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IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai

Before Shri S. Rifaur Rahman, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.380/Mum/2020
(Assessment Years: 2015-16)

Shri Chandrakant R. Agrawal 61, Sadhna Daftary Road, Malad East, Mumbai – 400097	Vs.	Pr. Commissioner of Income-tax (Central) -30, R. No. 541, 5th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai

PAN – AABPA8047N

(Appellant) **(Respondent)**

Appellant by: Dr. K. Shivaram, Senior Advocate
Respondent by: Ms. Shreekala Pardeshi, D.R

Date of Hearing: 20.01.2021
Date of Pronouncement: 22.01.2021

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax-30, Mumbai, (for short 'PCIT') under Sec. 263 of the Income Tax Act, 1961 (for short 'Act'), dated 03.12.2019 for A.Y. 2015-16. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1. The learned Principal Commissioner of Income-tax (Pr.CIT) erred in revising the assessment order dated November 21,2017 passed under section 143(3) of the Income-tax, Act, 1961 (Act) with respect to the issue of claiming deduction under section 57 of the Act without appreciating that the case of the appellant was selected for scrutiny specifically for the issue of deduction form Income from other sources inter alia, and after considering the submissions of the appellant and judicial precedents placed on record, passed an order and

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hence assessment order was neither erroneous nor prejudicial to the interest of the revenue and hence the order of revision is bad in law.

2. The learned Pr. CIT failed to appreciate the direct nexus between earning and payment of interest by appellant and erred in holding that the expenditure on interest claimed by the Appellant under Section 57(iii) of the Act is not tenable in law, by applying the wrong principle of law and ignoring the judicial precedents relevant to the facts of the appellant and hence the revision is bad in law.

3. Without prejudice, that the learned Pr.CIT failed to appreciate that on the issue of claiming deduction from Income from other sources, two possible view exist and thus when two views are possible than the assessment order cannot be termed as erroneous and prejudicial to the interest of the revenue and hence the order of revision is bad in law.

4. The appellant craves leave to add, amend, alter or delete and of the above grounds of appeal."

2. Briefly stated, the assessee who is a director of M/s Brijwasi Bengali Sweets Pvt. Ltd. had e-filed his return of income for A.Y. 2015-16 on 29.03.2016, declaring a total income of Rs. 76,37,800/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under the "Computer Assisted Scrutiny Selection" (for short "CASS"). Assessment under Sec. 143(3) was framed by the A.O vide his order passed under Sec. 143(3), dated 21.11.2017, determining the income of the assessee at Rs.76,37,800/-.

3. After culmination of the assessment proceedings the PCIT called for the assessment records of the assessee. On a perusal of the records, it was observed by the PCIT that the assessee had in his return of income after setting off the interest of Rs. 48,14,940/- paid on loan against the interest income of Rs. 51,03,256/- received on FDR's, had offered the net balance amount of Rs. 2,88,316/- for tax under Sec. 56 of the Act. It was noticed by the PCIT that the A.O while framing the assessment had accepted the aforesaid claim of deduction raised by the assessee. Holding a conviction that the deduction of the aforesaid interest expenditure against the interest income was not in accord with the provisions of Sec. 57 of the Act, the PCIT was of the view that allowing of the same by the A.O without verifying the records had

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rendered the order passed by him under Sec. 143(3), dated 21.11.2017 as erroneous in so far it was prejudicial to the interest of the revenue. Backed by his aforesaid conviction the PCIT issued a 'Show cause' notice (for short 'SCN') under Sec. 263 and called upon the assessee to explain as to why the assessment order may not be revised. In reply, it was submitted by the assessee that as its aforesaid claim for deduction of the interest expenditure was as per the mandate of Sec. 57 of the Act and was allowed by the A.O only after making necessary verifications in the course of the assessment proceedings, thus, the same was not amenable for revision under Sec.263 of the Act. However, the PCIT not finding favour with the aforesaid claim of the assessee rejected the same. Observing, that the assessee was liable to be assessed on the gross amount of interest received by him on his FDR's, and no deduction of the interest paid on the loan taken against the security of the said deposits was permissible under law, the PCIT was of the view that the A.O while framing the assessment had erred in accepting the assessee's claim for deduction of the interest expenditure against the interest income. In the backdrop of his aforesaid observation the PCIT 'set aside' the assessment order passed under Sec.143(3), dated 21.11.2017, and directed the A.O to frame a de novo assessment, in accordance with law, after giving a proper opportunity of being heard to the assessee.

4. Aggrieved, the assessee has assailed the order passed by the PCIT under Sec. 263, dated 03.12.2019 in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee Dr. K. Shivaram, Senior Advocate took us through the facts of the case. It was submitted by the ld. A.R that as the A.O in the course of the assessment proceedings had queried to his satisfaction as regards the assessee's entitlement for deduction of the interest paid on the loan raised from the bank against the interest received on the FDR's held by the assessee, and finding it in order had accepted the same, therefore, the PCIT had clearly exceeded his jurisdiction and taken recourse to the revisional action under Sec. 263 of the Act. It was submitted

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by the ld. A.R that as the A.O's view that the interest received on the FDR's, as rightly claimed by the assessee, was to be adjusted against the amount of interest paid on the loans taken on security of such deposits was a plausible view, the same, thus, could not have been held to be erroneous within the meaning of Sec. 263 of the Act. In order to support his aforesaid contention the ld. A.R relied on certain judicial pronouncements. Our attention was specifically drawn to the judgment of the **Hon'ble Supreme Court** in the case of **Hero Cycles Pvt. Ltd. Vs. CIT(Central), Ludhiana (2015) 63 taxmann.com 308 (SC)**. Relying on the said judicial pronouncement, it was averred by the ld. A.R that as observed by the Hon'ble Apex Court once it is established that there is a nexus between the expenditure and purpose of businesses, the department cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of Board of Directors and decide as to how much of expenditure could be reasonably allowed having regard to the circumstances of the case. It was further averred by the ld. A.R that as the A.O had made detailed inquiries while allowing the assessee's claim for deduction of the interest expenditure, thus, his order could not have been revised by the PCIT. In order to substantiate his claim that the A.O had made detailed enquiries as regards the issue in question and the same were from time to time duly replied to his satisfaction by the assessee, the ld. A.R took us through the relevant pages of the assessee's paper book (for short 'APB'). In support of his aforesaid contention the ld. A.R relied on the judgment of the **Hon'ble Supreme Court** in **PCIT-8, Mumbai, Vs. Sumatichand Tolamal Gouti (2019) 111 taxmann.com 287 (SC)**. It was further submitted by the ld. A.R that the non-mentioning of the queries raised by the A.O and the replies filed by the assessee as regards the issue of deduction of the interest paid on loan against the interest received on FDR's in the body of the assessment order could not lead to a conclusion that the A.O had not enquired into the said aspect. In support of his aforesaid contention the ld. A.R relied on the orders of the Hon'ble High Court of Bombay in the case of viz. (i) CIT vs. Fine Jewellery (I) Ltd., 372 ITR 303 (Bom); and (ii) CIT Vs. Reliance

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Communications Ltd. (2016) 69 taxmann.com 103 (Bom). On the basis of his aforesaid contentions, it was submitted by the ld. A.R that as the PCIT had clearly exceeded his jurisdiction and had dislodged the well reasoned order passed by the A.O under Sec. 143(3), dated 21.11.2017, the same, thus, could not be sustained and was liable to be vacated.

5. Per contra, it was submitted by the ld. Departmental Representative (for short 'D.R') that as the A.O while framing the assessment had failed to make any verifications as regards the assessee's claim for deduction of the interest paid on the loans against the interest received on the FDR's, therefore, the PCIT had rightly exercised his revisional jurisdiction and 'set aside' the assessment order with a direction to the A.O to pass a de novo order after affording an opportunity of being heard to the assessee. It was submitted by the ld. D.R that as the interest paid by the assessee on the loan taken (on security of the FDR's) was not in the nature of an expenditure laid out or expended wholly and exclusively for the purpose of making or earning such interest income, thus, the allowing of the same as a deduction by the A.O clearly militated against the provisions of Sec.57(iii) of the Act. The ld. D.R drawing support from the judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Company ltd. Vs. CIT (2000) 243 ITR 83 (SC) submitted that as the order passed by the A.O was erroneous in so far it was prejudicial to the interest of the revenue, therefore, the PCIT had rightly exercised his revisional jurisdiction under Sec. 263 of the Act.

6. We have heard the Ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, and also considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As is discernible from the records, the assessee held certain FDR's with the bank, against which he had thereafter raised certain loans from the bank for investing in a commercial project that was being developed by him alongwith his younger brother Shri Vinod R. Goyal on a land situated at Brijwasi Ind.

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Estate, Junction of I.B. Patel Road & Sonawala Lane, Goregaon (East), Mumbai. Against the interest income of Rs. 51,03,256/- received on the FDR's held by him with the bank, the assessee had claimed deduction of the interest paid on the loans that were raised from the bank (on security of the aforesaid FDR's). Resultantly, the assessee had offered the net interest income of Rs.2,88,316/- for tax under Sec. 56 of the Act. Observing, that the assessee was liable to be assessed on the gross amount of interest income received by him on his FDR's, and no deduction of the interest paid on loan raised from the bank (on security of the FDR's) was allowable under Sec. 57 of the Act, the PCIT was of the view that the A.O had erred in not bringing the entire amount of interest received on FDR's to tax in the hands of the assessee.

7. At the first blush the claim of the assessee for setting off the interest paid on the loan raised (on security of the FDR's) against the interest received on FDR's appeared to be very convincing. However, we find that the issue is no more res integra and had been settled by the **Hon'ble Supreme Court in CIT Vs. Dr. V.P Gopinathan (2001) 248 ITR 449 (SC)**. We find that the Hon'ble Apex Court while reversing the order of the **Hon'ble High Court of Kerala** in **CIT Vs. Dr. V.P Gopinathan (1998) 229 ITR 801 (Ker)**, had held, that interest on loan taken by the assessee from the bank on security of fixed deposit could not be reduced from his income by way of interest on the fixed deposit placed by him in the bank. The issues which came up for consideration before the Hon'ble Apex Court were as under:

> "1. Whether, on the facts and in the circumstances of the case, the assessee is to be assessed on the gross amount of interest received by him on his fixed deposit or on the interest received as reduced by the amount of interest paid on the loan taken on the security of such deposit ?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact in holding;
>
> (i) the act of making deposit and the act of borrowing on such deposit cannot be viewed as representing two different transactions,
>
> (ii) there is thus a nexus between the deposit and the borrowing;
>
> (iii) the principle of mutual dealings could be inferred."

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Answering the aforesaid issues which were inextricably interlinked or in fact interwoven, it was observed by the Hon'ble Apex Court, as under:

> 2**.** To take the facts of one of the two appeals before us as illustrative, the assessee had put moneys into fixed deposit with a bank and had earned in the assessment year in question interest in the sum of Rs. 1,17,444 thereon. On the security of the amount so deposited, the assessee took a loan from the bank and paid in respect of the loan interest to the bank in the sum of Rs. 90,410. The assessee claimed that he could be taxed only on the differential amount of Rs. 27,034. His contention was rejected by the ITO and in first appeal. The Tribunal took the contrary view, and out of its judgment the questions quoted above were referred to the High Court. The High Court answered the questions as indicated above on the basis that the situation was one of the mutuality.
>
> 3. Learned counsel appearing for the assessee before the Tribunal had made it clear that the assessee's case did not rest upon the provisions of s. 57(iii) of the Act. In other words, it was not the contention of the assessee, very rightly, that he was paying interest to the bank to facilitate the earning of interest from the bank.
>
> 4. The argument before us on behalf of the assessee was that the real income of the assessee is only Rs. 27,034.
>
> It was not disputed, as it could not be, that if the assessee had taken a loan from another bank and paid interest thereon his real income would not diminish to the extent thereof. The only question then is : does it make any difference that he took the loan from the same bank in which he had placed the fixed deposit. There is no difference in the eye of the law. The interest that the assessee received from the bank was income in his hands. It could stand diminished only if there was a provision in law which permits such diminution. There is none, and, therefore, the amount paid by the assessee as interest on the loan that he took from the bank did not reduce his income by way of interest on the fixed deposit by him in the bank.
>
> 5. Learned counsel for the assessee drew our attention to the judgment of the Gujarat High Court in Jashvidhyaben C. Mehta vs. CIT (1988) 67 CTR (Guj) 239 : (1988) 172 ITR 680 (Guj) : TC 41R.709. This was in respect of moneys deposited in three different accounts of a firm and it was found, as a fact, that the real income that the assessee drew from the firm was reduced by her dues to the firm. The facts of the case are totally different from those before us.
>
> 6. In the result, the appeals are allowed. The orders under appeal are set aside. The questions are answered in favour of the Revenue. No order as to costs."

In our considered opinion, the view taken by the PCIT in the case before us is absolutely in conformity with the aforesaid judgment of the Hon'ble Apex Court. At this stage, we may herein observe that in the backdrop of the aforesaid binding judgment of the Hon'ble Apex Court the view to the contrary arrived at by the A.O could not be held to be a possible and plausible view. Accordingly, finding ourselves in agreement with the view

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taken by the PCIT that the A.O had wrongly allowed the assessee's claim for deduction of the interest paid on the loans against the interest received on the FDR's, we uphold the order passed by him under Sec. 263 of the Act. Before parting, we may herein observe that the reliance placed by the assessee in his write up/factsheet on the judgment of the Hon'ble High Court of Kerala in the case of Dr. V.P Gopinathan (supra) would not assist his case, for the reason, that the same as observed by us hereinabove had thereafter been reversed by the Hon'ble Supreme Court. Accordingly, finding no infirmity in the order passed by the PCIT u/s 263, we uphold the same. The **Grounds of appeal Nos. 1 to 4** are dismissed.

8. Resultantly, the appeal of the assessee is dismissed.

Order pronounced in the open court on 22.01.2021

Sd/-	Sd/-
S. Rifaur Rahman	Ravish Sood
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Date: 22.01.2021
PS: Rohit

Copy of the Order forwarded to :
1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai