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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 162, 198 & 202/2017

PR. COMMISSIONER OF INCOME TAX- 11 ..... Appellant
Through: Mr. Zoheb Hossain, Sr. Standing Counsel.

versus

SHRI RAJESH BAJAJ (DECEASED) THR. LR'S ..... Respondent
Through: Mr. Satyen Sethi with Mr. Arta Tarana Panda, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **28.03.2017**

The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) which had affirmed the CIT (A)'s order in regard to the disallowance of interest that the assessee had made. It is urged that the interpretation of Section 57 (iii) of the Income Tax Act, 1961 by the ITAT is erroneous.

The assessee had for the purpose of business, borrowed capital from the Bank through overdraft account. The borrowing bank had insisted on securing the advance resulting in the assessee's depositing an amount of ₹7.25 crores in a fixed deposit which earned ₹42,68,867/-. Its claim in relation to netting and interest set off liability to the tune of ₹14,70,493/-

from the interest income on the fixed deposit, i.e., ₹42,68,867/- was rejected and the entire amount was disallowed.

On the assessee's appeal, the CIT (A) accepted the plea observing as follows: -

> *"6.4 The assessee is in appeal against the order of the AO and it is submitted that the AO is not justified to make the disallowance without any valid and proper reasons. It is submitted that the assessee has received has received the interest income of Rs.42,68,867/- out of the FDRs made with the bank and these FDRs were made out of the receipt of Rs.7.25 crores from Sunrise Securities Ltd. and the FDRs were made for the purpose of business and for this an OD A/c (vide OD A/c No.CA-401559) was also opened with the same bank i.e. SBOs in which the FDRs were made. It is submitted that the assessee did not succeed in the business because of various difficulties and problems but it does not mean that the assessee was not doing business and the FDRs and OD account were not for the purpose of business.*
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> *6.5 I have considered the addition of the AO, the remand reports of the AO and the submissions of the assessee and I find considerable merit in the submission of the assessee that the assessee had made the FDRs of Rs.7.25 crores with the bank with a view to open an OD account with the bank which are for the purpose of business and as such the assessee is eligible for the deduction of interest payment against the interest income. After considering all the facts and circumstances of the case, I am of the view that there is no proper justification for the AO to make the disallowance of the interest by the AO and accordingly, the AO is directed to allow the deduction as claimed by the assessee in the return of income and as such the appeal of the assessee is allowed."*

The above findings were concurred by the ITAT in the impugned order.

Mr. Zoheb Hossain, learned counsel for the Revenue relies upon the decision of the Supreme Court in *Commissioner of Income Tax v. Dr. V.P. Gopinathan*, 2001 (10) SCC 67 and the latter decision of this Court in *CIT v. Delhi Brass & Metal Works Limited,* (2009) 313 ITR 352 (Del) and submits that once the income of ₹42 lacs odd is treated as falling under the head "income from other sources", the assessee could have legitimately claimed deduction only on the permissible head enumerated in Section 57 (iii). It was contended that under that provision, all expenditure incurred "exclusively for the purpose of the making or earning such income", i.e., the expression "such income" would mean earning of interest alone would qualify for a deduction. Since the assessee's claim did not relate to the earning of interest but rather related to business expenditure, the set off/netting could not be permitted.

The Supreme Court in *Dr. V.P. Gopinathan (supra)* was concerned with an individual who had borrowed from a bank and earned FD which was used as security. There is nothing in that decision to indicate that the essential point of the deposit was to create security to borrow the funds that the assessee did. In *Delhi Brass & Metal (supra),* the claim was in the context of Section 80HHC. The issue was whether the interest earned on account of surplus funds which the assessee characterized as "parked surplus fund" was business income. Obviously, the Court taking note of Section 57 (iii) and the head of the income itself earned held that it did not qualify for deduction.

In the facts of this case, it is evident that the purpose for creating the

FD was solely to secure the loan that the assessee obtained and not for the purpose of earning interest as is insisted upon under Section 57.

The second question sought to be urged is with respect to the sum of ₹1.3 crores. Besides noting that these are fact based findings rendered concurrently, the Court is of the opinion that the ITAT's view that since the last transaction, i.e., borrowing to the tune of ₹7.2 crores could not be doubted, the addition made was not permissible, is correct. No question of law arises on this aspect.

In the circumstances, the findings rendered by the CIT (A) and endorsed by the ITAT cannot be faulted. No substantial question of law arises.

In view of the above, ITA 162/2017 and 198/2017 are accordingly dismissed.

ITA 202/2017

In view of the findings of the CIT (A) and ITAT on the issue of furnishing of inaccurate particulars which favoured the assessee, this Court is of the opinion that no substantial question of law arises.

In view of the above, ITA 202/2017 is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 28, 2017
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