earlier years. In this case the assessee has shown interest income of Rs. 6,38,869/- as income under the head other sources and has adjusted the balance interest of Rs. 7,02,434/- against the interest paid on loans. However, during the proceedings, the AO alleged that the

entire income received by way of interest has been set off towards the bank charges and loan taken from the bank without considering the fact that the assessee has shown the income of Rs. 6,38,869/- as income under the head other sources. AO further observed that the interest on loan and bank charges debited to P&L account do not have a direct relationship with the profession of the assessee and cannot be claimed as a business expenditure and also observed that since the this amount of loan was invested in FDR and interest was received on this investment, the assessee has not utilized the loan for which it was availed. Assessee submitted that as these loans were obtained for a business purpose, therefore the interest expenditure on these loans is allowed u/s. 36(1)(iii) of the Act and also since the assessee could not find a suitable premise, the assessee then proceeded to invest these idle funds into FDRs, thereby earning interest income on these investment. It was further submitted that the interest expenses incurred on the borrowed funds and simultaneous earning of interest income on the investment which exceeded the interest expenses, the assessee claimed it as a business expenditure and the balance income of Rs. 6,38,869/- under the head income was duly disclosed and paid taxed thereon. However, AO disregarded the submissions of the assessee and disallowed the expenses of Rs. 14,48,731/- on account of interest expenses by alleging that these expenses do not have direct nexus with the profession of the assessee and completed the assessment at 33,61,310/- u/s. 143(3) of the Act vide order dated

28.12.2016. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 31.3.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order of the Ld. CIT(A), the assessee is in appeal before the Tribunal challenging the addition made by the AO and sustained by the Ld. CIT(A).

3. At the time of the hearing, Ld. Counsel for the assessee submitted that disallowance in dispute has been confirmed despite the fact that the expenditure was incurred wholly and exclusively for the purpose of business and profession. It was further submitted that the said disallowance has been confirmed rejecting the detailed explanation and evidences furnished by the assessee and authorities below have wrongly observed that the amount borrowed by the assessee was not utilized for the purpose of business or profession. It was further submitted that the lower authorities wrongly rejected the contention of the assessee that the expenditure incurred by the assessee is otherwise eligible for deduction under section 57(iii) of the Income Tax Act, 1961. He further submitted that the loan obtained by the assessee was to be used for the purpose of expanding the business by purchasing a bigger office premises. The assessee also submitted a declaration from the broker which clearly indicates that the assessee was on a continuous lookout for a suitable office premises. He further submitted that nowhere in the section 36(1)(iii)

of the Act it is specified that the loan obtained by the assessee has to be invested on the date of borrowing. The section only specifies that the purposes for which the funds are being used is business purposes only, i.e., the amount has to be invested in the business only. It is on the assessee's discretion when to invest the borrowed funds, provided it is invested for the business purposes. To support his contention, he relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Anand Technology Resource Park Pvt. Ltd., ITA Nos. 625 to 627 of 2006, order dated 30.8.2011. He also filed a paper book containing pages 1-102 attaching therewith various documentary evidences.

3.1 On the contrary, the Ld. DR placed reliance on the order passed by the authorities below. She stated that since the amount of loan was invested in FDR and interest was received on this investment, the assessee has not utilized the loan for which it was availed. Hence, the addition was rightly made by the AO and sustained by the Ld. CIT(A).

4. I have heard both the parties and perused the records especially the orders of the authorities below, paper book; synopsis and case law relied upon by the assessee's counsel. I find that in this case the CIT(A) vide its order dated 31.03.2018 has upheld the action of AO for disallowing interest expense of Rs. 14,48,731/- by alleging that the interest on loan and bank charges have no direct nexus with the profession of the assessee. I find considerable cogency in the contention of the Ld. Counsel for the assessee that the loan obtained

by the assessee was to be used for the purpose of expanding the business by purchasing a bigger office premise. The assessee also submitted a declaration from the broker which clearly indicates that the assessee was on a continuous lookout for a suitable office premise. It is also noted that nowhere in the section 36(1)(iii) of the Act it is specified that the loan obtained by the assessee has to be invested on the date of borrowing. The section only specifies that the purpose for which the funds are being used is business purpose only, i.e., the amount has to be invested in the business only. It is on the assessee's discretion when to invest the borrowed funds, provided it is invested for the business purpose. This view is fortified by the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Anand Technology Resource Park Pvt. Ltd., ITA Nos. 625 to 627 of 2006, order dated 30.08.2011, wherein it was held as under:

"14. A reading of the aforesaid provision makes it clear the amount of interest paid in respect of capital borrowed for the purpose of business or profession is allowable as deduction in computing the income under Section 28. In other words, the assessee has to invest the money so borrowed in business or profession. There is no indication in the said provision that the amount is to be invested in the business which he is carrying on, on the date of borrowing. The amount is to be invested in his business, business which he is carrying on or a business which he intends commencing. But, the test is, it should be a business. Therefore, the contention of the revenue that unless the amount borrowed is invested in the existing business, he is not entitled to deduction under Section 36(1)(iii) is not tenable. May be in a case where such borrowing

is invested in acquiring shares, the intention of acquiring shares is to be ascertained. If the intention is to get only dividend it cannot be construed as an investment in business or profession. On the other hand if the investment in shares is made with the intention of carrying on business and the receipt of dividend is only incidental or ancillary, then Section 36(1)(iii) is attracted."

4.1. Since the assessee intended to purchase a business premise from the funds borrowed, it can be very well concluded that the purpose for which these loans were obtained were business purpose only. It is noted that assessee could not find any suitable office, he invested these idle funds into FDRs to reduce the burden of interest cost to be borne on the borrowed funds and the funds are readily available to the assessee as when a suitable office is found for investment.

4.2 It is a well settled law that revenue cannot sit in the armchair of a businessman to decide the reasonableness of a decision taken by a businessman. Here, in this case also, the AO has alleged that the borrowed funds were not for a business purpose while the assessee has clearly established the nexus between the purpose of business and the expenditure incurred. To support this view, I rely upon the judgment of the Hon'ble Supreme Court of India in the case of S.A. Builders vs. CIT(A) Civil appeal No. 5811 of 2006 with 5812 of 2006, wherein it was held as under:-

"35. We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (B.) Ltd. [2002] 254

ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."

4.3 After reading the aforesaid judicial pronouncement it is clear that the AO has wrongly disallowed the expenditure claimed by the assessee u/s 36(1)(iii) of the Act, by alleging that the interest expenditure were not directly related to the business of the assessee. Even otherwise, if the said expenditure is not allowable as a business expenditure, then the interest expenditure is allowable as a deduction u/s 57(iii) of the Act. During the year under consideration, the assessee had earned interest on FDR amounting to Rs. 13,41,303/- and a total expenditure on interest on loan and bank interest amounting to Rs. 14,90,125/- As per the language of section 57(iii) of the Act, the expenditure which is wholly and exclusively incurred for the purpose of earning income chargeable under the head income from other sources, is allowed as deduction from the said income of

the assessee. Thus, it can be concluded that there is a direct nexus between the income earned and the expenditure incurred which should allowable as a deduction u/s 57(iii) of the Act.

4.4 Keeping in view of the facts and circumstances of the case and respectfully following the precedents as aforesaid, the addition made by the AO and sustained by the Ld. CIT(A) is hereby deleted by allowing the grounds raised by the assessee.

5. In the result, appeal of the assessee is allowed.

Order pronounced on 16-10-2019

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 16/10/2019

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI