

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI****BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER****I.T.A. No. 6809 /Del/2017 (A.Y 2014-15)**

Jatinder Kumar Suri H-22, Masjid Moth, Greater Kailsah-II, New Delhi PAN No. ABIP58265Q (APPELLANT)	Vs	DCIT Circle-3 (1) (2), International Taxation, Room No. 418, Block E-2, Civic Centre, Nehru Marg, New Delhi-110002 (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Sanjay Kumar, Sr. DR

Date of Hearing	19.12.2022
Date of Pronouncement	04.01.2023

ORDER**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals) -43, Minto Road, New Delhi [hereinafter referred to CIT (Appeals) dated 31/08/2017 for assessment year 2016-17.

2. The grounds of appeal are as under:-

"1 (a) The Ld. CIT(A) has erred in confirming the addition of Rs. 93,30,054/- on account of disallowance of expense u/s 57 of the Income Tax Act, 1961 without considering the facts and circumstances of the case. The same be allowed.

(b) The Ld. CIT(A) has erred in confirming the addition on account of the reversal of incomes/excess income accounted and offered to tax in the preceding years for Rs. 34,13,451/- without considering the facts and circumstances of the case. The same be allowed.

(c) The Ld. CIT(A) has erred in disallowing the expense of Rs. 59,16,603/- on account of interest on Loan taken from MMFSL without considering the facts and circumstances of the case. The same be allowed.”

3. Brief facts of the case are that, the assessee filed return for the Assessment Year 2014-15 at 'NIL' income. The case was selected for limited scrutiny and the notice u/s 143(2) of the Act was issued and subsequently notice u/s 142(1) of the Act along with the questionnaire was also issued. The representative of the assessee has attended the assessment proceedings and an assessment order came to be passed on 03/11/2016 wherein the Ld. A.O. has made the following additions:-

"Business income as declared in the ITR		= Rs. 22,906/-
Income from other sources as per ITR	= (88,56,238/-)	
Add: disallowance as discussed in		
Para 10 above	= Rs. 93,30,054/-	Rs. 4,73,816/-
Total taxable income		Rs. 4,96,722/-"

4. Aggrieved by the assessment order dated 03/11/2016, the assessee has preferred an appeal before the CIT(A) and the Ld.CIT(A) has dismissed the appeal vide order dated 31/08/2017.

5. Aggrieved by the order of the Ld.CIT(A) dated 31/08/2017, the assessee has preferred the present appeal on the grounds mentioned above.

6. None appeared for the assessee on perusal of the order sheet it is found that after filing the appeal neither the assessee nor his representative have appeared before the Tribunal. Further the notices sent by the registry have been returned unserved with an endorsement "addressee left without instruction". Therefore, we are constrained to decide the appeal on hearing the Ld. DR and on perusing the material on record.

7. Before the A.O. it was submitted by the assessee that the amount of expenses claimed due to two reasons i.e. :-

(i) the assessee has taken premature encashment of FDR which was resulted in loss of Rs. 34,13,451/-

(ii) Interest of Rs. 59,16,603/- was paid on a loan taken from some purposes by the assessee from the same entity with whom deposit was made.

The Ld. A.O. was of the opinion that the reduction in interest income which is due to such premature encashment is not expenditure incurred by the assessee to earn interest income of the current year, accordingly disallowed the same. The Ld.CIT(A) has also confirmed the view taken by the A.O. In our considered opinion, the loss of interest income on account of premature encashment of FDRs if any is adjusted in the current year interest income as the same has been offered to the tax on real time basis. The deduction claimed by the assessee against the current year income is not an expenditure incurred by the assessee to earn interest income of the current year. Therefore, we do not find any error or infirmity in the order of the Lower Authorities.

8. Further, in so far as claim of deduction on account of interest paid on loan is concerned, the Assessing Officer during the assessment proceedings has categorically asked to explain the purpose and uses of loan taken from Mahindra & Mahindra Financial Service Ltd. ('MMFSL') but no concrete evidence has been provided to prove that the loan taken from MMFSL has

connection with earning of interest income of Rs. 59,16,603/-. Accordingly, the Ld. A.O. has made the addition which has been sustained by the CIT(A). It is the specific observation of the Ld.CIT(A) that the interest paid by any assessee on a borrowing of personal purpose can no terms be allowed as expenditure under any provision against an income chargeable to tax under the Act. The Ld.CIT(A) while dealing with the issue has observed as under:-

“4.9 It is clearly seen that the aforesaid decisions of the honorable Supreme Court and High Courts do not affirm the decision taken by the Agra Tribunal. Another distinguishing factor in the present case is that the assessee has, at no point of time indicated what the purpose of the borrowing is. In such a case, if the borrowing is for a personal purpose, then allowing interest which is due on such borrowing against the income under the other sources or any other head of income of the assessee would be contrary to the basic principles of Income Tax. The interest paid by any assessee on a borrowing for personal purpose can in no terms be allowed as expenditure under any provision against an income chargeable to tax under the Act. Putting a certain amount in a fixed deposit and then availing loan against the same fixed deposit which results in a net loss or a net pay out of interest in the hands of the assessee cannot be held to be an allowable expenditure if the borrowing is for personal purpose, say for a wedding. Therefore, the loss is envisaged under the Head of ‘Other Sources’ by the assessee which is due to the result of an unspecified borrowing (for unspecified reason) cannot be allowable expenditure. On the same lines, the loss incurred by the assessee due to premature encashment of the FDRs, which has been claimed as an expenditure of Rs.59,16,603, against the current year’s income is not permissible on basic principles. The loss has no nexus to the interest income which is earned by the

assessee. The reduction of the principle amount is due to the reasons which are personal in nature to the assessee. These reasons can therefore not be the source of loss to be set off against taxable income. Therefore the total expenditure of Rs.93,30,054/- is not held to be allowable against the interest income shown by the assessee to Rs.4,73,816.”

9. By considering the above facts, since the assessee has failed to produce any evidence before the Ld. A.O. or before the CIT(A) to prove that the loan taken from MMFSL has connection with earning of interest income of Rs. 59,16,603/-, the Ld. A.O. has made the addition which has been sustained by the CIT(A). Even before us, no such evidence has been produced to prove that the loan taken from MMFSL has connection with earning of the interest income. Therefore, we do not find any error or infirmity in the order of the Ld. CIT(A). Therefore, the Grounds of appeal of the assessee fails.

10. In the result, Appeal of the assessee is dismissed.

Order pronounced in the Open Court on this 04th Day of January, 2023

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 04/01/2023
R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI