

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , SANJAY GARG, JM

आयकर अपील सं./ ITA NO. 247/Chd/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Anjana Vinayak H.No. 545, Model Town Yamunanagar, Haryana	बनाम	The ITO, W-1 Ward-1 Yamunanagar, Haryana
स्थायी लेखा सं./PAN NO:		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Raman Kumar Goyal, CCIT(Retd)

राजस्व की ओर से/ Revenue by : Shri Arvind Sudarshan, JCIT DR

सुनवाई की तारीख/Date of Hearing : 09/07/2020

उद्घोषणा की तारीख/Date of Pronouncement : 23/07/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order of the Ld. CIT(A)-4, Ludhiana dt. 18/01/2019.

2. In the present appeal Assessee has raised the following grounds:

1. The order of CIT(A) is bad in Law.

Disallowance of deduction under section 57(iii)

2. The CIT(A) erred in not considering the decision of ITAT Agra in the case of Raj Kumari Agarwal (ITA No. 176/Agra/2013) that relied upon decision of Supreme Court in the case of Sasoon J David & Co. (118 ITR 261)

3. The CIT(A) erred in relying upon decision of Hon'ble Supreme Court in the case of Dr. V.P. Gopinathan 248 TTR 449, Wherein the Assessee did not claim deduction U/s 57(iii), whereas the Assessee claimed deduction U/s 57(iii).

4. The CIT(A) erred in not noticing that the Hon'ble Supreme Court in the case V.P. Gopinathan confirmed the decision merely on the fact that the argument of the Assessee of real income was not accepted, whereas there is no such argument in the case Anjani Vinayak.
5. The CIT(A) erred in not considering the expression "wholly and exclusively" and that does not mean necessarily.
6. The CIT(A) erred in not noticing the finding of the ITAT Agra in the case of Raj Kumari Agarwal wherein it was held that such expenditure is an expenditure incurred wholly and exclusively for earning from interest on fixed deposits, whereas there is no such discussion in the case of Dr. V.P. Gopinathan 248 ITR 449
7. The above grounds are without prejudice to each other.
8. The appellant craves leave to add, modify and withdraw any other grounds of appeal before or during the appellate proceedings.

From the aforesaid grounds it would be clear that the only grievance of the assessee relates to the confirmation of disallowance of claim for deduction under section 57(iii) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. Facts of the case in brief are that the assessee filed her return of income on 21/03/2015 declaring an income of Rs. 13,20,390/-. Later on, the case was selected for scrutiny. During the course of assessment proceedings the A.O. noticed that the assessee had shown income under the head "income from other sources" which was on account of interest from saving bank account and FDR, amounting to Rs. 45,49,341/- out of which deduction of Rs. 28,93,281/- was claimed on account of payment of interest on loan. The A.O. asked the assessee to justify the claim for deduction of Rs. 28,93,281/-. In response the assessee submitted as under:

"With regard to point No. 2. In continuation of Deduction of Rs. 2893281/- claimed on account of interest paid on loan raised against FDR to bank u/s 57, as required by your goodself copy of account of loan statement from bank is being enclosed for your kind verification:-

With reference to expenses claimed against FDR intt. I had claimed Rs. 2893281/- under section 57(iii) of the Act, 1961 towards loan raised from the same bank against security of fixed deposit.

There is no dispute that interest income in this case is to be taxed as an 'Income from other sources' For your kind reference section 57(iii) of the Act is reproduced here as "Section 57(iii) of the act clearly provides that " the income chargeable under 'Income from other sources' shall be computed after making the Deduction namely (interalia)..any ..expended wholly and exclusively for the purpose of making or earning such income.

The question here is that we really need to adjudicate on whether or not interest paid on the loan against the fixed deposit can be said to have been incurred "wholly and exclusively "for the purpose of earning of interest income from fixed deposits.

*The legal connotations of expressions "wholly and exclusively" came up for consideration before a coordinate bench of this Tribunal, though in the context of deductions from business income, and the coordinate bench, extensively reproducing from binding judicial precedents, observed as follows in the case of A/ay Singh Deal Vs. [JCIT (91 ITD 196) 2004] :
.....*

It is thus clear that as long as the expense is incurred wholly and exclusively for the purpose of earning an income, even if it is not necessarily for earning that income, it will still be deductible in computation of income. What thus logically follows is that even in a situation in which proximate or immediate cause of an expenditure was an event unconnected to earning of the income in the sense that the expenditure was not triggered by the objective to earn that income, but the expenditure was, nonetheless, wholly and exclusively to earn or protect that income, it will not cease to be deductible in nature. It is also important to bear in mind the fact that a borrowing against fixed deposit cannot be considered in isolation of a fixed deposit itself inasmuch as going by the admitted facts of this case, the interest chargeable on the fixed deposit itself is linked to the interest accruing and arising from the fixed deposit. On these facts, in order to protect the interest earnings from fixed deposits and to meet her financial needs, when an assessee raises a loan against the fixed deposits, so as to keep the source of earning intact, the expenditure so incurred in wholly and exclusively to earn the fixed deposit interest income.

The assessee could have gone for premature encashment of bank deposits, and thus ended the source of income itself as well, but instead of doing so, she resorted to borrowings against the fixed deposit and thus preserved the source of earning. The expenditure so incurred, is an expenditure incurred wholly and exclusively for earning from interest on fixed deposits. We are alive to the fact that in the case of a business assessee, and in a situation in which the borrowings against fixed deposits were resorted to for use in business, consideration for end use of funds so borrowed would be relevant because the interest deduction is claimed as a business deduction under section 36(1)(iii). That aspect of the matter, however, is academic in the present context as the limited issue for our consideration is whether or not, on the facts before us, the interest on borrowing against the fixed deposits could be said or protect the interest income from fixed deposit interest and thus, incurred wholly and exclusively for the purposes of earning such income."

3.1 The A.O. again asked the assessee to explain as under:

" You have claimed deduction of Rs. 28,93,281/- as expenses against interest earned of bank FDRs. As per order sheet entry dated 22.08.2016, it was requested to explain the purpose of availing the overdraft facility from the bank and how the loan funds have been utilized by you. Further, it was requested to justify that the expenditure of interest has been incurred wholly and exclusively for the purpose of making or earning such income as prescribed u/s 57 (iii) of the IT Act, 1961. The proceedings were fixed on hearing on 26.08.2016 but no reply has been filed, today. Please explain. "

3.2 In response the assessee stated as under:

"I had given money to my son to avoid premature encashment of the fixed deposits, for that purpose which would have resulted in net loss to me, I took loan against fixed deposit so as to keep the fixed deposit intact and earn the interest income thereon. As if I had premature FDR instead of taking loan, my income would be less as compared to at present. Same was held in case of Raj Kumari Aggarwal Vs DCIT, Circle Agra ITANo. 176/Agra/2013 Ay 2008-09 dated 19.07.2014."

The assessee has relied upon the following judgments:

Ajay Singh Deol Vs. [JCIT (91 ITD 196] 2004

Raj Kumari Aggarwal Vs DCIT, Circle Agra"

3.3 The A.O., however, was not satisfied from the explanation of the assessee and made the addition of Rs. 28,93,281/- by observing in para 3.3 of the assessment order dt. 28/11/2016 as under:

" 3.3 From the facts discussed above, it is apparent that the assessee has failed to justify that the said expenditure of interest has been incurred wholly and exclusively for the purpose of making or earning such income as prescribed u/s 57(iii) of the IT Act, 1961. Interest paid on loans raised against FDRs for giving the money to son cannot be said to be an expenditure incurred wholly and exclusively for the purpose of making or earning such income as prescribed u/s 57(iii) of the IT Act, 1961. Hence, the explanation filed by the assessee with regard to deduction of Rs. 28,93,281/- claimed u/s 57 (iii) of the I.T. Act, 1961 out of interest income declared at Rs. 45,49,341/- is hereby rejected. Accordingly, an addition of Rs. 28,93,281/- is made to the income of the assessee under the head income from other sources."

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

" In this regard it is submitted that assessee filed return declaring income of Rs. 1320390/-.

Assessee's only source of income is interest from bank FDRs, Interest on saving bank account or interest on securities.

Assessee has invested in fixed deposits receipts in bank in earlier years and is earning interest thereon as below:

Date of purchase of FDR	Rate of interest at which invested	Interest received quarterly during the financial year 2013-14
Renewal of old FDR valuing Rs. 44250000/-	@ 9.15% P.A	Rs 4549341.00

Assessee raised loans against the following FDR's and paid interest on the same to bank as indicated each such loan:

Particular	Amount of loan raised against the FDR	Rate of interest	Interest paid during the year
Loan A/c No. 358607030106673	Opening Balance 180.89 lacs	@ 10.15	Rs. 1994713/-
Loan A/c No. 358607030106712	Opening Balance 52.30 lacs	@ 10.15	Rs. 898568
Addition received during the year 2013-14	50.25 lacs		
	102.55 lacs		
			2893281.00

As per policy of the bank, if FDR with bank are encashed Pre Maturity, then there is penalty of 1.5% by the bank.

The Assessee got loan against the security of FDR Rs. 102.55 lacs @ 10.15% i.e; 1% higher. The Interest receivable on FDR i.e; 9.15%. Had the Assessee got FDR Pre matured, then she will lose ½% more and it works out total Rs. 51275/-.

Your honour will appreciate that the Assessee has got more Income on account of Interest on FDR during the year, even after making payment of interest on loan received against security of these FDR.

Thus during the year assessee received interest of Rs. 45,49,341/- against the FDR and paid a sum of Rs. 28,93,281/- in respect of loans raised against the FDR's Assessee claimed the above referred amount of Rs. 28,93,291/- as deduction against the interest received as deduction under section 27 of IT Act. However the learned assessing officer has disallowed the claim of the assessee and made addition of Rs. 28,93,281/- to the income of the assessee. Aggrieved the said addition, assessee has filed an appeal before your goodself.

Assessee has raised the following grounds of appeal:

1. The learned assessing officer has wrongly applied the provisions of section 57(iii) of IT Act.
2. The learned assessing officer had not appreciated the intention of the assessee, if she had premature FDR instead of taking loan, her net income would be on the lower side as had been declared by her in the return as duly explained during the course of assessment but the learned A.O. had not accepted the contention of the assessee.
3. The learned assessing officer has failed to understand the facts and circumstances of the assessee.
4. The appellant may be allowed to add/alter or modify any of the grounds of appeal at the time of hearing.

Ground no. 1 to 3 raised by the assessee are in respect of disallowance of interest of Rs. 28,93,281. Assessee has been receiving interest on various FDR and the same was being credited to the saving bank account of the assessee. Assessee has raised two loans of Rs. 180 Lacs and of Rs. 102 Lacs against security of the FDR's of the assessee as these funds were required for the need of the family, for the purposes of business being handled by her sons.

It may be seen that assessee has interest earning apparatus in the shape of FDR's in the bank on which she was receiving interest @ 9.15% Per annum and interest on each of the FDR's was being credited to the saving bank account of the assessee. Assessee claimed deduction of the interest paid under section 57(iii) of IT Act.

Assessing officer however relied on the judgment in the case of CIT Vs. VP Gopinathan 248 ITR 449. However the ratio laid down in that case is not applicable as in that case, assessee before the Tribunal had made it clear that the assessee's case did not rest upon the provisions of Section 57(iii) of the Act. In other words, it was not the contention of the assessee, that he was paying interest to the bank to facilitate the earning of interest from the bank.

The argument before the honorable Supreme Court was on behalf of the assessee was that the real income of the assessee is only Rs. 27,034. The Honorable Supreme Court in that situation held that 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.

The relevant paras of CIT Vs. V.P. Gopinathan 248 ITR 449 are reproduced as under:

" 4. 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 Section 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.

5. The argument before us on behalf of the assessee was that the real income of the assessee is only Rs. 27,034/-.
6. 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 placed by him in the bank."

The case was decided based on arguments taken by the assessee before ITAT.

The case of the assessee is squarely covered on the fact situation in the case of Raj Kumari of ITAT AGRA who has discussed in detail the similar facts (such situation and facts not existing in VP GOPINATHAN CASE of Hon'ble Supreme Court.

FACTS AND SITUATION EXPLAINED AS UNDER

For the purposes of requirement of funds, which were assessee's own funds and were lying with the bank in the shape of FDR assessee had the following options:

Option 1: assessee could have prematurely en-cashed the FDR and in that case she was required to pay back the interest in the shape of penalty for premature closing of FDR's.

Option2: Assessee could have raised loans against the FDR's and paid interest on the loan raised against.

In the first case the income earning apparatus would have ceased to exist at the time of premature closing of FDR and assessee would not have earned any income on such closed FDR. Further assessee was also liable to pay bank the penal charges for premature closing the FDR.

In the second option assessee raised loans against security of her own FDR so as to save her income earning apparatus but had to pay interest on the demand loan.

Assessee chose the second option so as to save her income earning apparatus and claim the interest paid against the interest earned on FDR's as deduction under section 57(iii) of ITA Act.

Section 57 of the IT Act reads as under:

Section 57:

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

(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:

Thus for claiming deduction under section 57(iii) it has to be proved that the expenses have been laid out or expended wholly and exclusively for the purpose of making or earning such income.

There is no dispute that interest income in this case is to be taxed as an 'income from other sources.' Section 57(iii) of the Act clearly provides that "the income chargeable under the head 'income from other sources' is to be computed making thededuction, namely..(inter alia)...any...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". It is thus clear that as long as expenditure is incurred wholly or exclusively for the purpose earning an income, such, expenditure constitutes an admissible deduction in computation of the income.

Reference was made to the case of Raj Kumar Agarwal ITAT AGRA ITA No. 176/Agra/2013 dated 18-07-14(copy enclosed)

As can be seen above the case of the assessee falls within the ratio of the judgment of ITAT Agra Bench in the case of Raj Kumari Aggarwal Vs. DCIT Circle 2 Agra in ITA no. 176/Agra/2013 where the facts of the case of assessee are identical.

The decision of Hon'ble Supreme Court is distinguishable in view of the fact that factual situation is different as the issue of necessity of loan and the loss arising due premature encashment of FDR was not before the Supreme Court. The ITAT AGRA has also relied upon the SC DECISIONS.

Keeping in view the above explained position, it is respectfully prayed that assessee may be allowed deduction as claimed in the return of income at Rs. 28,93,281/-.

5. Ld. CIT(A) after considering the submissions of the assessee observed that the assessee earned interest income on FDR amounting to Rs. 45,49,341/- and raised the loan against the security of FDR and paid interest of Rs. 28,93,281/-. He further observed that the interest expenditure was incurred for providing loan to the family members therefore the disallowance of interest made by the A.O. on account of loan raised against security of FDR was to be upheld. Accordingly the addition made by the A.O. was sustained

6. Now the assessee is in appeal.

7. Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the assessee invested in FDR's in bank in earlier years and was earning interest @ 9.15% per annum. Against the said FDR valuing Rs. 4,42,50,000/-, the assessee raised the loan of Rs. 180.89 lacs @ 10.15% amounting to Rs 1994713/-, another loan of Rs. 102.55 lacs was raised, on the said loan interest of Rs. 898568/- was paid. It was further submitted that as per the policy of the bank if the FDR were to be encashed prematurely, then there was a penalty @ 1.5% by the bank. Therefore, the assessee by getting the FDR premature, would have loosed 1½ % interest which worked out to Rs. 51275/-. It was contended that the assessee received interest of Rs. 45,49,341/- on the FDR and paid sum of Rs. 28,93,281/- in respect of loan raised against the FDR and claimed the payment of interest against the interest received, as a deduction under section 57(iii) of the Act. It was stated that in case the FDR was to be prematurely encashed then the income earning apparatus would have ceased to exist and the assessee was not have earned any income on said closed FDR and was liable to pay the bank the penal charges for premature closing of the FDR. It was contended that the assessee opted to raise the loan against the FDR and in this manner saved the interest as well as did not pay any penalty, therefore, it can be said that the assessee incurred the expenditure exclusively or wholly for the purposes of earning the income, so it was an admissible deduction in computation of the income. Reliance was placed on the following decisions of the ITAT and Hon'ble High Courts:

- Raj Kumar Agarwal Vs. DCIT, Circle-2, Agra in ITA No. 176/Agra/2013 order dt. 18/07/2014

- Knitwell India Pvt. Ltd. Vs. DCIT, Circle-1(1), Chandigarh in ITA No. 1174/Chd/2017 order dt. 06/02/2019
- CIT Vs. U.K. Bose in ITA No. 258/2010 (Del HC) order dt. 30/11/2012
- CIT Vs. J.B. Royd in ITA No. 546/2010 (Del HC) order dt. 30/11/2012

8. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) had given the findings without considering the reply of the assessee which shows that the Ld. CIT(A) has prejudged the issue. It was contended that the Ld. CIT(A) referred the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Dr. V.P. Gopinathan reported at 248 ITR 449 which was relied by the A.O. however the said judgment was distinguishable on facts because in the said case there was no issue relating to the disallowance under section 57(iii) of the Act. It was further submitted that in the said case which was relied by the A.O. and considered by the Ld. CIT(A) the loan was taken by the assessee from another bank and interest was paid on the said loan and the interest earned on FDR was from different bank while in the case of assessee the loan was raised against the FDR to save the interest and not to pay the penalty.

9. In his rival submissions the Ld. Sr. DR reiterated the observations made by the authorities below and strongly supported the impugned order passed by the Ld. CIT(A).

10. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is an admitted fact that the assessee was having old FDR's with the Bank and earning interest @ 9.15%. The assessee raised the loan against the FDR and paid 1% extra interest. The Ld. Counsel for the assessee pointed out that as per the policy of the Bank if the FDR with the bank were encashed prematurely then there was penalty of 1.5% by the bank, therefore by not encashing the FDR prematurely and raising the loans against the same FDR, the assessee saved interest @ 0.5%. So, there is no loss of the Revenue. In the instant case, it is not the case of the Department that the assessee raised the interest bearing funds and utilized the same for giving interest free advances. On the contrary the advances given by the assessee were out of the assessee's own funds. Moreover, by raising the loans against the FDR and not encashing prematurely the assessee saved the interest and also kept the income earning apparatus intact, therefore the disallowance made

by the A.O. and sustained by the Ld. CIT(A) was not justified particularly when the assessee has shown the income under the head "income from other sources" and not "the business income". In the present case, the interest paid on the loans raised against the FDR was having the direct nexus with the interest received from the FDRs and the assessee choose to save the penalty of 1.5% by raising the loans at 1% higher rate of interest than the interest rate on FDR thus there were saving of 0.5%. As regards to the decisions relied by the A.O. and considered by the Ld. CIT(A) i.e; CIT Vs. Dr. V.P. Gopinathan (supra) is concerned, it is noticed that the same is distinguishable from the facts of the assessee's case, since the issue in the said case was not relating to the applicability of section 57(iii) of the Act rather in the said case the loan was raised from different bank on which interest was paid while the interest was earned on the FDR with the different bank, so there was no nexus. We therefore by considering the facts of the present case as discussed herein above, are of the view that the disallowance sustained by the Ld. CIT(A) was not justified, accordingly, the same is deleted.

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

(Order pronounced in the open Court on 23/07/2020)

Sd/-

संजय गर्ग

(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

AG

Date: 23/07/2020

Sd/-

एन.के.सैनी,

(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File