

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE MS. DIVA SINGH, JUDICIAL MEMBER**

**ITA No. 2386/Del/2017
Assessment Year: 2012-13**

Ajay Kumar Gupta T-18, Green Park Extension New Delhi PAN : AAEPG5164B	Vs.	ITO Ward-46(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Tarun Rohatage, Advocate
Respondent by	Sh. T. Vasanthan, Sr. D.R.
Date of hearing	24-08-2017
Date of pronouncement	20-10-2017

ORDER

PER DIVA SINGH, J.M. :

The present appeal has been filed by the assessee assailing the correctness of the order dated 8.3.2017 of CIT(A)-16, New Delhi pertaining to 2012-13 assessment year.

Following grounds are as under:-

1. *That on the facts and in the circumstances of the case of the assessment made u/s 143(3) is without jurisdiction.*
2. *That on the facts and circumstances of the case the learned CIT (A) was not justified in sustaining the addition of Rs. 986,024 in respect of entire claim of interest and bank charges.*
 - 2.1. *That the learned CIT(A) failed to appreciate that the loans for which interest was paid were utilized for the purposes of business.*
 - 2.2. *That on the facts and in the circumstances of the case the learned CIT(A) ought to have held that the appellant was carrying on the business of trading in aluminium and real estate business.*

2.3. *Alternatively and without prejudice to the above ground if it is held that the interest pertains to the investment in properties the interest ought to be allowed to be capitalized.*

2.4. *That in any case the learned CIT(A) has grossly erred in sustaining the addition of interest paid of Rs. 60,819 on car loan and bank charges of Rs. 20,770/-*

2. The learned AR inviting attention to the assessment order and the impugned order submitted that the assessee over the years has been engaged in the business of Aluminium Goods under the name and style of M/s Ram Swaroop Vijay Kumar. It was his submission that since the aluminium business had almost dwindled the assessee instead had started making investment in the real estate business. The existence of the said business it was submitted has been treated by the tax authorities as an afterthought and also on the reasoning that it was not connected to his earlier business activity. Consequently the expenses of interest incurred on the loan, it was submitted as business expenditure has not been allowed.

3. The learned Sr. DR submitted that for starting the new business, the assessee should have registered with the sales tax authorities or registered itself as a property dealer nothing of this sought has been done.

4. I, have heard the submissions and perused the material available on records. I find that in the peculiar facts of the present case, the tax authorities had misdirected themselves in holding that in order to start the business of a property dealer the assessee should have registered to my understanding there is no regulatory authority with whom the assessee could have registered as property dealer at the relevant point of time. Similarly sales tax registration would also not be necessary. Being of the view that the issue needs to be re-considered in the light of the facts on record in regard to start of new business and evidences supporting the claim that loan was taken for a specific purpose need to be considered. To my understanding there is no bar to an individual to undertake aluminium business and simultaneously invest in properties as a business venture. The mere fact that there is no bar does not necessarily also lead to the

conclusion that the said venture has been undertaken by the assessee as it is a fact which has to be demonstrated on the basis of evidences. Accordingly, the impugned order is set aside and the issues are restored back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law after giving an assessee a reasonable opportunity of being heard.

5. Addressing the issue raised in ground no. 2.4, the learned AR submitted that no such disallowance has been made in the earlier years and also in the alternative disallowance made is on the higher side. On a query it was submitted that probably no log book etc is being maintained by the assessee in regard to the user of car and telephonic expenses. The learned Sr. DR relied upon the orders of the authorities below.

6. I have heard the submissions and perused the material available on record. On a consideration of the peculiar facts on record I deem it appropriate to set aside the issue back to the appeal of these CIT(A) with a direction to taking into consideration the past history of the assessee on the issue and the facts of the case and thereafter pass a speaking order in accordance with law. The order is pronounced in the open court at the time of hearing itself.

6. In the result, the appeal of the assessee is allowed for statistical purposes.
(Order pronounced in open court on 20.10.2017.)

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

SH/Binita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR,
ITAT NEW DELHI

		Date	
1.	Draft dictated on	24.08.2017	PS
2.	Draft placed before author	13.09.2017	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		