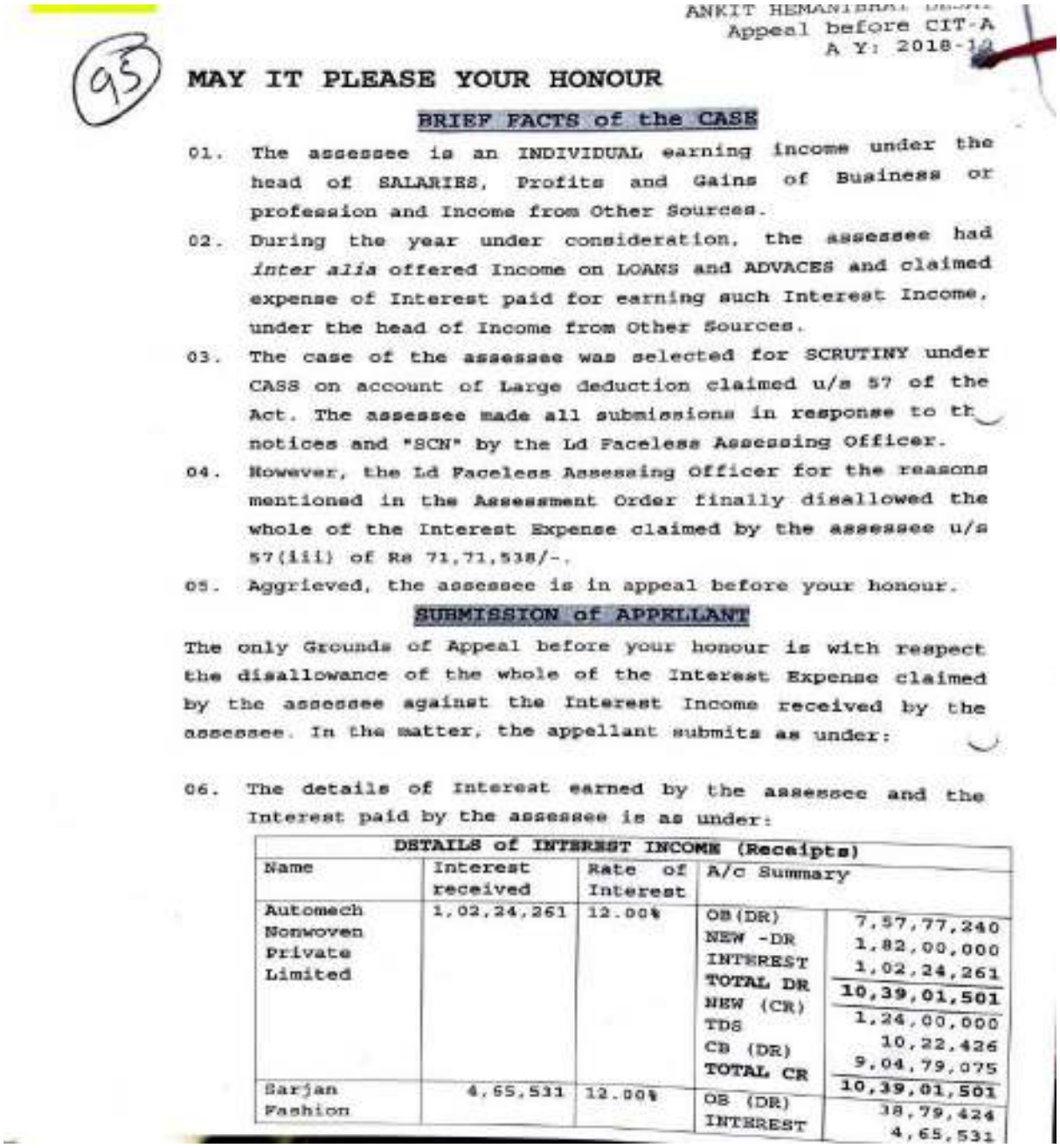
www.taxguru.in

interest of Rs. 9,95,098/- paid to Ms. Shweta Desai while upholding the rest of disallowance.

(v) Still aggrieved, the assessee has come in present appeal before us.

3. Before us, the Ld. AR for assessee filed following Written-Submission:



ANKIT HEMANTBHAI DESAI
Appeal before CIT-A
A Y: 2018-19

95

MAY IT PLEASE YOUR HONOUR

BRIEF FACTS of the CASE

01. The assessee is an INDIVIDUAL earning income under the head of SALARIES, Profits and Gains of Business or profession and Income from Other Sources.

02. During the year under consideration, the assessee had *inter alia* offered Income on LOANS and ADVACES and claimed expense of Interest paid for earning such Interest Income, under the head of Income from Other Sources.

03. The case of the assessee was selected for SCRUTINY under CASS on account of Large deduction claimed u/s 57 of the Act. The assessee made all submissions in response to th notices and "SCN" by the Ld Faceless Assessing Officer.

04. However, the Ld Faceless Assessing Officer for the reasons mentioned in the Assessment Order finally disallowed the whole of the Interest Expense claimed by the assessee u/s 57(iii) of Rs 71,71,538/-.

05. Aggrieved, the assessee is in appeal before your honour.

SUBMISSION of APPELLANT

The only Grounds of Appeal before your honour is with respect the disallowance of the whole of the Interest Expense claimed by the assessee against the Interest Income received by the assessee. In the matter, the appellant submits as under:

06. The details of Interest earned by the assessee and the Interest paid by the assessee is as under:

DETAILS of INTEREST INCOME (Receipts)

Name	Interest received	Rate of Interest	A/c Summary	
Automech Nonwoven Private Limited	1,02,24,261	12.00%	OB(DR)	7,57,77,240
			NEW -DR	1,82,00,000
			INTEREST	1,02,24,261
			TOTAL DR	10,39,01,501
			NEW (CR)	1,24,00,000
			TDS	10,22,426
			CB (DR)	9,04,79,075
			TOTAL CR	10,39,01,501
Sarjan Fashion	4,65,531	12.00%	OB (DR)	38,79,424
			INTEREST	4,65,531

www.taxguru.in

96

ANKIT HEMANTBHAI DESAI
Appeal before CIT-A
A Y: 2018-19

Private Limited			TOTAL DR	43,44,955
			TDS	46,554
			CB (DR)	42,98,401
			TOTAL CR	43,44,955
TOTAL	1,06,89,792			
DETAILS of INTEREST EXPENSE (PAYMENTS)				
Binal Estate p Ltd	9,46,949	10.25%	OB (CR)	2,57,01,192
			NEW RECD	50,000
			INTEREST	9,46,949
			TOTAL DR	2,66,98,141
			REPAYMENT	2,88,28,063
			CB (DR)	-21,29,922
			TOTAL CR	2,66,98,141
Shweta Desai NRI 195	9,95,098	10.25%	OB (CR)	1,22,90,000
			INTEREST	9,95,098
			TOTAL DR	1,32,85,098
			REPAYMENT	40,97,610
			TDS	3,07,485
			CB (CR)	88,80,003
			TOTAL CR	1,32,85,098
Shridhar Construction Private Limited	52,27,304	12.75%	OB (CR)	NIL
			NEW CRED	7,15,17,651
			INTEREST	52,27,304
			TOTAL DR	7,57,44,955
			REPAYMENT	26,50,000
			CB (CR)	7,30,94,955
			TOTAL CR	7,57,44,955
TOTAL	71,69,351			

07. The details of LOANS and ADVANCES given by the assessee is as under (Ledger a/c enclosed herewith at Pg # 1-4 of PB):

Name	AUTO NONWOVEN Private Limited	SARJAN FASHION Private Limited
OBAL	7,54,77,240	38,79,424
NEW GIVEN	1,82,00,000	0
INTEREST RECD	1,02,24,261	4,65,531
TOTAL DR	10,39,01,501	43,44,955
REPAYMENT RECD	1,24,00,000	0
TDS	10,22,426	46,554
TOTAL CR	1,34,22,426	46,554
CL BAL	9,04,79,075	42,98,401

www.taxguru.in

08. The details of UNSECURED LOANS RECEIVED is as un (Ledger a/c enclosed herewith at **Pg # 5-11 of PB)::**

Name	HEMANT DESAI	BINAL ESTATE Private Limited
OBAL	5,98,84,815	2,57,01,192
NEW RECEIVED	NIL	50,000
INTEREST PAID	5,49,00,724	9,46,949
TOTAL CR	**11,47,85,539**	**2,66,98,141**
REPAYMENT MADE	6,05,29,000	2,88,28,063
TDS	NIL	NIL
TOTAL DR	**6,05,29,000**	**2,88,28,063**
CL BAL	**5,42,56,539**	**(-)21,29,922**

Name	SEWETA DESAI	SHRIDHAR CONSTRUCTION Private Limited
OBAL	1,22,90,,000	NIL
NEW RECEIVED	NIL	7,15,17,651
INTEREST PAID	9,95,098	52,27,304
TOTAL CR	**1,32,85,098**	**7,57,44,955**
REPAYMENT MADE	40,97,610	26,50,000
TDS	3,07,485	NIL
TOTAL DR	**44,05,095**	**26,50,000**
CL BAL	**88,80,003**	**7,30,94,955**

09. The SCRUTINY of the case was undertaken for the reason of LARGE DEDUCTION u/s 57. The details Assessing Officer Interest Received and PAID has been submitted in th submission at para 6. The detailed submission was made by the assessee and the same is noted by the Ld Faceless Assessing Officer at para 4.1 of the Assessment Order. On the basis of the submission, the Ld Faceless Assessing Officer had noticed certain contrary facts which are mentioned at Para 4.2 of the Assessment Order. The Ld Faceless Assessing Officer had tried to prove the point that the Interest paid or the Interest bearing funds obtained by the assessee has no nexus with the Interest earned on LOANS and therefore the Interest paid cannot be allowed to be deducted out of the Interest earned by the assessee and accordingly the disallowance of whole of the Interest paid (Rs 71,71,538/-) has been disallowed.

www.taxguru.in

ANKIT HEMANTBHAI DESAI
Appeal before CIT-A
A Y: 2018-19

10. The Ld Faceless Assessing Officer had mentioned that the OPENING BALANCE of INTEREST FREE UNSECURED LOANS as on 01.04.2017 was Rs 5,98,84,815/- but he missed to mention that the INTEREST BEARING UNSECURED LOANS as on 01.04.2017 was also existing at Rs 4,32,24,070/- (including Interest payable of Rs 52,32,878/-), which was utilised for giving the LOAN. THUS, so far OPENING BALANCE is concerned the assessee is having LOANS GIVEN on INTEREST at Rs 7,93,56,664/- against which the Interest Bearing UNSECURED LOANS was Rs 4,32,24,070/-. Thus, the funds obtained with Interest were less than the Total Loans given on Interest. Your honour would appreciate that in the course of routine and regular working one cannot separate or mark the funds for making transactions. However, the overall funds situation is always kept in mind. Any prudent man will not borrow funds for making LOSS. The COMPARATIVE BALANCE SHEET for the year ended on 31/03/2018 and 31/03/2017 is enclosed herewith as per **Pg # 12-16 of PB.** Your honour would appreciate that summary as under:

YEAR ended on	Liabilities	Assets	
	CAPITAL+PROFIT+ USLOANS (INT-FREE) +Secured Home LOAN	**FIXED ASSETS + INVESTMENTS + LOANS & ADV (INT-FREE)**	
Amount as on 31/03/2017	12,01,48,600	9,63,18,165	
Amount as on 31/03/2018	12,90,39,816	10,34,01,062	
AVEARGE	**12,45,94,208**	**9,98,59,614**	
	OTHER CRDITORS	**SUNDRY DEBTORS + TDS RECEIVABLE + ADV TAX + CASH/BANK**	
Amount as on 31/03/2017	1,42,62,876	19,60,716	
Amount as on 31/03/2018	3,11,485	57,90,495	
AVERAGE	**72,87,181**	**38,75,606**	
	UNSECURED LOANS (INTEREST BEARING	**LOANS & ADVANCES (INTEREST BEARING)**	
Amount as on 31/03/2017	4,32,24,070	7,93,56,664	
Amount as on 31/03/2018	7,67,47,654	9,69,07,398	
AVERAGE	**5,99,85,862**	**8,81,32,031**	

11. From the above Chart and the Comparative Chart enclosed herewith at **Pg # 17 of PB,** your honour would find

www.taxguru.in

99

that there are three segments in the Balance Sheet and source and utilisation and surplus in one segment utilised in another segment is as under:

LIABILITIES	ASSETS	SURPLUS / DEFICIT
OWN FUNDS + OTHER INTEREST FREE + SPECIFIC HOME LOAN FUND	UTILISED OUT of the OWN FUNDS + OTHER INTEREST FREE + SPECIFIC HOME LOAN FUND in FIXED ASSETS, INVESTMENT and Interest Free Loans & Advances	
12,45,94,208	9,98,59,614	(+) 2,47,34,594
CURRENT LIABILITIES being OTHER CREDITORS + OVER ISSUED CHEQUES	CURRENT ASSETS being SUNDRY DEBTORS + TDS + ADV TAX + CASH and BANK	
72,87,181	38,75,606	(+) 34,11,575
TOTAL SURPLUS FUNDS AVAILABLE utilised in other segment		(+) 2,81,46,169
UNSECURED LOANS (Interest Bearing)	LOANS and ADVANCES (Interest Bearing)	
5,99,85,862	8,81,32,031	(-) 2,81,46,169
TOTAL DEFICIT/EXCESS UTILISATION		(-) 2,81,46,169
	NET	NIL

12. From the above table your honour would find that th Interest-Bearing UNSECURED LOANS is less than Total Interest Bearing LOANS and ADVANCES. That shows the prudency of the assessee. The available INTEREST FREE or OWN Funds has been finally utilised for earning Interest. Rs 2,81,46,169/- has been used for advancing Interest Bearing LOANS and ADVANCES. The year end position (average considered) is that the assessee had maximised his earning from Interest and paid the Tax. In the Assessment Order, the Ld Faceless Assessing Officer in para 4.2 had observed that the assessee had declared handsome Income. The copy of the Statement of Computation of Total Income is enclosed herewith as per **Pg # 18-21 of PB.** The TOTAL Income declared is Rs 1,00,98,710/- as per ITR. Thus, the

www.taxguru.in

100

whole of the Interest Bearing Funds had been utilised for earning Interest from LOANS and ADVANCES. The nexus of the Interest bearing Funds and the utilisation thereof for giving Interest Bearing Advances is clearly established as per the CHART enclosed herewith at **Pg # 22 of PB.** Transaction in particular with some direct nexus is not decisive and the nexus has to be seen in the overall context. The Hon'able SC had also decided that Indirect Nexus is also sufficient in the matter of claiming deduction u/s 57(iii). For the Interest u/s 36(1)(iii) also the Hon'able SC had decided in the matter of Reliance that overall funds has to be considered for the purposes of section 14A as well as section 36(1)(iii).

13. **JUDICIAL PRONOUNCEMENTS:** The case laws relied upon by the appellant are as under:

BEST TRADING AND AGENCIES LTD., vs DCIT, CIRCLE-11(2), BANGALORE, 119 taxmann.com 129 (Karnataka)(HC KARNATAKA)
Pg # 23-29 of PB.

Section 57 of the Income-tax act, 1961 ..... during year, assessee deposited surplus from restructuring process in bank fixed deposit and earned interest against which interest paid to lenders and creditors of said company was claimed as deduction under section 57 - Assessing officer disallowed interest claimed as deduction on ground that there was no nexus between interest paid to creditors and interest earned on fixed deposits - whether since assessee in order to cover cost of interest payable to creditors for unpaid period, invested surplus form restructuring process in fixed deposits and amount earned by way of interest was paid to lenders and creditors, there was nexus between interest paid to creditors on unpaid balance and interest earned on deposits and, therefore, assessee was entitled to deduction of interest income under section 57(iii) - Held, yes, [Para 15] a(In favour of assessee)

CIT vs Smt. SUSHILA DEVI KHADARIA, 183, taxman 275 (Bombay) (HC BOMBAY) **Pg # 30-31 of PB.**

Section 57, read with Section 58, of the Income-tax Act, 1961- ..... on appeal, Commissioner

www.taxguru.in

ANKIT HEMANTBHAI DESAI
Appeal before CIT-A
A Y: 2018-19

(101)

(Appeal) allowed deduction holding that even an indirect connection could prove nexus between expenditure incurred and income earned - On revenue's appeal, Tribunal upheld view taken by Commissioner (Appeals) holding that payment of interest and finance charges was in relation to genuine loans - Whether in view of aforesaid findings of Tribunal, there was no substance in revenue's appeal and same was to be dismissed - Held, yes

SETH R. DALMIA vs CIT, 110 ITR 644 (SC) Pg # 32-39 of PB.

In Commissioner of Income-tax vs H.H. Maharani Vijaykuverba Saheb of Morvi [1975] 100 ITR 67 (Bom), a Division Bench of the Bombay High Court held that the deduction which is permissible under sub-section (2) of section 12 is an expenditure incurred solely for the purpose of making or earning the income which has been subjected to tax and the dominant purpose of the expenditure incurred must be to earn income. It was further held that the connection between the expenditure and the earning of income need not be direct, and even an indirect connection could prove the nexus between the expenditure incurred and the income. We fully agree with the view taken by the Bombay High Court.

CIT (LTU) vs RELIANCE INDUSTRIES LTD., 86 taxmann.com 24 (Bombay) (Bombay HC) AND
CIT vs RELIANCE INDUSTRIES LTD.,102 taxmann.com 52 (SC)
Pg # 40-51 of PB.

33.We do not see how when the Assessing Officer's views are that in cases of the interest free loans and interest given by the assessee to its subsidiary companies are in the above sums, still, the principal laid down by this Court that if there are funds available to them interest free and overdraft or loans taken, would not apply. This view of the Assessing Officer is ex facie contrary to the settled principal that a presumption would arise that the investment would be out of the interest free funds generated or available with the company. Then, the borrowed capital in hand in that case and interest expenditure was deductible under section 36(1)(iii) of the I.T.Act,1961. The Tribunal held that the interest free fund available to the

www.taxguru.in

102

assessee is sufficient to meet its investment. ……. In such circumstances, the concurrent view on disallowance of interest was reversed and the appeal of the assessee to that extent was partly allowed. We do not see any substantial question of law arising from such a view of the Tribunal.

Considering the above, it is prayed and requested that the DISALLOWANCE of Interest of Rs 71,71,538/- may be kindly deleted.

HUMBLE REQUEST

14. Your honour will appreciate that as the proceedings are in faceless mode, there is very less scope of oral discussion in the matter. In case your honour have any query, doubt or inquiry in the matter, it will be highly appreciated, if your honour allow an opportunity to the appellant to respond to your honour's query doubt, or inquiry.

15. **Alternatively**, the appellant requests for allowing VC in case, the issues require oral discussion over VC.

CA Suresh K Kabra
पार्टनर - एस के काबरा एण्ड कम्पनी
Chartered Accountants
Authorised Representative

SURAT .. Dated 08/02/2024