

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3346/Del./2013
(ASSESSMENT YEAR : 2009-10)**

ITO, Ward 47 (2),
New Delhi. vs. Shri Ranjan Dagar,
BK – 16, Shalimar Bagh West,
Delhi – 110 088.

(PAN : ADKPD7090A)

**ITA No.4602/Del./2013
(ASSESSMENT YEAR : 2010-11)**

ACIT, Circle 47 (1),
New Delhi. vs. Shri Ranjan Dagar,
BK – 16, Shalimar Bagh West,
Delhi – 110 088.

(PAN : ADKPD7090A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri Atiq Ahmad, Senior DR

Date of Hearing : 21.09.2017
Date of Order : 22.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common question of law and facts is involved in both
the aforesaid appeals filed by the Revenue for AYs 2009-10 and

2010-11, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, ITO, Ward 47 (2), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal, sought to set aside the impugned order dated 20.03.2013 & 13.05.2013 passed by the Commissioner of Income-tax (Appeals)-XXX, New Delhi qua the assessment years 2009-10 & 2010-11 respectively on the grounds inter alia that :-

ASSESSMENT YEAR : 2009-10

“ 1. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in :

(i) Reducing the addition of Rs. 40,80,835/- to Rs. 4,45,838/- on account of interest of funds borrowed for acquiring immovable and issuing directions to adjust the same against the income from other sources;

(ii) Holding that the loan taken from Reliance Capital Ltd was for the purposes of earning income from other sources;

(iii) Holding that the intention of the assessee was to earn assurance return given by the Omaxe Ltd and to purchase multiplex in the commercial space in Omaxe NRI city;

(iv) Directing to allow the interest on loan under section 57(3) of the I T Act though the same is specifically allowable u/s 24(b) of the I T Act.

(v) Holding that the interest on loan was a revenue expenditure and not a capital expenditure.

(vi) Holding that the assessee had made an investment in commercial property ignoring the fact that the unit allotted to the assessee was a house property.

(vii) Not applying the ratio of decision in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd Vs CIT (1997) 227 ITR 172 (SC) which is fully applicable in this case.”

ASSESSMENT YEAR : 2010-11

“1. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in :

(i) Deleting the addition of Rs.33,23,793 /- and restricting the addition at RS.9,326/- without considering the fact that the loan taken by the assessee was for investment in purchase of property and nor for earning interest;

(ii) Holding that the loan taken from Reliance Capital Ltd was for the purposes of earning income from other sources;

(iii) Holding that the intention of the assessee was to earn assured return given by Omaxe Ltd and to purchase multiplex in the commercial space in Omaxe NRI city;

(iv) Directing to allow the interest on loan under section 57(3) of the I T Act though the same is specifically allowable u/s 24(b) of the I T Act.

(v) Holding that the interest on loan was a revenue expenditure and not a capital expenditure.

(vi) Holding that the assessee had made an investment in commercial property ignoring the fact that the unit allotted to the assessee was a house property.

(vii) Not applying the ratio of decision in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd Vs CIT (1997) 227 ITR 172 (SC) which is fully applicable in this case.”

3. Briefly stated the facts necessary for adjudication of the controversy at hand in both the aforesaid appeals are : during scrutiny proceedings, Assessing Officer noticed that assessee has shown income from salary at Rs.20,96,091 and Rs.29,73,188/- and declared a loss of Rs.4,45,838/- and Rs.7,32,459/- under the head ‘income from other sources’ for AYs 2009-10 and 2010-11 respectively. Assessee has adjusted the interest to the tune of Rs.40,80,835/- and Rs.33,23,793 for AYs 2009-10 and 2010-11 respectively paid to Reliance Capital Limited in a housing loan and has adjusted the same against the income under the head ‘income from other sources’. AO disallowed the interest of Rs.4,45,838/- and Rs.33,23,793/- for AYs 2009-10 and 2010-11 respectively paid to Reliance Capital Limited for the reason that the said loan was obtained for the purpose of acquiring commercial property and the loan was not utilized for earning the interest income under the head ‘income from other sources.

4. Assessee carried the matter by way of filing appeals before the Id. CIT (A) who has allowed the appeal for both the assessment years. Feeling aggrieved, the Revenue has come up before the

Tribunal by way of challenging the impugned orders passed by Id. CIT (A).

5. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeal with the assistance of the Id. DR as well as on the basis of documents available on the file.

6. We have heard the Id. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, the assessee has availed off the loan from M/s. Reliance Capital Limited for the purpose of earning interest income on advance made to M/s. Omaxe Limited; that assessee has invested in commercial property as investment for appreciation; that the assessee has not been given possession of the property in question; that M/s. Omaxe Limited with whom the assessee has invested in commercial property has stopped paying assured return to the assessee and the assessee has stopped making payment of EMI to the developer.

8. In the backdrop of the aforesaid facts and circumstances of the case, grounds of appeal and arguments addressed by Id.

Authorized Representatives of the parties to the appeal, the sole question arises for determination in this case is :-

“as to whether the interest expenditure incurred by the assessee on the loan availed of from M/s. Reliance Capital Limited is directly related with the interest income earned on advance made to M/s. Omaxe Limited should be allowed to be deducted from the said interest income u/s 57 (iii) of the Act?”

9. Ld. CIT (A), by relying upon the judgment of Hon’ble Apex Court cited as *CIT vs. Rajendra Prasad Moody – (1978) 115 ITR 519*, held that the interest expenditure incurred by the assessee on the loan availed of from Reliance Capital Limited is directly related to interest income earned on advance made to M/s. Omaxe Limited and as such, it is allowable. However, the ld. DR for the Revenue relied upon the order passed by AO.

10. When we examine the facts of this case, it is undisputed that the AO has disallowed the interest of Rs.40,80,835/- and Rs.33,23,793 for AYs 2009-10 and 2010-11 respectively paid by the assessee on the loan of Rs.6,00,00,000/- availed of from M/s. Reliance Capital Limited and invested the same in M/s. Omaxe Limited for getting assured return only. However, M/s. Omaxe Limited has resiled from its promise and did not pay the assured return to the assessee and thereafter assessee has also stopped making payment of EMI to M/s. Reliance Capital Limited.

11. When we examine all these facts in the light of the fact that M/s. Reliance Capital Limited, M/s. Omaxe Limited and assessee are into litigation before Hon'ble Delhi High Court qua the property in question and the property has also not been transferred in the name of assessee, the assessee will certainly get benefit of interest payment on the loan of Rs.6,00,00,000/- u/s 57 (iii) of the Act as it is not a house property income as has been held by the AO. Rather it was invested in the commercial property made by the assessee to get assured return / interest from his investment of Rs.6,00,00,000/-.

12. In these circumstances, the Id. CIT (A) has rightly held that this income is to be treated as income from other sources and the interest paid by assessee to M/s. Reliance Capital Limited is to be allowed as expenditure incurred for earning the income u/s 57 (iii) of the Act. Moreover, when there was a categoric understanding between the assessee and M/s. Reliance Capital Limited that the assessee will get assured return, the interest was being paid for the purpose of earning interest i.e. assured income from M/s. Omaxe Limited and acquisition of the property was incidental only.

11. Hon'ble Apex Court in case of *CIT vs. Rajendra Prasad Moody* (supra) while interpreting section 57 (iii) of the Act held as under :-

“ The plain natural construction of the language of s. 57(iii) of the Income-tax Act, 1961 irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. This section does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned.

Where the assessee borrowed monies for the purpose of making investment in shares and paid interest thereon during the accounting period relevant to the assessment year but did not receive any dividend on the shares purchased with those monies : Held, accordingly, that the interest on monies borrowed for investment in shares which had not yielded any dividend was admissible as a deduction under section 57(iii) of the Income-tax Act, 1961, in computing its income from dividend under the head “Income from other sources”.”

12. So, in view of what has been discussed above, we find no illegality or perversity in the findings returned by Id. CIT (A) who has given the complete computation of total income in the impugned order, consequently both the appeals filed by the Revenue for AYs 2009-10 & 2010-11 are hereby dismissed.

Order pronounced in open court on this 22nd day of September, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 22nd day of September, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-XXX, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
