

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA No.4578/Del./2018
Assessment Year 2014-15

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| Shri Dharam Bhushan Jain, XI/4239A, Shakahar Bldg., 1- Ansari Road, Darya Ganj, New Delhi. PAN AAFPJ9620G (Appellant) | vs., | The ACIT, Circle – 61(1) New Delhi. (Respondent) |
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| For Assessee : | Shri C.S. Aggarwal, Sr. Advocate And Shri Ravi Pratap Mall, Advocate |
| For Revenue : | Ms. Sangeeta Yadav, Sr.DR |

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| Date of Hearing : | 22.12.2021 |
| Date of Pronouncement : | 10.01.2022 |

ORDER

PER R.K. PANDA, A.M.

This appeal filed by the Assessee is directed against the order dated 25.05.2018 of the Ld. CIT(A)-20, New Delhi, relating to A.Y. 2014-15.

2. The grounds raised by the assessee are as under :

- “1. That the learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in confirming the order of assessment and has further erred in sustaining the disallowance made of an expenditure incurred of Rs.5,41,398/- representing the interest paid.
2. That the learned CIT(A) has failed to appreciate that despite the fact the proceedings had been initiated under ‘limited scrutiny’, yet the AO had exceeded in his jurisdiction to disallow the said sum (which was not subject matter of initiation of proceedings u/s 143(2) of the Act) and as such AO could not have either examined the claim and disallow the claim of expenditure incurred of Rs.5,41,398/-.
3. That without prejudice and in the alternative the learned CIT(A) has further erred in failing to appreciate that the Hon'ble High Court in the case of CIT vs. U. K. Bose reported in 212 Taxmann 399 has held that netting of interest is permissible while computing the total income and thus the claim of deduction made from interest income was a permissible deduction.

4. *The finding of the learned CIT(A) in his order that the deduction is not allowable u/s 57 of the Act is based on complete misconception of the facts and is in disregard of the fact that the deduction of interest had been claimed and had been allowed in all the preceding six years and was thus required to be allowed as a deduction, while computing the total income of the assessee for the instant year, since no sum had been borrowed during this year on which interest has been claimed.*
 5. *That the learned CIT(A) has further erred in not directing the AO to allow the credit of tax deducted at source of Rs.2,95,029/- as had been deducted. The entire amount of tax deducted at source of Rs.2,95,029/- was thus required to be allowed.*
 6. *That the learned CIT(A) has further erred in not deleting the interest levied u/s 234A, u/s 234B and u/s 234C of the sums of Rs.1,43,939/-, Rs.2,07,867/- and Rs.37,439/- respectively.”*
3. Facts of the case, in brief, are that the assessee is a Chartered Accountant by profession and derived income from profession, house property, income from capital gain and income from other sources. He filed his return of

income on 10.12.2015 declaring total income of Rs.78,23,352/-. The case was selected for limited scrutiny. Notice under section 143(2) of the I.T. Act, 1961 was issued and served upon the assessee. In response to the various statutory notices issued by the A.O, the Ld. A.R. of the assessee appeared before him and filed the requisite details.

3.1. During the course of assessment proceedings, the A.O. noted that assessee has claimed deduction of Rs.5,41,397.50 against the interest income of Rs.42,09,926.11. He, therefore, asked the assessee to furnish the rate of interest paid on borrowed capital and the utilisation of the same. From the various details furnished by the assessee, the A.O. noted that assessee has utilised the borrowed capital for the repayment of earlier loans / advances and for investment for acquisition of agricultural land. The A.O. further noted that assessee did not file the bank statement to substantiate the various entries reflected in the detailed chart filed by him. He further noted that assessee has paid interest on borrowed capital @ 12% whereas the assessee has earned interest income at lower

rate. According to him, as per the provisions of Section 57 of the I.T. Act, 1961, deduction from income from other sources is allowed for those expenses which are laid out or expended wholly and exclusively for the purpose of earning of such income. Since the assessee in the instant case could not substantiate that borrowed capital on which assessee has paid interest of Rs.5,41,397.50 @ 18% was utilised for earning interest income, the A.O. disallowed the deduction of Rs.5,41,397.50 and added the same to the total income of the assessee. Accordingly, the A.O. determined the total income of the assessee at Rs.83,64,750/-.

3.2. Before the Ld. CIT(A) the assessee stated that his case was selected for limited scrutiny for the following two reasons :

(a) "mismatch between the income/receipt credited to P&L account considered under other heads of income and income from heads of income other than business/profession (Schedule BP and Part B-TI of return);

(b) large cash deposits in savings bank accounts."

3.3. However, the A.O. without obtaining the necessary approval from the competent authority had expanded the scrutiny to other income which is not permissible under law.

3.4. So far as the merit of the case is concerned, it was argued that the A.O. was not framing the assessment of assessee's income earned by him from business or profession. He was dealing with the income earned by the assessee from other sources i.e., interest received. It was argued that assessee had received interest on the personal savings only which are not taxable under the head income from profession. If income out of personal savings is taxable, interest paid for loans raised by the assessee for meeting the personal expenses is also allowable out of interest received as expenditure not being in the nature of capital expenditure laid out or expended wholly and exclusively for making or earning of such income as is allowable under the provisions of Section 57(iii) of the I.T. Act, 1961. The assessee also submitted the following chart which was also filed before A.O.

| Date | Amount (Rs.f | Loan raised from - | Utilisation of loan | | | | | | | | | | | | | | |
|------------|--|--------------------|--|----|--|----|---|----|--|----|---|----|---|----|--|----|---|
| 02/12/2010 | 11,00,000/- | Makan Lai Jain | Paid to Desh Bhushan Jain for reimbursement of payment made on behalf of me. | | | | | | | | | | | | | | |
| 19/03/2011 | 10,00,000/- | Makan Lai Jain | <table border="1"> <tr> <td>1.</td> <td>Rs. 1,00,000/- towards D.B.Jain & Co. (CA firm of the assessee).</td> </tr> <tr> <td>2.</td> <td>Rs. 40,000/- towards payment of LIC</td> </tr> <tr> <td>3.</td> <td>Rs. 1,63,500/- towards Foreign Travels Expenses.</td> </tr> <tr> <td>4.</td> <td>Rs. 1,00,000/- towards payment of Advance Tax to the Government</td> </tr> <tr> <td>5.</td> <td>Rs. 1,00,000/- towards M/s New Delhi Estates Private Limited.</td> </tr> <tr> <td>6.</td> <td>Rs. 63,000/- towards furniture & fixtures.</td> </tr> <tr> <td>7.</td> <td>Rs. 2,15,000/- to daughter Sanyogita Jain, Etc.</td> </tr> </table> | 1. | Rs. 1,00,000/- towards D.B.Jain & Co. (CA firm of the assessee). | 2. | Rs. 40,000/- towards payment of LIC | 3. | Rs. 1,63,500/- towards Foreign Travels Expenses. | 4. | Rs. 1,00,000/- towards payment of Advance Tax to the Government | 5. | Rs. 1,00,000/- towards M/s New Delhi Estates Private Limited. | 6. | Rs. 63,000/- towards furniture & fixtures. | 7. | Rs. 2,15,000/- to daughter Sanyogita Jain, Etc. |
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| 7. | Rs. 2,15,000/- to daughter Sanyogita Jain, Etc. | | | | | | | | | | | | | | | | |
| 04/12/2007 | 2,00,000/- | Makan Lai Jain | Paid to Bharat Bhushan Jain for reimbursement of payment made on behalf of me.' | | | | | | | | | | | | | | |
| 23/08/2008 | 1,00,000/- | Makan Lai Jain | Payment made for purchase of agricultural land at Tijara. | | | | | | | | | | | | | | |
| 28/04/2010 | 2,00,000/- | Makan Lal Jain | <table border="1"> <tr> <td>1.</td> <td>Rs.20,000/-, Rs.30,000/- & Rs.18,000/- towards drawings.</td> </tr> <tr> <td>2.</td> <td>Rs.22,500/- & Rs.19,874/- towards payment of interest</td> </tr> </table> | 1. | Rs.20,000/-, Rs.30,000/- & Rs.18,000/- towards drawings. | 2. | Rs.22,500/- & Rs.19,874/- towards payment of interest | | | | | | | | | | |
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|------------|------------|-----------------|--|
| | | | 3. Rs.15,000/- for College Fees of Daughter. |
| | | | 4. Rs.20,000/- again towards drawings etc., |
| 04/12/2007 | 3,00,000/- | Shakuntala Jain | Paid to Bharat Bhushan Jain for reimbursement of payment made on behalf of me. |
| 23/08/2008 | 2,00,000/- | Shakuntala Jain | Payment made for purchase of agricultural land at Tijara. |

3.5. It was further argued that the amount raised as loans were used for repayment of earlier loans/ advances and for investments for acquisition of agricultural land. It was argued that the addition made by the A.O. is not sustainable.

3.6. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the addition made by the A.O. by observing as under :

“6.1 The Assessing Officer has disallowed the deduction of Rs.5,41,397/- claimed by the appellant u/s 57 of the Act as the appellant has shown interest income of Rs.42,09,926/- and claimed deduction of interest expense of Rs.5,41,397/- whereas this interest

was paid by the appellant on borrowed capital @ 18% which was invested for acquisition of agriculture land and repayment of earlier loans and advances. The Assessing Officer has also claimed that the appellant has shown interest income at the lower rate than 18% as per detailed discussion made by the Assessing Officer in the assessment order mentioned supra in Para 4.

6.2. *The appellant on the other hand has filed detailed written submission mentioned supra in Para 5 and claimed that the entire interest expense is allowable u/s 57 of the Act.*

6.3. *The contention of the Assessing Officer and the submission of the appellant has been considered and from the submission of the appellant, it is gathered that in Para 4.10 of the written submission, the appellant has given the chart of loan taken and utilization of its loan. This shows that none of the loan taken from the parties are utilized to earn the interest income which is a pre condition for claiming any*

expenditure u/s 57(iii) of the Act. To appreciate this position, the provision of section 57(iii) is reproduced as under: -

"Deductions.

57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely-

(i).....

(ii).....

(iii) any other expenditure not being in the nature of capital expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income;"

6.4. The claim of the appellant that the interest paid for loans raised are utilizing towards personal expenses and allowable expense u/s 57(iii) is not acceptable as the provision of section 56 and section

57 clearly stipulates that only those expenses are allowable u/s 57(iii) of the Act; which has a direct nexus with earning of 'Income From Other Sources'. Hence, any expenditure incurred for earning such interest income is allowable to the appellant under section 57(iii) of the Act. Apparently, the interest income which is earned on FDR and interest from other parties have no nexus with the interest expense claimed by the appellant. In this light, I find no reason to interfere in the decision of the Assessing Officer and ground No.1 and 2 of the appeal deserves to be dismissed.”

4. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

4.1. Learned Counsel for the Assessee strongly challenged the order of the Ld. CIT(A) in confirming the addition made by the A.O. He submitted that the assessee has paid interest on the loans raised by him to repay the old loans, which were raised during the F.Y. 2009-10 and thereafter which were utilised for the purpose of business of the assessee or for the purpose

of earning income on which interest has been earned. Referring to page numbers.64 and 65 of the PB, Learned Counsel for the Assessee submitted that this fact is purely borne-out from the assessment order for A.Y. 2013-14 wherein the A.O. had accepted that such amount of interest paid is an allowable deduction and no disallowance had been made. He submitted that even in the succeeding A.Y. 2016-17 such disallowance has not been made though assessment has been made under section 143(3) of the I.T. Act, 1961, copy of which is placed at page numbers.79 to 80 of the PB. He submitted that it is not a case wherein assessee had paid interest on loans borrowed by him either for incurring of personal expenses or for making tax free investment. He submitted that there is absolutely no nexus between the loans raised on which interest had been paid and the loans raised for making personal expenses or any tax free investment. Learned Counsel for the Assessee submitted that unless and until the assessee had borrowed the funds and had not

substantial capital of its own and there is nexus between the amount borrowed and personal expenses or making such investment on which no tax is payable, the disallowance could be made, otherwise, deduction is admissible either under section 36(1)(iii) or Section 57(iii) of the I.T. Act, 1961. He submitted that it is not the case where the assessee had no income from business or the assessee had no substantial capital. On the contrary, it is a case wherein the expenditure has been incurred and allowed in the preceding and succeeding assessment year. Learned Counsel for the Assessee accordingly submitted that when such interest expenditure has been allowed in the preceding and subsequent assessment year in order passed under section 143(3) of the I.T. Act, 1961, therefore, following the rule of consistency itself the disallowance made by the A.O. and upheld by the Ld. CIT(A) is not in accordance with law. The Learned Counsel for the Assessee referred to the chart filed before Ld. CIT(A) and submitted that no fresh loan had been raised during the

F.Y. 2013-14 relevant to A.Y. 2014-15 on which interest had been paid. He further submitted that assessee does not have separate bank accounts for borrowed sums and self-acquired funds.

4.1. Referring to the decision of Hon'ble Karnataka High Court in the case of CIT vs., Sridev Enterprises reported in 192 ITR 165 (Kar.), copy of which is placed at page numbers.54 to 58 of the PB, the Learned Counsel for the Assessee drew the attention of the Bench to the following observation of the Hon'ble High Court :

“It is no doubt true that the firm may have interest-free loans on partners' accounts, but the question would still remain to be answered as to whether those were the funds which were utilised for making this advance. We cannot deem that these amounts have been utilised on any general proposition. We, therefore, find it necessary to remit the case back to the Commissioner of Income-tax (Appeals) for deciding the issue, viz.,

whether the advances made in the year of account have come out of borrowed funds or not. If it is shown to be out of funds not borrowed, then no disallowance can be made. If on the other hand, the whole or any part of the advance is out of borrowed funds, then adjustments have to be made only for the advance so made in this year of account as we have already held that the opening balance cannot be the subject-matter of any enquiry in this year."

In respect of the advances made during the accounting year in question, the matter was remitted to find out whether the advances made in the year of account have come out of borrowed funds or not and if it is shown to be out of funds not borrowed, "then no disallowance can be made".

The Revenue is aggrieved by the limited question remanded; according to the Revenue, the remand should comprise the question pertaining to the opening

balance advanced to Nalanda because the said sum was also advanced out of borrowed amounts.

We are in agreement with the view expressed by the Appellate Tribunal. The status of the amount outstanding from Nalanda on the first day of the accounting year is the amount that stood outstanding on the last day of the previous accounting year and, therefore, its nature and status cannot be different on the first day of the current accounting year from its nature and status as on the last day of the previous accounting year. Regarding the past years, the assessee's claims for deduction were allowed in respect of the sums advanced during those years; this could be only on the assumption that those advances were not out of borrowed funds of the assessee. This finding during the previous years is the very basis of the deductions permitted during the past years, whether a specific finding was recorded or not. A departure from that finding in respect of the said amounts advanced during the previous year would result in a contradictory

finding; it will not be equitable to permit the Revenue to take a different stand now in respect of the amounts which were the subject-matter of previous years' assessments; consistency and definiteness of approach by the Revenue is necessary in the matter of recognising the nature of an account maintained by the assessee so that the basis of a concluded assessment would not be ignored without actually reopening the assessment. The principle is similar to the cases where it has been held that a debt which had been treated by the Revenue as a good debt in a particular year cannot subsequently be held by it have become bad prior to that year.

Sri K. R. Prasad, learned counsel for the assessee, referred to a decision of this court in [Bit Tul \(P.\) Ltd. v. CIT \(ITRC.141 of 1977 dated 29.7.80\)](#) wherein it was held that there should be material to justify the conclusion that any borrowed money by the assessee in a year to which interest had been paid had been diverted for non-business purpose. For the purpose of

this reference, it is unnecessary to apply the said principle.

Accordingly, we answer the question referred to us in the affirmative and against the Revenue.”

4.2. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs., Gio Ltd., ITA.No.941 of 2010 dated 27.07.2010 (Del.), copy of which is placed at page numbers.59 to 62 of the PB, Learned Counsel for the Assessee drew the attention of the Bench to the following observations of the Hon'ble High Court :

“4. We are of the opinion that as in past assessment years, the interest expenditure had been allowed, it was not open to the Assessing Officer to disallow the said expenditure in the year under consideration. The Karnataka High Court in Commissioner of Income Tax Vs. Sridev Enterprises, (1991) 192 ITR 165 has held that a departure from a finding in respect of deductions permitted during the past years would result in a contradictory finding.

5. We are also of the view that it would not be equitable to permit the Revenue to take a different stand in respect of expenses which were the subject matter of previous years' assessments. In our opinion, consistency and definiteness of approach by the Revenue is necessary in the matter of recognizing the nature of an account maintained by the assessee so that the basis of a concluded assessment is not ignored without actually reopening the assessment.

6. As far as the issue of foreign travelling expense is concerned, we find that ITAT has observed as under :-

"4.1..... A perusal of the assessment order shows that the disallowance had been made by the Assessing Authority on account of non-filing of the details of travel. A perusal of the order of the Ld. CIT(A) shows that he has verified the assessment record and has found that substantial details had been filed. However, it is noticed that the Ld. CIT(A) drew a conclusion that the travel of the

Managing Director to Paris, London, Amsterdam and Hong Kong had apparently no connection with the business of the assessee. It is noticed that the assessee is in the business of textile and garment manufacturing. The disallowance has been made on presumption and the disallowance is an ad-hoc disallowance. The details of the expenditure have been found to have been produced before the Assessing Authority. Ld. CIT(A) not found any defect in the claim of expenses, could not now make a change in the stand of the Assessing Authority to say that apparently the travel to Paris, London, Amsterdam and Hong Kong was not for business purposes. Further, as the revenue has not been able to point out as to which expenses of foreign travel as claimed by the assessee is not for the business purpose and as the assessee has produced the evidences in relation to the foreign travel before the Assessing Authority and the same has also been accepted by the Ld. CIT(A), the

addition on this account more so on ad-hoc basis, is unjustified and the same is deleted. In these circumstances, ground No. 5 of the assessee's appeal stands allowed."

7. Keeping in view the aforesaid conclusion on facts by ITAT, which is the final fact finding authority, we are of the view that no substantial question of law arises in the present case. Consequently, present appeal is dismissed in limine but with no order as to costs".

4.3. Learned Counsel for the Assessee filed the following chart and submitted that assessee has been receiving and paying interest since more than four preceding assessment years. The assessee had also paid interest in the succeeding years. The A.O. in the post and subsequent years had not disputed the deductibility of the amount of interest paid while computing the total income. Therefore, in view of the various decisions filed in the PB and case law compilation, the addition made by the A.O. and

sustained by the Ld. CIT(A) is not justified.

| Asst. Year | Interest Received | Interest Paid | Date of Assessment | Assessed u/s | Opening Debit Balance of the Debtors | Closing Debit Balance of Debtors |
|------------|-------------------|---------------|--------------------|--------------|--------------------------------------|----------------------------------|
| 2010-11 | 4,81,774/- | 3,67,485/- | 12.03.2011 | u/s 143(1) | 39,80,386/- | 44,78,485/- |
| 2011-12 | 5,33,380/- | 5,06,053/- | 13.11.2011 | u/s 143(1) | 44,78,485/- | 55,54,639/- |
| 2012-13 | 1,89,59,082/- | 7,51,968/- | 19.01.2014 | u/s 143(1) | 55,54,639/- | 1,53,94,116/- |
| 2013-14 | 85,00,455/- | 7,50,354/- | 31.12.2015 | u/s 143(3) | 89,92,538/- | 2,11,68,868/- |
| 2014-15 | 44,30,725/- | 5,41,397/- | 27.12.2016 | u/s 143(3) | 2,06,35,580/- | 2,38,51,052/- |
| 2015-16 | 26,98,838/- | 5,66,830/- | 13.03.2016 | u/s 143(1) | 1,60,11,057/- | 2,36,02,312/- |
| 2016-17 | 16,88,403/- | 5,48,717/- | 19.12.2018 | u/s 143(3) | 1,36,89,858/- | 1,39,99,169/- |
| 2017-18 | 13,12,556/- | 5,06,778/- | 01.10.2018 | u/s 143(1) | 1,39,99,169/- | 1,14,35,662/- |
| 2018-19 | 12,00,000/- | 3,24,000/- | 13.04.2019 | u/s 143(1) | 1,14,33,201/- | 1,14,33,201/- |

4.4. In his second plank of argument, the Learned Counsel for the Assessee submitted that the case was selected for limited scrutiny for two reasons. However, the A.O. in the instant case without following the due process of law had made the impugned addition which was not one of the reasons for selecting the case for limited scrutiny. Relying on various decisions, he submitted that since the A.O. has expanded the scope of limited scrutiny without obtaining previous approval of

the CIT/PCIT, therefore, such order of the A.O. also is not in accordance with law and has to be quashed.

5. The Ld. D.R. on the other hand heavily relied on the orders of the A.O. and the Ld. CIT(A). She submitted that when the assessee has utilised the borrowed funds for meeting the personal expenses and acquisition of agricultural land, the A.O. has rightly disallowed the interest claimed as deduction and the Ld. CIT(A) is fully justified in upholding the same.

6. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case disallowed the deduction of Rs.5,41,397/- claimed by the assessee under section 57 of the I.T. Act, 1961 out of the interest income of Rs.42,09,926/- and deduction of interest expenses of Rs.5,41,397/- on the ground that assessee has paid interest @ 18% on the borrowed capital which was invested for acquisition of agricultural land and

repayment of earlier loans and advances and the assessee is receiving lower rate of interest. We find the Ld. CIT(A) upheld the action of the A.O, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that the case was selected for limited scrutiny for two reasons i.e., (a) mismatch between the income/receipt credited to P&L account considered under other heads of income and income from heads of income other than business/ profession (Schedule BP and Part B-TI of return); and (b) large cash deposits in savings bank accounts and the A.O. without following the proper procedure of obtaining approval from the concerned CIT/PCIT has travelled beyond the reasons for which the case was selected and, therefore, the addition made by the A.O. on account which was not the reason for selecting the case for limited scrutiny cannot be sustained. It is also his submission that the A.O. in the A.Y. 2013-14 and in the A.Y. 2016-17 in the orders passed under section 143(3) of the I.T. Act, 1961 has not made any disallowance of interest expenditure and, therefore, following the rule of consistency

alone, the disallowance made by the A.O. and sustained by the Ld. CIT(A) is not justified especially when the assessee has not taken any fresh loan during the F.Y. 2013-14 and the assessee has huge capital of his own and the assessee does not maintain any separate bank account of borrowed fund and self-acquired fund.

6.1. We find some force in the above arguments advanced by the Learned Counsel for the Assessee. A perusal of the chart filed before the A.O. as well as the Ld. CIT(A) show that assessee has not raised any loan during the impugned assessment year. Further the A.O. in the order passed under section 143(3) of the I.T. Act, 1961 for the A.Y. 2013-14 and in the order passed under section 143(3) of the I.T. Act, 1961 for the A.Y. 2016-17 has not made any disallowance of interest, a statement made by the Learned Counsel for the Assessee at the Bar and not controverted by the Ld. D.R.

6.2. We find the Hon'ble Calcutta High Court in the case of Indian Explosives Ltd., vs., CIT reported in 147 ITR 392 (Cal.) has held that where interest paid on overdraft account maintained with bank for purpose of business and all receipts are deposited in the overdraft account and all payments including taxes made from that account, the entire interest paid would be allowable deduction.

6.3. The Hon'ble Supreme Court recently in the case of South India Bank Ltd. vs., CIT reported in [2021] 130 taxmann.com 178 (SC) has held that where interest free own funds available with assessee-banks exceeded their investments in tax-free securities; investments would be presumed to be made out of assessee's own funds and proportionate disallowance was not warranted under section 14A on the ground that separate accounts were not maintained by assessee for investments and other expenditure incurred for earning tax-free income.

6.4. We find the Hon'ble Karnataka High Court in the case of CIT vs., Sridev Enterprises (supra) has held that

consistency and definiteness of approach by the Revenue is necessary in the matter of recognizing the nature of an account maintained by the assessee so that the basis of a concluded assessment would not be ignored without actually reopening the assessment. It was held in the said decision that where the assessee advanced certain sums to another Firm having common partners, free of interest and assessee is paying interest on money borrowed since in past years assessee's claim for deduction of interest paid was allowed on the assumption that those advances were not out of borrowed funds, advances to Firm shown on 1st Day of the Accounting Year exclude for the purpose of computing the disallowance of deduction.

6.5. We find the Hon'ble Delhi High Court in the case of CIT vs., Givo Ltd., (supra) following the Judgment of Hon'ble Kamataka High Court in the case of CIT vs. Sridev Enterprises (supra), has held that since in the past assessment years, the interest expenditure had been allowed, it was not open to the A.O. to disallow the said expenditure in the year under consideration. The Hon'ble

Delhi High Court further held that it would not be equitable to permit the Revenue to take a different stand in respect of expenses which were the subject matter of previous years' assessments. It was held that consistency and definiteness of approach by the Revenue is necessary in the matter of recognizing the nature of an account maintained by the assessee so that the basis of a concluded assessment is not ignored without actually reopening the assessment.

6.6. Similar view has been taken by the Coordinate Benches of the Tribunal in the decisions relied on by the Learned Counsel for the Assessee. Under these circumstances, since in the instant case the A.O. in the past and subsequent assessment years has not made any disallowance of such interest expenditure and the assessee has not raised any fresh loans during the impugned assessment year, we are of the considered opinion that no disallowance of interest is called for during the impugned assessment year. Accordingly, the order of the Ld. CIT(A) is set aside and A.O. is directed to delete the addition.

6.7. Even otherwise also, as mentioned earlier the case was selected for limited scrutiny for two reasons, the details of which are given at Para Number.3.2 of this order. However, the A.O. has not made any addition/disallowance on those two counts for which the case was selected for limited scrutiny, but he has made certain additions on an issue which was not the subject matter of limited scrutiny and there is nothing on record to suggest that the A.O. has taken necessary approval from the PCIT/CIT for converting the limited scrutiny to full scrutiny. Therefore, on this issue also the A.O. is not justified in making the disallowance of interest expenditure. In this view of the matter, we set aside the order of the Ld. CIT(A) and direct the A.O. to delete the addition. Grounds raised by the assessee are allowed.

7. In the result, appeal of the Assessee is allowed.

Order pronounced in the open court on 10.01.2022.

Sd/-
[N.K. CHOUDHARY]
JUDICIAL MEMBER

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated 10th January, 2022

VBP/-

Copy to

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|----|----------------------------|
| 1. | The assessee |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT 'B' Bench, Delhi |
| 6. | Guard File. |

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.