

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकरअपीलसं. / ITA No. 313/RPR/2016

निर्धारणवर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax-2(1),
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Arun Singhania
Gokul, Geeta Nagar, G.E. Road,
Raipur (C.G.)

PAN : AKHPS6503R

.....प्रत्यर्थी / Respondent

Assessee by
Revenue by

:Shri Amit M Jain, CA
:Shri Sanjay Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.07.2022
घोषणा की तारीख / Date of Pronouncement : 29.07.2022

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the Revenue is directed against the order passed by the CIT (Appeals)-1, Raipur, dated 03.06.2016, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 31.03.2015 for assessment year 2012-13. Before us the Revenue has assailed the impugned order on the following grounds of appeal:

- "1. Whether in law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.2,81,31,759/- made by the A.O. on account of disallowance of Interest Expenses on investments in assets?."
2. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) has erred in allowing interest expenses on investments out of the income of the assessee which consists of interest and remuneration from partnership firms in which the assessee is a partner?"
3. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) has violated the due provision of law u/s. 36(i)(iii) of the Act, by allowing interest expenses on account of investments against the income out of remuneration and interest received by the assessee in the status of partners of various firms?"
4. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.28,00,000/- made by the AO on account of unexplained cash credit?"

5. "Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) has violated the due provisions of law under Rule 46A of the I T Rules by accepting additional evidences, without giving an opportunity to the Assessing Officer while deleting the addition of Rs.28,00,000/- made by AO on account of unexplained cash credit?"

6. "The Order of the Ld. CIT (A) is erroneous both in law and on facts."

7. "Any other ground that may be adduced at the time of hearing."

2. Succinctly stated, the assessee had filed his return of income for the assessment year 2012-13 on 13.05.2013, declaring an income of Rs. Nil. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of the assessment proceedings, it was, inter alia, observed by the A.O that the assessee had in his computation of income raised a claim for deduction of interest expenses of Rs.2,81,31,759/- against an income of Rs.70,73,894/- that was derived by him on account of remuneration and interest on capital from certain partnership firms, viz. M/s. Mukesh Carriers, M/s. Max Developers, M/s. Sky Automobiles and M/s. Pirda Estates. On a perusal of his profit & loss account, it was observed by the A.O that the same revealed a profit on sale of shop of Rs.95,250/-. On the basis of the aforesaid

facts the A.O called upon the assessee to justify his claim for deduction of interest expenses against his business income i.e., interest income and remuneration derived by him from the aforementioned partnership firms. In reply, it was submitted by the assessee that he was engaged in the multiple streams of business of making investments in immovable properties, shares & loans. It was the claim of the assessee that as he had raised a claim for deduction of interest that was paid on the loans which were raised for the purpose of its business, therefore, the same being as per the mandate of law was allowable for computing his taxable income for the year under consideration. However, the aforesaid explanation of the assessee did not find favour with the A.O. Observing, that if any expenditure would have been incurred by the assessee for the purpose of his business, then, the same would have figured in his profit & loss account, the A.O was of the view that as the same was not the case, therefore, the fact that the interest expenditure might have been incurred by the assessee qua his investments in immovable properties, shares and loans could not be ruled out. Backed by his aforesaid observations the

A.O disallowed the assessee's claim for deduction of interest expenditure of Rs.2,81,31,759/-. Also, it was observed by the A.O that a perusal of the entries appearing in the Individual Transaction Statement (ITS) of the assessee revealed that the assessee as per his cash book had deposited cash of Rs.15 lacs on 01.03.2012 in his bank account with Punjab National Bank. On further verifications it was gathered by the A.O that the assessee had claimed to have received an amount of Rs.28 lacs from M/s. Mukesh Carriers Gurgaon, a partnership firm in which he was one of the partner. On being queried the assessee filed with the AO a copy of the ledger account of M/s. Mukesh Carriers. On a perusal of the aforesaid account it was observed by the A.O that the assessee had not received any cash on 01.03.2012 from the aforesaid firm, viz. M/s. Mukesh Carriers, Gurgaon. On the basis of his aforesaid observation the Assessing Officer made an addition of Rs.28 lacs as an unexplained cash credit u/s.68 of the Act in the hands of the assessee. Accordingly, the A.O vide his order passed u/s.143(3) dated 31.03.2015 determined the income of the assessee at Rs.1,30,12,460/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). Before the CIT(Appeals) the assessee assailed the assessment order on two fold grounds, viz. (i) disallowance of his claim for deduction of interest expenses of Rs. 2,81,31,759/- against his business income; and (ii) addition u/s.68 of the Act of an amount of Rs.28 lacs. After deliberating at length on the issue in hand, it was observed by the CIT(Appeals) that as the interest expenses were incurred by the assessee on loans which were raised for the purposes of his business, the same, thus, was allowable as a deduction u/s.36(1)(iii) of the Act. Apart from that, it was observed by the CIT(Appeals) that the assessee's claim for deduction of interest expenditure on the loans in question had been allowed by the AO while framing the assessment u/s.143(3) of the Act in his case for the last two preceding years i.e., A.Y. 2010-11 and A.Y. 2011-12. On the basis of his aforesaid observations the CIT(Appeals) vacated the addition of Rs.2,81,31,759/- made by the A.O u/s.36(1)(iii) of the Act.

5. In so far the addition of Rs.28 lacs that was made by the A.O u/s.68 of the Act was concerned, it was the claim of the assessee before the CIT(Appeals) that the A.O had made the said disallowance on the basis of misconceived and in fact half baked facts. Elaborating on his aforesaid contention it was claimed by the assessee that he had three ledger accounts with the aforesaid partnership firm viz., (i) M/s. Mukesh Carriers, Gurgaon; (ii) M/s. Mukesh Carriers, (Partner); and (iii) M/s. Mukesh Carriers, Raipur. It was claimed by the assessee that while for the withdrawal of cash of Rs.28 lacs was reflected in his ledger account with M/s. Mukesh Carriers, Gurgaon, but the CIT(Appeals) had confined himself to the transactions as figured in his ledger account i.e., M/s. Mukesh Carriers, (partner). On a perusal of the aforesaid ledger accounts, it was observed by the CIT(Appeals) that the amount of Rs.28 lacs was duly accounted for in the ledger account of the assessee i.e., M/s. Mukesh Carriers (Partner). Accordingly, finding the aforesaid claim of the assessee in order he CIT(Appeals) vacated the addition of Rs.28 lacs that was made by the A.O u/s 68 of the Act.

6. The Revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

8. Adverting to the disallowance of the assessee's claim for deduction of interest expenditure of Rs.2,81,31,759/- against his business income i.e., remuneration and interest income that was derived by him from the aforementioned partnership firms, we find that the same was disallowed by the AO for the reason that the interest expenditure might have been incurred on the loans raised by the assessee for making investments in immovable property and shares. Also, the A.O was of the view that in case interest expenditure of the assessee would have been incurred by the assessee for the purpose of his business, then, the same would have been claimed by him in his Profit and loss

account and not separately in his computation of income. Rebutting the aforesaid observation of the AO, the CIT(Appeals) had observed that as the loans in question were raised by the assessee for the purpose of his business, therefore, the interest expenditure incurred on the same was duly allowable as a deduction u/s.36(1)(iii) of the Act. It was also observed by the CIT(Appeals) that now when the department had consistently in the preceding years i.e., A.Y. 2010-11 & A.Y. 2011-12 allowed the assessee's claim for deduction of interest expenses while framing the assessments for the said respective years u/s. 143(3) of the Act, therefore, the facts remaining the same during the year under consideration, an inconsistent approach was not permissible to be adopted by the department.

9. After giving a thoughtful consideration to the aforesaid issue in hand, we are in agreement with the view taken by the CIT(Appeals) that now when the loans had been raised by the assessee in the course of his business of purchase/sale of lands/plots, buildings, shops, share and securities and advancing of loans and advances, therefore, the interest expenditure therein incurred would clearly be allowable as

a deduction u/s. 36(1)(iii) of the Act. At this stage, we may herein observe that Section 36(1)(iii) of the Act contemplates allowability of interest expenditure "*in respect of capital borrowed for the purpose of the business or profession.....*". Accordingly, in the case of a going concern, where interest bearing loans have been raised by the assessee wholly and exclusively for the purpose of his business then, irrespective of the fact as to whether the said loans were raised towards its working capital or for the acquisition of a capital asset in the course of its business, the interest expenditure therein incurred would duly be allowable as a deduction u/s.36 (1)(iii) of the Act. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Core Health care Ltd. (2008) 298 ITR 194(SC). In the said judgment it was observed by the Hon'ble Apex Court that the allowability of an assessee's claim for deduction u/s.36(1)(iii) of the Act is a code by itself and the same makes no distinction between money borrowed to acquire a capital asset or a revenue asset. It was observed by the Hon'ble Apex Court that what the section requires is that the assessee must borrow capital and the

purpose of the borrowing must be for business which is carried on by the assessee in the year of account. Rebutting the view taken by the Revenue that the interest-bearing funds which were borrowed for acquiring capital asset would not be allowable u/s. 36(1)(iii) of the Act, it was observed by the Hon'ble Apex Court that unlike Section 37 of the Act which expressly excludes an expense of a capital nature, what Sec. 36(1)(iii) of the Act emphasizes is the user of the capital and not the user of the asset which comes into existence as a result of the borrowed capital. It was observed by the Hon'ble Court that the legislature had made no distinction in Section 36(1)(iii) between "capital borrowed for a revenue purpose" and "capital borrowed for a capital purpose" and an assessee is entitled to claim interest paid on borrowed capital provided that capital is used for business purpose, irrespective of what may be the result of using the capital which the assessee has borrowed. Apart from that, the fact that the balance sheet of the assessee as on 31.03.2012 reveals his investments in partnership firms, business stock and interest bearing loans and advances of Rs. 36.09 crore (approx), as against interest bearing funds

of Rs. 28.21 crore (approx) on which interest of Rs. 2.81 crore (approx) had been paid by him substantiates his claim that the interest bearing advances have been utilized/channelized towards income generating investments held by him in the course of his business.

10. Apart from that, we find that now when the Department itself had been consistently allowing the assessee's claim for deduction of interest expenditure on the loans in question while framing the assessments in his case for the immediately last two preceding years i.e., A.Y 2010-11 and A.Y 2011-12 vide orders passed u/s.143(3) r.w.s. 153A of the Act, dated 28.03.2013, therefore, there would be no justification in adopting an inconsistent approach in the absence of any shift in the facts during the year under consideration. We also find that the assessee's claim for deduction of interest expenditure had been accepted by the A.O while framing the assessment in his case u/s.143(3) dated 27.12.2017 for the assessment year 2015-16. We, thus, in terms of our aforesaid observations are of the considered view, that in light of principle of consistency the assessee's claim for deduction of interest expenditure on the loans in question ought to

have been allowed. Our aforesaid conviction as regards adopting of a consistent approach by the department is supported by the following judicial pronouncements:

- (i) Radhasoami Satsang v. CIT, 193 ITR 321 (SC)
- (ii) CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC)
- (iii) BSNL Vs. Union of India & Others (2006) 282 ITR 273(SC)
- (iv) PCIT Vs. Quest Investment Advisor (P) Ltd., ITA 280 of 2016 dated 28.06.2018 (Bom. HC)

Accordingly, we find no infirmity in the view taken by the CIT(Appeals), who had rightly observed that as the interest bearing loans had been raised by the assessee for the purpose of his business, therefore, his claim for deduction u/s.36(1)(iii) of the Act was in order. Also, we concur with the view taken by the CIT(Appeals) that going by the principle of consistency there was no justification on the part of the department to have taken an inconsistent approach during the year under consideration qua the aforesaid issue in hand, specifically when it had been consistently not only in the immediately last two preceding years, but also in the succeeding years allowed the aforesaid claim of

deduction of interest expenditure of the assessee. We, thus, in terms of our aforesaid deliberations uphold the order of the CIT(Appeals) to the said extent and vacate the disallowance of interest expenditure of Rs.2,81,31,759/-. Thus, the **Grounds of appeal No.(s) 1, 2 and 3** raised by the Revenue are dismissed in terms of our aforesaid observations.

11. Now we shall deal with the grievance of the Revenue that the CIT(Appeals) had erred in vacating the addition of Rs.28 lacs u/s.68 of the Act.

12. At the very outset, we may herein observe that the aforesaid disallowance was made by the A.O for the standalone reason that the assessee's claim of having received an amount of Rs.28 lacs in cash from M/s. Mukesh Carriers, Gurgaon, i.e a firm in which he was one of the partner, was not proved on a perusal of his account with the said firm viz., M/s. Mukesh Carriers, partner's account. However, as is discernible from the records, it is a matter of fact that the assessee had three ledger accounts with the aforesaid partnership firm, viz. (i)

M/s. Mukesh Carriers, Gurgaon; (ii) M/s. Mukesh Carriers, (Partner); and (iii) M/s. Mukesh Carriers, Raipur. Nothing has been placed on record by the Ld. DR which would reveal that the aforesaid observation of the CIT(Appeals) is incorrect. On a perusal of the records, we find, that as observed by the CIT(Appeals), and rightly so, the amount of withdrawal of cash of Rs.28 lacs is reflected in the ledger account of M/s. Mukesh Carriers, Gurgaon. On a perusal of the order of the CIT(Appeals) we find that the A.O while framing assessment had confined himself to the transactions reflected in the ledger account of M/s. Mukesh Carriers (partner) and failed to consider the ledger account of the assessee, viz. M/s. Mukesh Carriers, Gurgaon, wherein the payment of Rs.28 lacs to the assessee was duly accounted for. For the sake of clarity the observations of the CIT(Appeals) in respect of the aforesaid issue is reproduced as under:

“3.3. AO has made the addition on the reason that cash of Rs. 28,00,000/- received by the appellant from M/s. Mukesh Carriers is not reflected in the ledger account of M/s.Mukesh Carriers in appellant's books. The said ledger has been reproduced in the assessment order. Further considering the appellant's explanation and examining the ledgers and cash book produced I find that there are three ledgers of M/s Mukesh Carriers. These are M/s Mukesh Carriers Gurgoan, M/s Mukesh Carriers(partner) and M/s Mukesh Carriers, Raipur. Cash of Rs.28 lakhs is reflecting in the assessee's

cash book as well as in the ledger of M/s Carriers (Gurgaon). The AO skipped this ledger. The ledger which has been relied upon by the AO is that of M/s Mukesh Carriers, partner. Since all the ledgers are ledgers of M/s Mukesh Carriers in in books of the appellant if the assessee's intention was to evade any transaction there is no reason why such transaction will not be reflected in the particular ledger. Therefore, the addition is due to misappreciation of facts by the AO and is accordingly deleted. The ground of the assessee is allowed."

In the backdrop of our aforesaid deliberations, we are of the considered view that as the availability of Rs.28 lacs as appearing in the ledger account of the assessee, viz. M/s. Mukesh Carriers, Gurgaon stands established, therefore, no infirmity emerges from the order of the CIT(Appeals) who after taking cognizance of the said fact had rightly vacated the addition of Rs.28 lacs so made by the A.O. u/s.68 of the Act. Thus, the **Grounds of appeal No.(s) 4 and 5** raised by the Revenue are dismissed in terms of our aforesaid observations.

13. **Grounds of appeal No.(s) 6 and 7** being general in nature are dismissed as not pressed.

14. In the result, appeal of the Revenue being bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 29th day of July, 2022.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th July, 2022

***SB

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	25.07.2022	Sr.PS/PS
2	Draft placed before author	26.07.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		