

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी” चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH ‘B’, CHANDIGARH

BEFORE: SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI R.L. NEGI, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.21/Chd/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Sh.Ravinandan Kumar, #606/2916, C/o M/s Rahul Sales, Krishna Nagar, Ferozpur Road, Ludhiana. स्थायी लेखा सं./PAN NO: AGQPK5052L	बनाम	The D.C.I.T. , Circle – 7, Ludhiana.
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Parikshit Aggarwal, CA

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 07.06.2021

उदघोषणा की तारीख/Date of Pronouncement: 07 .06.2021

(Hearing through webex)

आदेश/Order

Per Annapurna Gupta, Accountant Member:

The above appeal has been preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3 [in short the ‘Ld.CIT(A)], Ludhiana dated 14.11.2018 relating to assessment year 2014-15, passed

u/s 250(6)) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'.

2. The assessee has raised the following grounds:

"1. That the Learned Commissioner of Income Tax Appeals)-3, Ludhiana has erred the confirming the addition of Rs.40,53,426/- made by the Learned Assessing Officer on account of disallowing the deductions claimed by the assessee u/s 57(III) OF THE Income Tax Act, 1961 AT Rs.40,53,426/- without considering the facts of the case, without giving any opportunity for hearing to the appellant and without considering the submissions filed by the appellant during the course of appellate proceedings as per as in Assessment Proceedings. Therefore, addition of Rs.40,53,426/- made by the Learned Assessing Officer and confirmed by the Learned Commissioner of Income Tax (Appeals)-3, Ludhiana is illegal, uncalled for and needs to be deleted.

3. That the appellant craves to leave or to amend the Ground of appeals before or at the time of hearing.

3. As is evident from the grounds of appeal raised before us, the solitary issue in the present appeal relates to disallowance of deduction claimed by the assessee u/s 57(iii) of the Act amounting to Rs.40,53,426/-. The impugned disallowance, as is emanating from the orders of the authorities below, relates to interest expenses incurred which were claimed against interest income

earned by the assessee and returned under the head “income from other sources”. Taking us through the facts of the case, the Ld.Counsel for the assessee first drew our attention to the assessment order made on the assessee dated 21.12.2016 and pointed out that the case of the assessee was selected for limited scrutiny under CASS for one of the reason being large deduction claimed u/s 57 of the Act. Thereafter he drew our attention to para No.2 of the order pointing out that the AO had discussed the issue of the aforesaid claim in this para. Referring to the same, he pointed out that the AO had noted that the assessee had claimed deduction of interest expenses u/s 57 amounting to Rs.40,53,426/- which he was asked to explain during proceedings as how the assessee was eligible to claim the same. The Ld.Counsel for the assessee drew our attention thereafter to the reply submitted by the assessee to the AO on 08.12.2016 as under:

*"December 8, 2016
The Assistant Commissioner of Income Tax,
Circle VII, Ludhiana*

*Re : Mr Ravi Nandan Kumar Prop. M/s
Rahul Sales, 606/2916, Krishna Nagar,
Ludhiana
PAN: AGQPK5052L
Assessment Year: 2014-15*

Sub : Assessment Proceedings under section 143(3) of the Income Tax Act, 1961 ("the Act")

Respected Sir,

With regard to the captioned Subject, it is humbly submitted that the Case of the Assessee for the year under consideration has been picked by your goodself under Section 143(3) of the Act. We have already furnished Replies to your goodself's Questionnaire. Further, it is submitted that your goodself has asked to explain that how the expenses claimed under Section 57 of the Act are eligible for deduction against Income from Other Sources.

Regarding the above, it is submitted that the Assessee has taken Loans from the Cholamandalam investment and Finance Company Limited and TATA Capital Housing Finance Limited and invested the same as Loan in the Firm named M/s Rahul Sales and in the Mutual Funds. Due to this reason, the Assessee has claimed the Interest paid on the above said Loans as an expenditure under Section 57 of the Act.

We hope that your goodself would find the above documents in order and oblige.

