

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री संजय अरोड़ा, लेखासदस्य एवं
श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2175/Mds/2016
निर्धारण वर्ष /Assessment Year: 2007-08

The Asst. Commissioner of Income- Tax,
Central Circle-1(4), 46,
Nungambakkam High Road,
Chennai.

Vs. M/s.Rishabh Infopark Pvt.-
Ltd.,
Super A-16 & 17,
Thiru vi ka Industrial Estate,
Guindy, Chennai-600 032.

[PAN: AACCR 9899 K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Cross-Objection No.132/Mds/2016
निर्धारण वर्ष /Assessment Year: 2007-08

M/s.Rishabh Infopark Pvt.Ltd.,
Super A-16 & 17,
Thiru vi ka Industrial Estate, Guindy,
Chennai-600 032.

Vs. The Asst. Commissioner of-
Income Tax,
Central Circle-1(4), 46,
Nungambakkam High Road,
Chennai.

[PAN: AACCR 9899 K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by : Mr.R.Venkatesh, CA
Department by : Ms.Ann Mary Baby, JCIT
सुनवाई की तारीख/Date of Hearing : 14.09.2017
घोषणा की तारीख /Date of Pronouncement : 14.09.2017

आदेश / ORDER

PER BENCH:

ITA No.2175/Mds/2016 is an appeal filed by the Revenue against the Order of the Commissioner of Income Tax (Appeals)-3, Chennai, in ITA No.19/2013-14/CIT(A)-3 dated 28.03.2016 for the AY 2007-08 and CO No.132/Mds/2016 is a Cross-Objection filed by the assessee in the Revenue's appeal.

2. Ms. Ann Mary Baby, JCIT, represented on behalf of the Revenue and Shri Mr.R.Venkatesh, CA, represented on behalf of the assessee.

3. In the Revenue's appeal, the Revenue has challenged the action of the Ld.CIT(A) in deleting the addition made by the AO on account of the restriction interest u/s.24(b) of the Act. It was a submission that the assessee is a company which is earning income from house property. It was a submission that the AO had disallowed the interest relating to the Project-II of the assessee u/s.24(b) of the Act. It was a submission that Ld.CIT(A) had following the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case for the AY 2008-09 had deleted the addition made on account of interest disallowed u/s.24(b) of the Act. It was a submission that the order of the Ld.CIT(A) was liable to be reversed.

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4. In reply, the Ld.AR submitted that the assessee is in the business of building and letting out of IT Park and Convention Centers. It was a submission that for the AY 2007-08 & 2008-09, the Co-ordinate Bench of this Tribunal had in the assessee's own case in ITA No.731 & 832/Mds/2012 dated 15.05.2015 held that the income of the assessee is to be assessed under the head business income and not under the head income from house property. It was a submission that the assessee had taken a loan of Rs.46.50 Cr. from Oriental Bank of Commerce as has been mentioned in the Assessment Order. It was a submission that the said loan was taken for setting up of the Project-I. It was a submission that subsequently, the assessee had taken further loans from Bank of Maharashtra and Oriental Bank of Commerce for an amount of Rs.18.50 Cr. and Rs.28.00 Cr. respectively and the same had been used for repaying the loan taken from Oriental Bank of Commerce to an extent of Rs.46.50 Cr. Fresh loan had to be taken from OBC as Project-I had been completed, so that the new loan was securitized against future lease rentals (income) from the said Project. The Ld.AR drew our attention to Page No.60 of the Paper Book which was the copy of the statement of accounts with Oriental Bank of Commerce showing the re-payment of loan of Rs.46.50 Cr. by the loan from Oriental Bank of Commerce and Rs.28.00 Cr. and Bank of Maharashtra for Rs.18.50 Cr. It was a submission that the AO had drawn an assumption that the loans taken from the Oriental Bank of Commerce for the amount of Rs.28.00 Cr. was in respect of the

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second Project which had been started by the assessee during the AY 2007-08 and was completed only in the AY 2009-10. Consequently, the AO had disallowed the interest in respect of the said loan by applying provisions of Sec.24(b) of the Act. On a query by the Bench, it was submitted by him that Project-II had been independently financed, interest in respect of which – the Project being under progress, had not been claimed, but carried over (to the following year) as part of the Project cost. It was a submission that the assessee had no objection, if the issue is restored to the file of the AO for verification as to whether the loans taken from the Bank of Maharashtra and Oriental Bank of Commerce on 18.05.2006 & 10.08.2006 respectively were used for re-paying the loans taken from the Oriental Bank of Commerce on 17.10.2005 thereby showing that the loan was taken in respect of the Project-I which was completed and consequent to which interest was liable to be allowed u/s.36(i)(iii) itself in so far as the Co-ordinate Bench of this Tribunal had in the assessee's own case for the AY 2007-08 in Para No.7 of its Order has categorically held that the income of the assessee from the renting of the IT Park is to be considered as business income only. In respect of the Cross-Objection, it was submitted by the Ld.AR that the same was against the re-opening of the assessment. It was a submission that he did not wish to press the same.

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5. We have considered the rival submissions. As the Ld.AR submitted that he did not wish to press the Cross-Objection, the same stands dismissed as not pressed.

6. In respect of the Revenue's appeal, on perusal of the Page No.60 of the Paper Book which is a statement of account in respect of the loan of Rs.46.50 Cr. taken from Oriental Bank of Commerce clearly shows that the same has been re-paid by another loan from Oriental Bank of Commerce for Rs.28.00 Cr. and re-payment of Rs.18.50 Cr. representing the loan taken from Bank of Maharashtra. However, as the evidence was not before the AO, in the interest of natural justice, the issue is restored to the file of the AO for examination as to whether the loan had taken from Oriental Bank of Commerce on 10.08.2006 for an amount of Rs.28.00 Cr. and the loan taken from Bank of Maharashtra on 18.05.2006 for an amount of Rs.18.50 Cr. has been used for re-payment of the loan taken from the Oriental Bank of Commerce on 17.10.2005 for an amount of Rs.46.50 Cr. If the assessee is able to show that the loans were taken for the re-payment of the earlier loans of Rs.46.50 Cr. then no disallowance of interest is liable to be made in so far as the income of the assessee has admittedly been held to be assessed under the head income from business and interest in respect of the said loans would be in relation to the Project-I, which is a completed project. In these circumstances, with the above directions, the issue is restored to the file of the AO for re-

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adjudication after granting the assessee adequate opportunity to substantiate his case.

7. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes & Cross-Objection filed by the assessee stands dismissed as not pressed.

Order pronounced in the Open Court on September 14, 2017, at Chennai.

Sd/-
(संजय अरोड़ा)

(SANJAY ARORA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: September 14, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF