

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC -2', NEW DELHI**

Before Sh. I.C.Sudhir, JM

ITA No. 2347/Del./2014 : Asstt. Year : 2010-11

Amarjeet Singh 23-Regal Building, Connaught Place New Delhi	Vs	I.T.O. Ward-31(1) New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAGPS2209D		

**Appellant by : Sh. K. Sanpath, C.A.
Respondent by : Sh. P.D.Taneja, Sr. DR**

Date of Hearing : 30.06.2015	Date of Pronouncement : 30.07.2015
-------------------------------------	---

ORDER

PER I.C.Sudhir, J.M.

This is an appeal by the Assessee against the order dated 5.03.2014 of the Ld. C.I.T.(A)-XXVII. New Delhi.

2. The assessee has impugned action of the ld. CIT(A) in upholding the addition of Rs. 2,96,333/- to return income by disallowing interest paid on loan.

3. Heard and considered the arguments advanced by the parties in view of the orders of the authorities below, material available on the record and the decisions relied upon.

4. The facts in brief are that during the year the assessee derived income from property, share of profit from partnership concerns, M/s Santokh Singh & Sons and M/s. S.M. & Sons and interest income. The return of income showing income of Rs. 8,19,950/- was filed. During the year the assessee had paid interest of Rs. 58,17,044/- including interest of Rs. 55,20,711/- to bank loan. The bank loan was utilized for acquiring flats and property. Since no income was received from such properties, therefore, interest paid to bank on loan was capitalized and added into revalue of the flats and properties by the assessee. In addition to the bank loan, the assessee had also taken loan of Rs. 70,00,000/- from Smt. Madhu Bhandari on 8.7.2009 and repaid on 15.11.2009 along with interest of Rs. 2,96,333/-. The assessee claimed interest of Rs. 2,96,333/- paid to Smt. Madhu Bhandari u/s 57 against the interest income received by him. The AO rejected the claim on the basis that there was no live nexus between interest income and interest payment of Rs. 2,96,333/- and added the disallowance in the income of the assessee. The same has been upheld by the Id. CIT(A).

5. In support of the ground, the Id. AR reiterated the submissions made before the authorities below. He submitted that loan of Rs. 70,00,000/- taken from Smt. Madhu Bhandari was used in business as investment in M/s S.M.Sons in which the assessee is partner and made advance payment for booking of space for sale. The assessee has earned income of Rs. 7,11,573/- which includes profit of Rs. 5,43,573/- salary of Rs. 1,20,000/- and rent of Rs. 48,000. The assessee had also given advance of Rs. 20,00,000/- to

ABV infrastructure Ltd. and Rs. 5,00,000/- to global communication for booking of space for sale. The Id. AR submitted that the profit on sale of booking space is taxable under the head income from other sources and similarly the expenditure on account of interest paid on loan for booking of space is also allowable deduction under income from other sources. He stated that the assessee had tried to sale the booking but could not succeed. The Id. AR placed reliance on the following decisions :-

1. *C.I.T. vs. Rajendra Prasad Mody (1978) 115 ITR519 (SC)*
2. *Eastern Investments Ltd. vs. CIT (20) ITR 1 (SC)*
3. *C.I.T. vs. P.L. Ramiahi (2002) 254 ITR 238 (Madras)*
4. *C.I.T. vs. Gopal Chand Patnaik (1978) 111 ITR 86 Orissa*

The Ld. AR contended further that the requirement of Section 57(iii) is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income.

6. The Ld. DR on the other hand tried to justify the orders of the authorities below.

7. On perusal of the First Appellate Order, I find that Id. CIT(A) has upheld the disallowance made by the AO on the basis that the income received from the firm where the assessee is partner has no relationship with the borrowed fund taken from Smt. Madhu Bhandari. He has observed that interest on borrowed sum taken from Smt. Madhu Bhandari has no nexus with the share of profit and remuneration from firm as partner and therefore the deduction claimed u/s 57 of the Act by the assessee is not allowable. He has noted that share of profit is exempt income and remuneration is paid to working partner. He has noted further that the loan taken from

Smt. Madhu Bhandari has not been used in acquiring the house property which is resulting rental income, therefore, the interest of Rs. 2,96,333/- is also not allowable as deduction u/s 24. In this regard Id. CIT(A) has placed reliance on the decision of Delhi High Court in the case of M/s Taj International Jewellers (A.Y. 2007-08) in ITA No. 113/2012, order dated 21.2.2012. In the case of M/s Taj International Jewellers (Supra) the money obtained on loan was converted and made into FDRs. The assessee followed the same practice or method of account / treatment for the assessment years 2005-06 and 2006-07. The Assessing Officer had made similar additions in the said years and did not allow netting of the interest paid on the loan from the interest received on deposits. The Hon'ble High Court held that the interest paid was expenditure laid out wholly and exclusively for the purpose of making or earning the interest income. The Id. CIT(A) following the ratio of this decision in the present case has held that there is no direct nexus between expenditure incurred wholly and exclusively for earning interest income. The assessee in the present case before the Tribunal, however, has advanced the argument that to bring a case u/s 57 (iii) it is not necessary that any income should in fact, have been earned as a result of the expenditure.

8. Having gone through the cited decisions by the parties, I find that there is no dispute that interest expenditure is admissible as a deduction u/s 57(iii) of the Act in computing income under the head "income from other sources". The Authorities below have denied the claimed deduction of interest on the basis that in the present case there is no direct nexus between expenditure incurred

wholly and exclusively for earning interest income. The contention of the assessee remained that profit earned on sale of booking of space is taxable under the head income from other sources and similarly the expenditure on account of interest paid on loan for booking of space is also allowable deduction under the income from other sources. In the case of CIT vs. Rajendra Prasad Modi (Supra), the assessee had borrowed money for the purpose of making investment in certain shares and paid interest thereto but did not receive any dividend thereon. The Hon'ble Supreme Court was please to hold that the interest was admissible as a deduction u/s 57(iii) of the Act in computing income from dividend under the head "income from other sources". I, thus, in the interest of justice set aside the matter to the file of the AO to decide the issue afresh in view of the above cited decision of Hon'ble Supreme Court after verification of the claim of the assessee that during the year, there was income from other sources after affording opportunity of being heard to the assessee.

The Ground is accordingly allowed for statistical purposes.

In the result appeal is allowed for statistical purposes.

Order Pronounced in the Court on 30/07/2015.

Sd/-
(I.C.Sudhir)
JUDICIAL MEMBER

Dated: 30 / 07/2015

B. Rukhaiyar

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	20.07.2015		
2.	Draft placed before author	21.07.2015		
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			