

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D”,MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
Ms. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. Nos.1210 & 1211/Mum/2023
(Assessment years : 2017-18 & 2018-19)**

D D & Co. 610, 6 th Floor, P.J. Tower, Dalal Street, Fort, Mumbai-400 001 PAN : AAJFD3066E	vs	The Asst. Commissioner of Income- tax, Circle 22(1), Mumbai Room No.322, 3 rd Floor, Piramal Chamber, Lal Baug, Parel, Mumbai- 400 012
APPELLANT		RESPONDENT

Present for the Assessee	Shri Paras Savla
Present for the Department	Ms. Riddhi Mishra, CIT DR & Mahita Nair, Sr.AR

Date of hearing	22/08/2023
Date of pronouncement	28/08/2023

ORDER

Per Bench:

These appeals filed by the assessee are against the separate orders of Commissioner of Income-tax, National faceless Appeal Centre (NFAC)[hereinafter ‘the Ld.CIT(A)’] both dated 24/03/2023 for A. Ys. 2017-18 and 2018-19.

2. The only issue contended in both these appeals is the disallowance of interest expenses by the Assessing Officer under section 57 of the Income-tax Act, 1961(in short, 'the Act').

3. The assessee is a partnership firm engaged in the business of trading in shares. The assessee filed its return of income for A.Y. 2017-18 on 28/08/2017 declaring Nil income and on 11/07/2018 for A.Y.2018-19 declaring Nil income. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The assessee in the return of income has declared income from business as well as income from other sources. The assessee in the return of income for A.Y. 2017-18 has claimed interest on loan and OD of Rs.68,92,787/- out of which Rs.47,89,529 was claimed under section 57 and the balances as business expenditure. For the A.Y. 2018-19, the assessee made similar claim of Rs.71,72,101/- out of which Rs.55,46,456 was claimed under section 57 and the balances as business expenditure.

4. The Assessing Officer noticed that in the balance-sheet, assessee has shown unsecured loan at Rs.7,86,74,438/- for A.Y.2017-18 and Rs.7,52,40,801/- for A.Y. 2018-19. The Assessing Officer further noticed that these unsecured loans have been taken from individuals @ 9% and the same is disclosed in form 3CD as payments made to persons specified under section 40A(2)(b). It is also noticed by the Assessing Officer that the assessee has investments in fixed deposit in bank earning interest income @6.25%. The Assessing Officer called on the assessee to furnish details of unsecured loans taken and its nexus and usage for business, details of interest paid, loan confirmation, etc. The assessee furnished the following details with regard to the unsecured loans before the Assessing Officer.

A.Y. 2017-18

DATE	PARTICULARS	AMOUNT	DATE	AMOUNT	PARTICULARS
21-03-2014	FD WITH KOTAK MAHINDRA BANK	5,25,00,000.00	21-03-2014	2,72,00,000.00	LOAN TAKEN FROM ANKIT NISAR
			21-03-2014	2,72,00,000.00	LOAN TAKEN FROM ANKIT NISAR
				5,44,00,000.00	INTEREST RS.47,25,000 @9% p.a. ON 5,25,00,000
21-04-2015	FD WITH KOTAK MAHINDRA BANK MATURED	-5,25,00,000.00			
07-05-2016	FD WITH HDFC BANK	1,90,00,000.00			
07-05-2016	FD WITH HDFC BANK MATURED	-3,20,00,000.00			
07-12-2016	FD WITH KOTAK MAHINDRA BANK	99,00,000.00			
07-12-2016	07-12-2016	99,00,000.00			
06-03-2017	FD WITH HDFC BANK	99,00,000.00			
07-03-2017	FD WITH HDFC BANK	99,00,000.00	07-03-2017	31,00,000.00	LOAN TAKEN FROM TARAMATI NISAR
			07-03-2017	27,50,000.00	LOAN TAKEN FROM NAGJI NISAR
				58,50,000.00	INTEREST RS.30,061 @9% P.A. ON 58,50,000 FOR 25 DAYS

A.Y. 2018-19

S.No.	Name of the lender	Opening Balance in Rs.)	Added during the year (in Rs.)	Repaid during the year (In Rs.)	Closing balance (in Rs.)	Rate of Interest	Interest Paid (in Rs.)
1	Ansh Jayesh Nisar	34502464	3366431	0	378688895	8%	2807145
2	Ankit Jayesh Nisar	34371974	2999933	0	37371907	8%	2777703
3	Nagji Devji Nisar	4950000	0	4950000	0	8%	369962
4	Taramati Nagji Nisar	4850000	0	4850000	0	8%	363551

Fixed Deposits held with the banks					
Sl.No.	Booked On	Particulars / F.D.Number	Amount (in Rs.)	Remarks	Rate of Interest
1.	07.12.2018	Kotam Bank - 4311801493	9900000	Renewal	6.6
2	07.12.2016	Kotak Bank - 4311801509	9900000	Renewal	6.6
3	07.12.2016	Kotak Bank - 4311801509	9900000	Renewal	6.6
4	07.12.2016	Kotak Bank - 4311801516	9900000	Renewal	6.6
5	06.3.2017	HDFC Bank - 503001874-8686	9900000	Renewal	6.75
6	07.03.2017	HDFC Bank 50300187477431	9900000	Renewal	6.75
7	19.03.2018	HDFC BANK	15000000	-	7.45
TOTAL			7,44,00,000		

5. The Assessing Officer held that the assessee could not establish the nexus between the fixed deposits made and the loans borrowed from the family members and, therefore, the deduction claimed by the assessee against the interest income from fixed deposits under section 57 cannot be allowed as a deduction since it was not established by the assessee that the expenses is incurred wholly and exclusively for the purpose of earning income offered under section 56 of the Act. Accordingly, the Assessing Officer disallowed the interest expenses to the tune of Rs.47,89,528/- for A.Ys 2017-18 and Rs. 55,46,456/- for A.Y. 2018-19. The assessee preferred appeal before the CIT(A).

6. The assessee submitted before the CIT(A) that the loans taken are invested in fixed deposits and therefore the interest paid should be allowed as a deduction under section 57. The assessee further submitted that the claim of expenditure is restricted to the interest income earned and therefore there is no excess claim towards the difference in the interest paid and interest received. The assessee also made an alternate submission that if the interest is disallowed under section 57, the same should be allowed as a deduction from the business profits. The assessee relied on various judicial pronouncements in this regard. The CIT(A) did not

accept the submissions of the assessee and upheld the disallowance made by the Assessing Officer for the reason that the assessee failed to establish the nexus between the expenses incurred and the interest income earned. With regard to the alternate claim that the amount disallowed under section 57 should be allowed as a business deduction, the CIT(A) held that the assessee has paid higher interest to the related parties claiming more expenses wherein the funds are parked in low interest bearing FDRs with the bank, the same cannot be said to be done wholly and exclusively for the purpose of business and accordingly rejected the alternate plea of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

7. Before us, the Ld.AR reiterated the submissions made before the lower authorities. The Ld.AR drew our attention to the statement of income of the assessee explaining the mode in which the interest paid has been claimed in the computation of income. The Ld.AR submitted that the borrowed funds are utilized by the assessee for business purposes and the excess funds were placed in FD as lien for the business transactions. The assessee has offered the interest income separately under the head 'Income from other sources' and restricted the claim of interest expenses against the said income to the extent of income offered under section 57 of the Act. The Ld.AR, therefore, submitted that the assessee had not claimed more than the income offered to tax under 'Income from other sources', i.e. income earned at 6.25% and the expenses restricted to the same percentage. Therefore, it is argued by the Ld.AR that no disallowance under section 57 is warranted. The Ld.AR also drew our attention to funds flow wherein the money received as loan from related parties have been used for keeping it in FD from where interest income is earned and submitted that this fact has been clearly explained to the Assessing Officer during the course of assessment. The Ld.AR further submitted that all the unsecured loans are not received during the year and

in earlier years, no disallowance is made by the revenue. It is submitted that since the assessee has utilized the money borrowed both for business purpose as well as to keep in FD, the assessee could not apportion the interest expenses and accordingly, restricted the claim of interest expenses to be income earned from other sources.

8. The Ld.DR, on the other hand, vehemently argued that the assessee has borrowed funds @9% which has been kept in FD earning lesser income at 6.25% and, therefore, there should be disallowance towards the excess interest payment. The Ld.DR submitted that the assessee has used the different heads of income in its computation claiming the entire interest paid at 9% is not correct. Therefore, the Ld.DR submitted that the Assessing Officer has correctly disallowed the amount of interest paid under section 57 of the Act.

9. We heard the parties and perused the material on record. The main reason quoted by the assessing officer as well as the CIT(A) is that the assessee failed to establish the nexus between the interest income from FDs and the interest paid by the assessee. From the perusal of the assessment order we notice that the assessing officer has contended that the assessee failed to establish the nexus of the FD balance as of 31/03/2017 which is at Rs.11,93,00,000/- and the details of the loan amount borrowed from related parties as provided by the assessee. It is the claim of the assessee that the FDs are placed using the funds borrowed in earlier years from the related parties and therefore the revenue cannot make the disallowance in the years under consideration for the reason that the assessee failed to establish the nexus. During the course of hearing our attention was drawn to Balance Sheet of the assessee as at 31/03/2017 and 31/03/2018 to submit that there cannot be a one to one match between the loan amount used for investing in FD and used for

business. We tend to agree with this contention for the reason that one of the partners' capital account is having a considerable credit balance (own funds) and there is also sizeable balance shown under the head "Span Margin" in the asset side which substantiates the claim that there is no one to one match between the source and the investments. The claim of the assessee that the amount borrowed from related parties has been used for investment in FD as well as business purpose has merits. Be that as may be for the purpose of claiming deduction under section 57, it is important to establish that the expenditure (not being in the nature of capital expenditure) is laid out or expended wholly and exclusively for the purpose of making or earning such income. In assessee's case the assessing officer has not considered the movement in the loan account details submitted by the assessee and also has not considered the fresh FDs and renewal of FDs before concluding that the entire claim is not allowable under section 57. The alternate plea of the assessee that the interest expenditure if disallowed under section 57 should be allowed as business expenditure for the reason that the FDs are kept for business purpose has also not been considered by the lower authorities. In view of these discussions we deem it fit to remit the issue back to the assessing officer for a de novo consideration. The assessing officer is directed to consider the movement in the FD account and the loan account to understand the nexus and also to consider the alternate claim of interest as business expenditure based on the facts and evidences that may be submitted by the assessee. Needless to say that the assessee be given a reasonable opportunity of being heard.

10. The facts are identical for AY 2018-19 also and therefore we remit the issue for AY 2018-19 also back to the assessing officer with similar directions.

11. In result the appeal for AY 2017-18 and 2018-19 are allowed for statistical purposes.

Order pronounced in the open court on 28/08/2023

Sd/-

sd/-

AMIT SHUKLA	PADMAVATHY S.
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt 28th August, 2023

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai