

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH,  
RAIPUR BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND GEORGE GEORGE K, JUDICIAL MEMBER**

**ITA No. 136/Rpr/2013**

Assessment Year :2010- 2011

DCIT-1(1), Central revenue Building, Civil Lines, Raipur	Vs.	Sardar Baldeo Singh Bhatia, Bus Station Road, Rajnandgoan, C.G.
PAN/GIR No. AINPB 7454 I		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri N.M.Porwal/R.K.Sonchhatra, AR

Revenue by : Shri Geetesh Kumar, DR

**Date of Hearing : 01/05/ 2017**

**Date of Pronouncement : 02 /05/ 2017**

**ORDER**

**Per N.S.Saini, AM**

This is an appeal filed by the revenue against the order of CIT(A)- Raipur, dated 28.8.2013, for the assessment year 2010- 2011.

2. The sole issue involved in this appeal is that the Id CIT(A) erred in deleting the dis allowance of Rs. 35,37,793/- made by the Assessing Officer out of interest expenses as the interest bearing funds were used for non business purposes.

3. The brief facts of the case are that the Assessing Officer observed the assessee has debited interest of Rs. 70,21,679/- in the profit & loss account against which the assessee has earned interest income of Rs. 31,83,886/- and hence, the net interest income debited in the profit and loss account was Rs. 35,37,793/-. He further observed that the assessee has own capital of Rs. 8.43 crores, interest free unsecured loan of Rs. 0.13 crores and interest free current liability of Rs. 847.77 lakhs all aggregating to Rs. 8.69 crores. He further observed that the assessee has invested Rs. 11.62 lakhs in fixed assets, Rs. 2096.96 lakhs in current assets and Rs. 859.29 lakhs in investment and deposits on which no interest was earned. Thus, Rs. 8.59 crores was utilised in non-business/ non-earning investment and deposit. Further, Rs.2.84 crores of loans and advances have been utilised in non business/ non-earning loans and advances. He, therefore, concluded that the assessee had Rs.8.69 crores own capital and interest free funds available with him and has utilised Rs. 11.55 crores in fixed assets, investment in land and property, non-earning loans and advances and deposits and for non business purposes. Hence, he held that interest bearing funds of Rs. 668.02 lakhs as secured loans received from bank and Rs. 210.59 lakhs as interest bearing unsecured loans from partnership firm, and outsiders and Rs. 180.04 lakhs interest bearing current liabilities were utilised in investment for non business purposes/ non-earning loans and advances. Therefore, the Assessing Officer disallowed interest expenses claimed by the assessee of Rs. 38,37,793/-.

4. On appeal, the CIT(A) accepted the appeal of the assessee observing that the interest free funds available with the assessee stood at Rs. 9.47 crores as against Rs. 8.69 crores worked out by the Assessing Officer . Further, the interest on housing loan taken by the assessee and appearing under the head "secured loan" was debited to the capital account and not in the profit and loss account. He also observed that the overdraft facility of Dena Bank was utilised for repayment of interest bearing loan . He also observed that there was an element of commercial expediency in the interest free loans and advance made by the assessee. He observed that the assessee himself had worked out the amount of dis allowance of interest of Rs. 2.60 lakhs as the assessee had given interest free loan of Rs. 1.94 crores to Shri Harpal Singh on 24.2.2010. Therefore, the CIT(A) observed that as the assessee himself has accepted the dis allowance of Rs. 2.60 lakhs and considering the findings recorded by the Assessing Officer, he held that it would meet the ends of justice, if the dis allowance is restricted to Rs. 3,00,000/- out of interest expenses claimed by the assessee. Hence, he allowed relief of Rs. 38,37,793/- to the assessee.

5, Being aggrieved, the revenue is in appeal before us.

6. Before us, Id Departmental Representative relied on the order of the Assessing Officer whereas Id Authorised Representative of the assessee supported the order of the CIT(A).

7. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. It is observed that the Assessing Officer by considering the balance sheet of the assessee as at 31.3.2010 has arrived at the conclusion that Rs.11.55 crores have been utilised for non-business purposes against interest free own capital and unsecured loans

and current liabilities of Rs. 8.69 crores and, therefore, disallowed interest expenditure of Rs. 38,37,793/.

8. On the other hand, the CIT(A) from the very same balance sheet has concluded that Rs. 1.94 crores have only been utilised for non business purposes by the assessee and, therefore, considered dis allowance of interest of Rs. 3 lakhs as reasonable.

9. In our considered opinion, the balance sheet drawn by the assessee reflects the transaction of the assessee at a particular date i.e. 31.3.2010 and not the transaction on the date the borrowed funds were utilised for non-business purposes by the assessee. It is the position on the date when the funds were invested in non-interest earning loans and advances and deposits, it has to be seen whether it was out of the own funds or from interest free unsecured loans of the assessee or not. This will prove the nexus whether interest bearing funds have been utilised in giving interest free advances or not. It has not been done either by the Assessing Officer or by the CIT(A). In our considered view, without proving the nexus between the borrowed funds and its utilisation for non-business purposes, no dis allowance of interest expenditure can be made. Therefore, it would be, in the interest of justice to remand the issue back to the file of the Assessing Officer to re-adjudicate the issue afresh in the light of discussion herein above after allowing reasonable opportunity of hearing to the assessee. We order accordingly. Thus, the ground of appeal of the revenue is allowed for statistical purposes.

8. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 02/05/2017.

Sd/-  
(George George K)  
**JUDICIAL MEMBER**

sd/-  
(N.S Saini)  
**ACCOUNTANT MEMBER**

Raipur; Dated 02 /05/2017  
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : DCIT-1(1), Central revenue Building, Civil Lines, Raipur
2. The Respondent. Sardar Satpal Singh Bhatia, Bus Station Road, Rajnandgoan, C.G.

3. The CIT(A) Raipur
  4. CIT, Raipur
  5. DR, ITAT, Raipur
  6. Guard file.
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BY ORDER

SR. PRIVATE SECRETARY