Thanking you,

*Yours faithfully,
Sd/-
(Authorised Signatory)"*

And again to another reply dated 14.12.2016 as under:

*"December 14, 2016
The Assistant Commissioner of Income Tax,
Circle VII, Ludhiana*

*Re : Mr Ravi Nandan Kumar Prop. M/s
Rahul Sales, 606/2916, Krishna Nagar,
Ludhiana
PAN: AGQPK5052L
Assessment Year: 2014-15*

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Respected Sir,

With regard to the captioned Subject, it is humbly submitted that the Case of the Assessee for the year under consideration has been picked by your goodself under Section 143(3) of the Act. We

have already furnished Replies to your goodself's Questionnaire. Further, it is submitted that your goodself has asked to explain that how the expenses claimed under Section 57 of the Act are eligible for deduction against Income from Other Sources.

Regarding the above, it is submitted that the Assessee has earned an interest from M/s Rahul Sales amounting to Rs.30,82,235/- and Income from Mutual Funds amounting to Rs.50,752/- and total of above stated figures come to Rs.31,32,987/-.

It is submitted that the Assessee had taken Loans from the Cholamandalam Investment and Finance Company Limited and TATA Capital Housing Finance Limited and invested the same as Loan in the Firm named M/s Rahul Sales and in the Mutual Funds Due to this reason, the Assesses has claimed the Interest paid on the above said Loans as an expenditure under Section 57 of the Act

The Copy of Account of the Assesses in the Books of Accounts of M/s Rahul Sales for the year under consideration is enclosed herewith as Annexure-I. It can be seen that the opening balance in the above said Bank Account is Rs. 2,36,18,987/-. We are also enclosing herewith the Copy of Account of Cholamandalam Investment and Finance Company Limited In the Books of Accounts of the Assessee as Annexure-II. The opening balance in the above said Account is Rs. 2,19,57,375/-. Further, it is submitted that the Assesses has raised the Loan from Tata Capital Housing Finance Limited in the preceding years.

The Investment of the Assessee in M/s Rahul Sales is his personal Investment and the Loans raised by the Assessee from Cholamandalam investment and Finance Company Limited and Tata Capital Housing Finance Limited are his personal Loans. Further, the Assessee has various other personal Assets in the form of immoveable Properties and other personal Unsecured Loans

It is a landmark principle that money has no colour and entire money of the Assessee, coming from any source, comes in a common kitty. It should be at the discretion of the Assessee that where he had applied his sources The above Investment in M/s Rahul Sales is his personal Investment, whereas he has raised Loans from various institutions on his personal account. It is not the Revenue who will suggest that which Loan should be taken By the Assesses and where should it be invested Or whether no loan should be taken by the Assessee These are not the business assets and

business loans where the direct nexus of funds and its application should be taken into account, In case of personal assets and personal sources, it is the discretion of the Assessee to apply any of his sources in any of his personal assets.

In our case too, the Assessee has raised the Loans from Cholamandalam Investment and Finance Company Limited and Tata Capital Housing Finance Limited in the preceding years whereas the Investment has also been made by him in M/s Rahul Sales in the preceding years. The Assessee has applied the above said Loans in M/s Rahul Sales. Therefore, it is submitted to your goodself to kindly allow the expenditure incurred by the Assessee in the above said Loans against an Investment in M/s Rahul Sales.

We hope that your goodself would find the above information and documents in order and oblige.

Thanking you,

Yours faithfully,

Sd/-

(Authorised Signatory)"

4. Both the above replies stand reproduced in the order of the AO. Referring to the same, he stated that he had explained to the AO that the assessee had earned interest income amounting to Rs.30,82,235/- from loan given to a firm named M/s Rahul Sales and had also earned income from mutual funds amounting to Rs.50,752/- and the entire aforesaid income of Rs.31,32,987/- had been returned under the head "income from other sources". That the aforesaid investments, it had been explained, had been made from loans taken from M/s Cholamandlam Investment Finance Company Limited and M/s Tata

Capital Housing Finance Limited and interest paid thereon had accordingly been claimed as deduction as per section 57 of the Act against the income earned from investments so made. The Ld.Counsel for the assessee contended that even copies of account of the assessee in the books of M/s Rahul Sales for the year under consideration had been filed to the AO reflecting opening balance of Rs.2,36,18,987/- as also copy of account of M/s Cholamandlam Investment Finance Company Limited in the books of the assessee reflecting opening balance of Rs.2,19,56,375/- and it had also submitted to the AO that the loan from M/s Tata Capital Housing Finance Limited had been raised in the earlier years. The Ld.Counsel for the assessee contended that despite the explanation and submissions so made by the assessee the AO held that the assessee had failed to prove how the expenditure claimed u/s 57 of the Act was for the purpose of earning such income and accordingly he disallowed the expenses claimed u/s 57 of the Act amounting to Rs.40,53,426/-. He drew our attention to the relevant findings of the AO as under:

“Even from the above reply, the assessee has failed to prove how the expenditure claimed u/s 57 of I.T. Act, is for the purpose of making or earning such income. Thus, expenses claimed u/s 57

*amounting to Rs.40,53,426/- are disallowed and are added to the total income of the assessee. **Penalty proceedings u/s 271(1)(c) for filing inaccurate particulars of income are being initiated separately.***

(Addition of Rs.40,53,426/-)

5. The Ld.Counsel for the assessee drew our attention to the order of the Ld.CIT(A) and stated that despite reiterating his contention which were made before the AO, before the CIT(A) also, as reproduced at para 4.1 of the order, the Ld.CIT(A) upheld the disallowance re-emphasizing the findings of the AO that the assessee had failed to prove the nexus between the loan deduction and interest paid thereon without specifically dealing with the contentions of the assessee. He drew our attention to para 4.2 to 4.4 of the order as under:

"4.2 I have carefully considered the facts of the case. I am inclined to agree with the contention of AO. The provisions of the Income-tax Act relating to allowances disclose that the expenditure or outgoing sought to be deducted should bear a character which has a connection with or relation to the particular activity which produces the income or constitutes its source. Section 57(iii) provides for deduction only of expenditure incurred wholly and exclusively "for the purpose of making or earning such income". "Such income" refers to "income from other sources". The expression "for the purpose of business" is narrower than the expression "for the purpose of making or earning such income."

4.3 I have carefully considered facts of the case. I have also considered case laws relied upon by the assessing officer. I am inclined to agree with the contention of AO. The assessing officer at page number 3 of the assessment order, has mentioned that loan was taken by the assessee from Cholamandlam Investment Finance Limited Company and

paid interest of Rs.29,22,296/- and also taken loan from Tata Housing Finance and paid interest at Rs.11,30,430/-. However the assessee has extended loan to M/s Rahul Sales and invested in the mutual funds. The AO observed that the assessee has failed to establish nexus between loan taken, and interest paid thereupon and how expenditure incurred, relates to income earned as interest u/s 57(iii). The assessee has not establish the nexus and availability of funds while extending loan by appellant to M/s Rahul Sales and investment in the mutual funds and how this expenditure by way of payment of interest is linked with the interest earned by assessee . Therefore assessee has failed to claim and justify to prove the nexus of income earned from other sources and interest paid against this income. The onus to prove the nexus lies on the assessee who had claimed the deduction. I have also gone through the detailed submission filed by the appellant and I find myself in agreement with the contention of assessing officer , that assessee has not been able to explain the clear Nexus between the earning of income from other sources and to establish the nexus of expenditure with income earned by the assessee.

4.4 In order to explain that an expenditure may be admissible under section 57(iii), it is necessary that the primary motive of incurring it is directly to earn income falling under the head "income from other sources". Under section 57(iii), deduction will not be allowed if the expenditure is not incurred for the purpose of earning income falling under the head "income from other sources" CIT vs. Smt. Amirtaben R. Shah (1999) 152 Taxation 721 (Bom.).The plain natural construction of the language of section 57(iii) of the Act, irresistibly leads to the conclusions that to bring a case within that section it is not necessary that any income should in fact have been earned as a result of the expenditure. What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. The section does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction it does not say that the expenditure shall be deductible only if any income is made or earned (CIT vs. Rajendra Prasad Moody (1978), Taxation 51 (3)-52, 115 ITR 519 (SC) : CIT vs. Murli Manohar (1998) IX SITC 673 (All) : CIT vs. Rampur Timber & Turney Co. Ltd. (1981) 129 ITR 58 (All.) : CIT vs. Administrator General of Madras (1998) 142 Taxation 85 (Mad.)).

The Gujarat High Court in Padmavati Jaykrishna vs. CIT (1981) 131 ITR 653 has held that in order to decide whether an expenditure is a permissible deduction under section 57(iii), the nature of the expenditure must be examined. Also the Gujarat High Court in the case of Sarabhai Sons (P) Ltd. vs. CIT(1993) 113 Taxation 407, 201 ITR 464 has held that if the dominate purpose for which the expenditure was incurred not to be earn the income, the expenditure incurred in that behalf would fall outside the purview of section 57(iii) of the Act. Where the dominant purpose of the assessee in taking overdrafts was not to earn income but to meet the personal liability, interest payment on overdrafts was held to be not allowable deduction under section 57(iii) of the Act(H. H. Maharaja Martand Singh Ju Deo Vs. CIT (1989) Taxation 92(3)-199, 174 ITR 515 (MP): Padmavati Jai Krishna Vs. Addl. CIT (1987) Taxation 86(2)-1: 166 ITR 176 (SC)). Connection between the expenditure and earning of income need not be direct and it may be indirect. But, since the expenditure must have been incurred for the purpose of earning that income, there should be some nexus between the expenditure and the earning of the income [Addl. CIT vs. Madras Fertilisers Ltd. (1980) 122 ITR 139 (Mad.) : Vijaya Laxmi Sugar Mills Ltd. vs. CIT (1991) 191 ITR 641 (SC): CIT vs. Dwaraka Chit Funds Pvt. Ltd. (1996) 132 Taxation 109 (Mad.).

In view of the facts of the case as mentioned above and different judicial pronouncements I find that the assessee has clearly failed to establish nexus between the interest income earned and expenditure claimed by the assessee against earning this income. Accordingly disallowance of Rs.40,53,426/- as interest paid under section 57(iii) is sustained. With the result this ground of appeal is dismissed.”

6. At this juncture the Ld.Counsel for the assessee was asked to demonstrate as to how the assessee has established the nexus between the interest expenses claimed and the interest income earned and was also asked whether the assessee had made similar claims in preceding years also. To this the Ld.Counsel for the

assessee stated at Bar that the assessee had made identical claims in the preceding years also, having made the impugned investments from loans taken 4 to 5 years back, but at the same time pointed out that none of the claims so made has been subjected to scrutiny assessment in earlier years u/s 143(3) of the Act. Further the Ld.Counsel for the assessee reiterated his submissions made before the authorities below.

7. At this juncture, it was pointed out to both the Ld. DR and the Ld.Counsel for the assessee that in the impugned case it appeared that the issue had been adjudicated de hors the facts relating to it. That despite the specific submissions of the assessee before the lower authorities of the investment having been made out of interest bearing funds and the assessee having filed certain copies of accounts relating to the loan taken and investment made, the findings of the lower authorities that the assessee was unable to establish nexus between the two, does not deal with the aforestated submissions at all. At the same time, the Ld.Counsel for the assessee was also unable to demonstrate before us as to how the submissions of the assessee justified his claim, though he contended that this was not the only year in which the

assessee had made this claim and that similar claim had been made in earlier years also since a portion of the investment had been made out of loans taken in earlier years.

8. In the absence of the necessary facts relating to the issue, we are of the view that it would not be fair to adjudicate the issue either ways. That it would be in the interest of justice to restore the matter to the AO for reexamination after considering all facts relating to it.

9. In view of the above the issue of claim of deduction u/s 57(iii) of the Act amounting to Rs.40,53,426/- is restored back to the AO to be decided in accordance with law after considering all facts relating to the same and the assessee is directed to produce all necessary documents bringing out the said facts before the AO.

The grounds of appeal raised by the assessee are, therefore, allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes

Sd/-
(R.L. NEGI)

न्यायकि सदस्य/Judicial Member

Dated: 14th June, 2021

Sd/-
(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
- गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar