

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “SMC-C” , BANGALORE**

**Before Shri Chandra Poojari, Accountant Member**

IT(IT)A No.1715/Bang/2019 : Asst.Year 2012-2013  
IT(IT)A No.1716/Bang/2019 : Asst.Year 2013-2014

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| Smt.Zeelia Zeena Mayzean Shenoy<br>No.3-65/9, Horizon, Lohithnagar<br>1 <sup>st</sup> Main, 2 <sup>nd</sup> Cross,<br>Ashok Nagar Post<br>Mangalore – 575 006.<br><b>PAN : AAHPZ0591Q</b> | Vs. | The Income Tax Officer<br>(International Taxation)<br>Mangalore. |
| (Appellant)                                                                                                                                                                               |     | (Respondent)                                                     |

Appellant by : Smt.Sheethal Borkar, Advocate  
Respondent by : Dr.Ganesh R.Ghale, Standing Counsel

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| <b>Date of Hearing : 20.02.2020</b> | <b>Date of<br/>Pronouncement: 27.4.2020</b> |
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**ORDER**

These appeals filed by the assessee arise out of two different orders of the CIT(A), Bangalore. The relevant assessment years are 2012-2013 and 2013-2014.

2. There is a delay of 67 days in filing these appeals before the Tribunal. The assessee has filed a petition for condonation of delay and also an Affidavit of the assessee stating therein the reasons for belated filing of the appeal. I have perused the reasons stated in the affidavit for not filing the appeal on time. I find that there is sufficient cause for the delayed filing of these appeals and no laches can be attributed to the assessee. Hence, I condone the delay and proceed to dispose of the appeals on merits.

3. Common grounds are raised in both the appeals, except variance in figures. Hence, I reproduce the grounds raised in IT(IT)A No.1715/Bang/2019 for assessment year 2012-2013:-

*“(1) The learned CIT(A) erred in passing the order in the manner which he did.*

*(2) The learned CIT(A) ought to have appreciated that the appellant was right in her claim for netting of interest income and therefore, the same ought to have been allowed.*

*(3) The ld.CIT(A) ought to have considered the case laws filed by the Appellant where in the netting off interest has to be allowed and same ought to have allowed in the interest of justice.*

*(4) The ld.CIT(A) ought to have appreciated that if at all there was any error in the interest income, it was due to the belated upholding of the TDS return by the concerned Bank and for no default of the appellant and hence, ought to have refrained from confirming the said addition of Rs.22,79,226.*

*(5) The learned CIT(A) erred in upholding the interest u/s 234B and 234C of the Act.*

*(6) Without prejudice the disallowance as confirmed by the learned CIT(Appeals) are arbitrary excessive and ought to be reduced substantially.*

*(7) For these and such other grounds that may be urged at the time of hearing the Appellant prays that the appeal may be allowed.”*

4. Briefly stated the facts of the case are that the assessee filed her return of income for the assessment year 2012-2013 declaring total income of Rs.7,52,510. The Assessing Officer completed the assessment vide order passed u/s 143(3) r.w.s. 147 of the I.T.Act on 22.12.2017, after making disallowance of interest payment claimed by the assessee, and determined the total income at Rs.21,79,226. Aggrieved by the order of the Assessing Officer, the assessee went in appeal before the

CIT(A), who confirmed the view taken by the Assessing Officer. Therefore, the assessee has come up in second appeal before the Tribunal.

5. The learned AR relied on the order of the Agra Bench of the Tribunal in the case of *Raj Kumar Agarwal v. DCIT [ITA No.176/Agra/2013]*. The Tribunal vide order dated 18<sup>th</sup> July, 2014, held as under:-

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

*17. The legal connotations of expression "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 Ajay Singh Deol Vs. JCIT [(91 ITD 196) 2004]:*

*8. We find guidance from a passage from the judgment of House of Lords in the case of Atherton vs. British Insulated & Helsbey Cables Ltd. (1925) 10 Tax Cases 155 (HL), referred to with approval by the Hon'ble Supreme Court in the case of CIT vs. Chandulal Keshavlal & Co. (1960) 38 ITR 601 (SC), which reads as follows:*

*"It was made clear in the above cited cases of Usher's Wilshire Brewery vs. Bruce (supra) and Smith vs. Incorporated Council of Law Reporting (1914) 6 Tax Cases 477 that a sum of money expended not with a necessity and with a view to direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency and in order to indirectly facilitate, carrying on of business may yet be expended wholly and exclusively for the purpose of the trade; and it appears to me that the findings of the CIT in the present case, bring the payment in question within that description. They found (in words which I have already quoted) that payment was made for the sound commercial purpose of enabling the company to*

*retain the existing and future members of staff and for increasing the efficiency of the staff; and after referring to the contention of the Crown that the sum of Sterling Pound 31,784 was not money wholly and exclusively laid out for the purpose of the trade under the rule above referred to, they found deduction was admissible-thus in effect, though not in terms, negating the Crown's contentions. I think that there was ample material to support the findings of the CIT, and accordingly hold that this prohibition does not apply."*

*It will, therefore, be clear that even if an expense is incurred voluntarily, it may still be construed as 'wholly and exclusively'. Explaining this principle, Hon'ble Supreme Court has, in the case of Sassoon J David & Co. (P) Ltd. vs. CIT (1979) 118 ITR 261 (SC) inter alia observed that:*

*"It has to be observed here that the expression "wholly and exclusively" used in s. 10(2)(xv) of the Act does not mean "necessarily". Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under s. 10(2)(xv) of the Act even though there was no compelling necessity to incur such expenditure. It is relevant to refer at this stage to the legislative history of s. 37 of the IT Act, 1961, which corresponds to s. 10(2)(xv) of the Act. An attempt was made in the IT Bill of 1961 to lay down the "necessity" of the expenditure as a condition for claiming deduction under s. 37. Sec. 37(1) in the Bill read "any expenditure..... laid out or expended wholly, necessarily and exclusively for the purposes of the business or profession shall be allowed ..." The introduction of the word "necessarily" in the above section resulted in public protest. Consequently, when s. 37 was finally enacted into law, the word "necessarily" came to be dropped. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under s. 10(2)(xv) of the Act if it satisfies otherwise the tests laid down by law."*

*18. 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 is wholly and exclusively to earn the fixed deposit interest income. The authorities below were apparently swayed by the fact that the borrowings were triggered by assessee's financial needs for personal purposes and, by that logic, the borrowing cannot be said to be wholly and exclusively for the purposes of earning interest income, but what this approach overlooks is whether the expenditure is incurred for directly contributing to the beginning of or triggering the source of income or whether the expenditure is for protecting, and thus keeping alive, that source of income, in either case it is expenditure incurred wholly and exclusively for the purpose of earning that income. The assessee indeed required that money, so raised by borrowing against the fixed deposits, for her personal purposes but that's not relevant for the present purposes. 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, in our considered view, 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 borrowings against the fixed deposits could be said to protect the interest income from fixed deposit interest and thus, incurred wholly and exclusively for the purposes of earning such income."*

6. On the other hand, the learned Departmental Representative relied on the order of the co-ordinate Bench of the Tribunal in the case of Shri M.J.Aravind v. JCIT [ITA No.1991/Bang/2016]. The Tribunal vide order dated 20.04.2018 held as under:-

*“8. As per the provisions of section 57(iii) of IT Act, 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 under the head ‘income from other sources’ is allowable. In addition to that, in respect of income excluding exempt income being interest on securities, any reasonable sum paid by way of commission or remuneration to banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee is allowable as per clause (i) of section 57. Apart from these two clauses i.e. clause (i) & (iii), other clauses of section 57 are not applicable in the present case. The assessee’s claim is this that as per section 14A of IT Act, ½% of the investments has to be disallowed and the balance has to be allowed and the assessee computed the disallowance in that manner and claimed balance amount as deduction. In this regard, we observe that section 14A comes into picture in respect of those expenses which are otherwise allowable and therefore, the assessee has to first establish this that the expenses claimed by the assessee is allowable under any provisions of the law. For that, the assessee has to show that the claim of the assessee is allowable u/s. 57 of IT Act because the expenses are incurred in earning of income from other sources. As per the details of the expenses claimed by the assessee, it is available on table 2 of written submissions filed by the assessee before the CIT(A) as reproduced above, it is seen that there is no claim regarding any expenses specified in clause (i) of section 57 i.e. commission or remuneration to banker or any other person for the purpose of realising dividend or interest income because the assessee has claimed deduction on account of PMS charges, Salaries, Professional charges, vehicle maintenance, travel, computer maintenance, printing and stationery, telephone charges and bank charges. Hence no deduction is allowable in the present case under clause (i) of section 57.*

9. Regarding the allowability of deduction under clause (iii) of section 57, it has to be established by the assessee that expenditure has been exclusively laid out or expended wholly and exclusively for the purpose of making or earning such income taxable under the head 'income from other sources' and a categorical finding has been given by CIT (A) in para no. 6.2 of his order as reproduced above that no such detail was furnished by the assessee. Before us also, the assessee has made general arguments and has submitted general details but no specific details were furnished before us also. Hence, we hold that no deduction is allowable u/s 57 (iii).

10. Now we examine the applicability of two judgments on which reliance have been placed by ld. AR of assessee. First judgment is the judgment of Hon'ble Apex Court rendered in the case of CIT Vs. Rajendra Prasad Moody (supra). In our considered opinion, this judgment does not help assessee in the absence in the absence of any details as required u/s. 57(iii) of IT Act because the disallowance was not made by the AO and confirmed by CIT (A) by holding that since no income is earned in the present year, deduction is not allowable in respect of this expenditure which are spent for earning some income taxable under the head "Income from other Sources" but income could not be earned in the present year. The reason for disallowance made by the AO and confirmed by CIT(A) is this that the assessee has not furnished necessary details and hence, this judgment renders no help to the assessee in the present case.

11. Reliance has been placed by ld. AR of assessee on the Tribunal order rendered in the case of East West Hotels Ltd. vs. ACIT (supra). In that case, lease rent income was to be assessed as income from other sources and the assessing officer held that expenditure allowable is restricted to only such payment, which is separately binding on the employer and legal entity, i.e., company, such as salaries, PF, ESI and other inevitable expenses. In that case, the assessee was a company and the Tribunal has followed the judgment of Hon'ble Calcutta High Court rendered in the case of CIT Vs. Ganga Properties Ltd. as reported in 199 ITR 94 in which it was held that expenditure incurred in complying with statutory obligations is deductible u/s. 57(iii) of IT Act. As per the relevant para of judgment reproduced by the Tribunal, it was noted that even if a company derives income from 'other sources', it has to maintain its establishment for complying with statutory

*obligations so long it is in operation and its name is not struck off the register of companies or unless the company is dissolved which means cessation of all corporate activities of the company for all practical purposes and so long as it is in operation, it has to maintain its status as a company and it has to discharge certain legal obligations and for that purpose, it is necessary to appoint clerical staff and a secretary or accountant and incur incidental expenses and therefore, such expenses incurred were wholly and exclusively for the activities to earn income and it was held that such expenses are allowable. For the same ratio, judgment of Hon'ble Bombay High Court rendered in the case of Chinai & Co. (P.) Ltd. Vs. CIT a reported in 206 ITR 616 was also followed and the judgment of Hon'ble Allahabad High Court rendered in the case of Rampur Timbur & Turnery Co. Ltd. as reported in 129 ITR 58 was also followed. Since in the present case, the assessee is not a company, these judgments of Hon'ble Calcutta High Court in the case of CIT Vs. Ganga Properties Ltd. (supra), Hon'ble Bombay High Court in the case of Chinai & Co. (P.) Ltd. Vs. CIT (supra) and of Hon'ble Allahabad High Court in the case of Rampur Timbur & Turnery Co. Ltd. (supra) have no relevance and since, the Tribunal has followed these judgments and decided the issue in case of that assessee being a company, this Tribunal order is also not applicable in the present case. The nature of expenses in dispute in that case are noted by the Tribunal in the form of a table and from the same, it is seen that the expenses claimed in that case were regarding the personal expenses of Directors, travelling expenses of others, Motor car expenses, security charges, printing and stationery, staff welfare, flowers and plants, AGM expenses, Board meeting expenses, miscellaneous expenses, rent paid, subscription to club, Interest on purchase of car, legal expenses etc. Hence it is seen that as per the nature of expenses involved in that case, the expenses were in relation to the fulfilling the requirements of company law to have directors and to have AGM, Board meeting and to maintain the office etc. which are necessary for fulfilling the legal requirements of a company under the Companies Act. Hence we hold that this Tribunal order is also not applicable in the present case because the assessee in the present case is not a company and therefore, there is no such legal compulsion to incur the expenses which are claimed in the present case. Hence we find that the claim of assessee for allowing deduction of expenses against income from other sources is not allowable because the assessee has*



*not established that the expenses are allowable u/s. 57(iii) of IT Act.*

*12. Now we deal with and decide the alternative argument of ld. AR of assessee that even if expenses are held as not allowable against income from other sources, the same should be allowed against income from capital gain in the present year or future years. Regarding this argument, we would like to observe that for computing income from capital gains, deduction is allowable u/s. 48 and expenses which can be allowed as per this section are expenses incurred wholly and exclusively in connection with transfer of asset or cost of acquisition of asset or cost of any improvement of the concerned capital asset only. The claim of expenses in the present case is not for those expenses which are incurred on account of cost of transfer of asset or cost of acquisition of asset or cost of any improvement of asset and therefore, this alternative claim also has no merit and accordingly rejected.*

6.1 The learned DR also relied on the judgment of the Hon'ble Punjab & Haryana High Court in the case of *Haryana State Small Industries & Export Corporation Ltd. v. CIT* in ITA No.79/2012 dated 01.08.2012, wherein it was held as under:-

*"9. It would be expedient to reproduce the provision. [Section 57\(iii\)](#) of the Act, as far as relevant provides:-*

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

*(i) and (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:*

*Provided .....*

*Explanation: ....."*

*10. [In Vijaya Laxmi Sugar Mills Ltd. v. Commissioner of Income Tax](#) (1991) 191 ITR 641 (SC) where the company was ordered to be wound up by the High Court, certain income had accrued by way of interest income from monies invested in fixed deposits with certain banks. A claim was made for deduction of expenses incurred towards salaries, legal fees, liquidation expenses, TA and DA, postage and stationery in computing its income. The Hon'ble Supreme Court held that it could not be said that any business was being carried on by*

*the company and, therefore, interest income would not fall within the meaning of [Section 28](#) of the Act but was liable to be computed only under the head 'Income from other sources'. The expenses claimed by the assessee therein were held to be inadmissible under [Section 57\(iii\)](#) of the Act as it was not established that expenses sought to be deducted were to facilitate the earning of the interest income. It was noticed as under:-*

*"The next submission of the learned counsel for the assessee was that in the course of effecting the winding up of the assessee company the Liquidator has been incurring expenses such as salaries, legal fees, travelling expenses and other liquidation expenses and that these expenses are allowable deduction from income earned by way of interest from fixed deposits in the relevant year. In computing the income chargeable under the head "Income From Other Sources", [section 57\(iii\)](#) provides that deduction is to be made in respect of expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income. The question for consideration, therefore, is whether the expenses of the type incurred by the Liquidator in this case can be said to have been incurred solely for the purpose of earning the interest income. It is true that the connection between the expenditure and the earning of income need not be direct and it may be indirect. But since the expenditure must have been incurred for the purpose of earning that income there should be some nexus between the expenditure and the earning of the income. There is not even some sort of an evidence to show that the expenses incurred by the Liquidator was to facilitate the earning or at least for protecting of the income. The interest accrues sui generis. The interest is payable by the bank whether it is claimed or not and whether there is any establishment or not. Normally there was no necessity for spending anything separately for earning the interest. However we may hasten to add that if any expenditure was incurred like commission for collection or such similar expenditures which may be considered as spent solely for the purpose of earning that income, the position may be different. But that was not so in this case. It could not also be said that the expenditure incurred was to preserve or acquire the asset. Nor could it be said that the expenses were incurred for the purpose of maintenance of the source. The requirement under [section 57\(iii\)](#) that the expenditure should have been incurred "for the purpose of making or earning such income" show that the object of spending or the end or aim or the intention of such spending was for earning the interest income. There could be no doubt that the expenditure incurred by the Liquidator in this case can by no stretch be said to have been incurred with the object or for the purpose of earning the interest income. The Tribunal was, therefore, right in holding that the expenses claimed are not related to the interest income and was not a deductible expenditure under [section 57](#)."*

11. Further, this Court in *Consumer Electronics (Punjab) Ltd. Vs. ACIT, Circle-III, Chandigarh, ITA No. 198 of 2003* decided on 29.9.2010 relying upon the judgment of Hon'ble Apex Court in *M/s Tuticorin Alkali Chemicals and Fertilizers Ltd. v. Commissioner of Income Tax, Madras* (1997) 227 ITR 172 under similar circumstances held that the assessee was not entitled to deduction under [Section 57\(iii\)](#) of the Act. It was observed as under:-

"7. For deciding the said questions, it is necessary to refer to statutory scheme under the Act. [Section 17](#) classifies heads of income into five heads and computation of income under different heads has to be as per the statutory scheme. Deduction from business income are governed by the provisions of Chapter IV-D i.e. [Sections 28 to 44](#) whereas income from other sources is dealt with under Chapter IV-F. Expenses permissible from the said income are specified under [section 57](#) of the Act. Thus, under the scheme of the Act, income from one head cannot be adjusted against expenses under the other head. Provision for inter-head set off under [section 71](#) of the Act applies to set off of loss and not of expenses or deductions for computing income.

8. We may refer to the law laid down by the Hon'ble Supreme Court in *Tuticorin Alkali Chemicals* to the following effect:-

"The computation of income under each of the above six heads will have to be made independently and separately. There are specific rules of deduction and allowances under each head. No deduction or adjustment on account of any expenditure can be made except as provided by the Act.

The basic proposition that has to be borne in mind in this case is that it is possible for a company to have six different sources of income, each one of which will be chargeable to income tax. Profits and gains of business or profession is only one of the heads under which the company's income is liable to be assessed to tax. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed. If the company, even before it commences business, invests the surplus fund in its hand for purchase of land or house property and later sells it at profit, the gain made by the company will be assessable under the head 'Capital gains'. Similarly, if a company purchases a rented house and gets rent, such rent will be assessable to tax under [Section 22](#) as income from House property. Likewise, a company may have income from other sources. It may buy shares and get dividends. Such dividends will be taxable under [Section 56](#) of the Act. The Company may also, as in this case, keep the surplus fund in short-term deposits in order to earn interest. Such interests will be chargeable under [Section 56](#) of the Act.

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*There are specific provisions in the [Income Tax Act](#) of setting off of loss from one source against income from another source under the same head of income ([Section 70](#)), as well as setting off of loss from one head against income from another ([Section 71](#)). In the facts of this case the Company cannot claim any relief under any of these two Sections, since its business had not started and there could not be any computation of business income or loss incurred by the assessee in the relevant accounting year. In such a situation the expenditure incurred by the assessee for the purpose of setting up its business cannot be allowed as deduction, nor can it be adjusted against any other income under any other head. Similarly any income from a non- business source cannot be set off against the liability to pay interest on funds borrowed for the purpose of purchase of plants and machineries even before commencement the business of the assessee.*

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*It is true that the Company will have to pay interest on the money borrowed by it. But that cannot be a ground for exemption of interest earned by the Company by utilizing the borrowed funds as its income. It was rightly pointed out in the case of [Kedar Narain Singh v. Commissioner of Income Tax](#), (6 I.T.R. 157) that "anything which can properly be described as income is taxable under the Act unless expressly exempted". The interest earned by the assessee is clearly its income and unless it can be shown that any provision like [Section 10](#) has exempted it from tax, it will be taxable. The fact that the source of income was borrowed money does not detract anything from the revenue character of the receipt. The question of adjustment of interest payable by the Company against the interest earned by it will depend upon the provisions of the Act. The expenditure would have been deductible as incurred for the purpose of business if the assessee's business had commenced. But that is not the case here. The assessee may be entitled to capitalise the interest payable by it. But what the assessee cannot claim is adjustment of this expenditure against interest assessable under [Section 56](#). [Section 57](#) of the Act sets out in its clauses (i) to (iii) the expenditures which are allowable as deduction from income assessable under [Section 56](#). It is not the case of the assessee that the interest payable by it on term loans are allowable as deduction under [Section 57](#) of the Act."*

*12. Adverting to the judgments on which reliance had been placed by the learned counsel, suffice it to notice that in view of the subsequent judgment of the Hon'ble Apex Court in [Vijaya Laxmi Sagar Mills Ltd's](#)*

*case (supra) and this Court in Consumer Electronics (Punjab) Ltd's case (supra), the pronouncements in Rampur Timber & Turnery Co. Ltd. and Nakodar Bus Service (P) Ltd's cases (supra) would not come to the rescue of the appellant.*

*13. From the above, the legal position that emerges is that [Section 57\(iii\)](#) of the Act requires that the expenditure must be laid out or expended, which is not of capital nature, for the purpose of making or earning such income. The purpose of the expenditure is germane for determining its admissibility for deduction and the purpose must be making or earning such income. However, the deduction is not inadmissible if no income is made or earned. To bring a case within the ambit of this section, it is not necessary that there must be direct connection between the expenditure and the earning of the income, but there should be some nexus between the expenditure and the earning of the income. The income on fixed deposit accrues sui generis whether it is claimed or not and whether there is any establishment or not. Ordinarily there arises no necessity for spending anything separately for earning the interest. However, where any expenditure in the nature of commission or collection charges or such similar expenditure which may be essential and had been spent solely for the purpose of earning that income, the same would be deductible.*

*14. Examining to the factual matrix herein, there is nothing to show that the expenses claimed as deduction were incurred for earning interest income. Equally, the claim of the appellant that the expenditure incurred by the assessee was allowable under [Sections 30 to 37](#) of the Act is inadmissible for the reason that the business of the assessee was lying closed and income from interest was chargeable to tax as 'income from other sources' under [Section 56](#) of the Act. Once that was so, the Tribunal had rightly adjudicated the matter in favour of the revenue."*

6.2 The learned DR submitted that the SLP filed by the assessee before the Hon'ble Supreme Court in SLP in TS-324-SC-2014 has been dismissed.

6.3 The learned DR also relied on the judgment of the Hon'ble Supreme Court in the case of *CIT v. V.P.Gopinathan* [(2001) 248 ITR 449 (SC)] .

7. I have heard the rival submissions and perused the material on record. In the present case, the assessee made fixed deposit with various banks amounting to Rs.15 crore. At

the same time, the assessee availed loan amounting to Rs.2.5 crore from State Bank of India and claimed the interest of Rs.25,16,005 to be set off against the interest received from various banks from fixed deposits. The same was denied. The contention of the learned AR is that there is a direct nexus between the interest receipt from banks and interest payments to banks, and also this issue covered by the decision of the Agra Bench of the Tribunal in the case of *Raj Kumar Agarwal (supra)*. The interest expenditure is allowable as deduction when it is paid on monies used for acquiring asset from which income derived is assessable under the head “income from other sources”. The Hon’ble Karnataka High Court in the case of *Karnataka Forest Plantation v. CIT [(1985) 156 ITR 275 (Kar.)]*, wherein it was held by the Hon’ble Court that when the assessee after borrowing amount for the purpose of business, had kept part of it in short deposit in bank, and the interest paid on amount borrowed was not deductible from interest earned from short term deposits, as borrowing was not for the purpose of earning such interest income. The Hon’ble Karnataka High Court in the case of *H.H.Maharajakumari Meenakshideviavaru v. CIT [(1984) 150 ITR 247 (Kar.)]*, observed that the assessee had interest income from fixed deposits assessable under the head “income from other sources” but on account premature termination of such fixed deposit, she had to pay back the amount of interest which had been paid in excess by the bank to her for all the years up to the date of termination and the assessee claimed this amount as deduction u/s 57 of the Act, it was held that the said claim was unsustainable as a deduction

of excess amount by bank had no connection with the interest earned by the assessee up to the date of termination. The facts of this case are fully distinguishable and cannot be applied to the facts of present case. The Hon'ble Kerala High Court in the case of *CIT v. Dr.V.P.Gopinathan [(1997) 137 CTR 190 (Ker.)]*, has held that where interest is received by the assessee on its fixed deposit and has also paid interest on loan obtained on the security of the fixed deposit, only the net interest is chargeable on the principle of mutuality. Further, this decision was reversed by the Hon'ble Supreme court in *CIT v. V.P.Gopinathan [(2001) 248 ITR 449 (SC)]*, in which it has been held that interest on loan taken by the assessee from the bank on secured fixed deposit could not be reduced from his income by way of interest on the fixed deposit placed by him in the bank.

7.1 In my opinion, the facts in the present case is similar to that of the one considered by the Hon'ble Supreme Court in the case of *CIT v. V.P.Gopinathan (supra)*. However, the learned AR made an argument that the interest on loan was to be set off against the interest received for the reason that the expenditure was incurred to earn protect the receipt of interest income and it is to be allowed as deduction out of the interest earned by the assessee. According to her, the payment of interest has direct link to the accrual of interest income on fixed deposits and thereby the assessee protected the interest earning from the fixed deposits and to meet her financial needs. According to the learned AR, using borrowing for the personal purpose has no relevance for the allowability



of interest expenditure out of interest received by the assessee. However, I find that the judgment of the Hon'ble Karnataka High Court in the case of *H.H.Maharajakumari Meenakshideviavaru v. CIT (supra)*, delivered without noticing the judgment of the Hon'ble Supreme Court in the case of *CIT v. V.P.Gopinathan (supra)*. Hence, I am not inclined to follow the judgment of the Hon'ble Karnataka High Court in the case of *H.H.Maharajakumari Meenakshideviavaru v. CIT (supra)*. The assessee has also relied on the judgment of the Hon'ble Delhi High Court in the case of *CIT v. Uk Bose* in ITA No.258/2010 dated 30<sup>th</sup> November, 2012, wherein the Hon'ble High Court allowed the payment of interest on loan taken for purchase of an exempted asset. In that case, the assessee has received interest from Sahara India Corporation Limited, in respect of land sold to them against which the sales proceeds were received late, and on the other hand has also paid interest on loan obtained earlier for the purchase of the said land and the difference of the same has also been offered for the assessment in the revised return. The assessee was under wrong impression that since the sale of land was not taxable receipt in the hands of the assessee, it was presumed that the interest element also was not taxable and obtained proper legal advances and the same is being offered for assessment. The Assessing Officer was of the opinion that there was no provision in the Act to allow the interest paid against the interest received by the assessee. The Hon'ble High Court was of the opinion that - "Strictly speaking, in the present case it is not a question of any deduction being allowed from the interest receipt, it is really a question of adjusting or setting off both the



interest received and the interest paid, since both have close link or nexus with each other. The Tribunal has recorded finding that the agricultural land was sold by the assessee in the month of February, 1999 to SICCL. From the date of sale of the land till the remittance of the sale proceeds the assessee was to pay interest of Rs.10,12,529 on the loan which he had taken for purchase of the land. It is in respect of the same period that he was entitled to interest income of Rs.17,18,426 from SICCL. Had there been no delay by SICCL in the remittance of the sale proceeds, there would have been no interest liability. The right to receive the interest and the liability to pay interest arose in respect of the same period and out of the same event i.e. non-payment of the sale proceeds in time. The delay in payment of the sale proceeds and the delay in repayment of the borrowing are both intertwined; one gives rise to interest income and the other gives rise to interest liability. We are of the view that this affords sufficient nexus between the two so as to justify the applicability of the principle of netting." However, in the present case, the above fact is entirely different. The assessee's payment of interest has no nexus between the earning of income and it is appropriate to mention here the judgment of the Hon'ble Punjab & Haryana High Court in the case of *Haryana State Small Industries & Export Corporation Ltd. v. CIT* in ITA No.79/2012 dated 01.08.2012, wherein it was held as under:-

*"13. From the above, the legal position that emerges is that [Section 57\(iii\)](#) of the Act requires that the expenditure must be laid out or expended, which is not of capital nature, for the purpose of making or earning such income. The purpose of the expenditure is germane for determining its admissibility for deduction and the purpose must be*

*making or earning such income. However, the deduction is not inadmissible if no income is made or earned. To bring a case within the ambit of this section, it is not necessary that there must be direct connection between the expenditure and the earning of the income, but there should be some nexus between the expenditure and the earning of the income. The income on fixed deposit accrues sui generis whether it is claimed or not and whether there is any establishment or not. Ordinarily there arises no necessity for spending anything separately for earning the interest. However, where any expenditure in the nature of commission or collection charges or such similar expenditure which may be essential and had been spent solely for the purpose of earning that income, the same would be deductible.*

*14. Examining to the factual matrix herein, there is nothing to show that the expenses claimed as deduction were incurred for earning interest income. Equally, the claim of the appellant that the expenditure incurred by the assessee was allowable under [Sections 30 to 37](#) of the Act is inadmissible for the reason that the business of the assessee was lying closed and income from interest was chargeable to tax as 'income from other sources' under [Section 56](#) of the Act. Once that was so, the Tribunal had rightly adjudicated the matter in favour of the revenue."*

7.2 In view of the foregoing reasons and the precedents cited supra, I do not find any infirmity in the orders of the lower authorities, and accordingly, I uphold the same.

8. In the result, the appeals filed by the assessee are dismissed.

Order pronounced on this 27<sup>th</sup> day of April, 2020.

Sd/-

**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Bangalore ; Dated : 27<sup>th</sup> April, 2020.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-12, Bengaluru.
4. The Pr.CIT (International Taxation), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore