

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 252/JP/2017
निर्धारण वर्ष / Assessment Year : 2012-13

M/s Padam & Co., B-31, Rajdhani Krishi Mandi, Sikar Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward-3(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABFP 9888 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Lokesh Sharma (CA)
राजस्व की ओर से / Revenue by : Shri Ajay Mallik (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 15/09/2017
उदघोषणा की तारीख / Date of Pronouncement : 10/11/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of the Id. CIT(A)-I, Jaipur dated 24/01/2017 for the A.Y. 2012-13, wherein the assessee has raised following grounds of appeal:-

- "1. That the Id. CIT(A) has erred in law and facts in confirming the addition.
2. That there was direct nexus between the expenditure claimed and savings achieved and therefore, no disallowed was warranted.

3. *That the interest on capital borrowed for the purpose of business or profession is allowable U/s 36(1)(iii)."*

2. In all the grounds of appeal, there is only one issue involved, which is against confirmation of disallowance of interest of Rs. 2,37,675/-.

3. The brief facts of the case are that the assessee is engaged as a trader/commission agent of Khal. During the year under consideration, the assessee has purchased plot No. 15-16 in Mohit Nagar Vistar, Sarana Doongri, Jaipur admeasuring $611.11+850.82= 1461-53$ sq. yards for Rs. 31,68,995/-. The Assessing Officer disallowed the interest on the borrowed capital on Rs. 31,68,995/- for six months totaling to Rs. 2,37,675/-.

4. The Id. CIT(A) has confirmed the disallowance by holding as under:

3.1.2 Determination

(i) *The brief facts of the case are that the appellant was engaged as a trader/commission agent of Khal. During the year under consideration, it has purchased plot no. 15-16 in Mohit Nagar Vistar, Sarana Doongri, Jaipur admeasuring (611.11+ 850.42) 1461.53 sq yards for Rs 31,68,995/-. During the assessment proceedings, it was observed by the AO that the appellant has obtained net fresh deposit of Rs. 1,28,23,673/-and has paid net interest of Rs. 34,67,957/-. It was*

concluded by the AO that the capital borrowed to the extent of Rs. 31,68,995/- were used for acquiring the capital assets which were not put to use during the year under consideration and hence the AO has disallowed proportionate interest of Rs. 2,37,675/- and has made addition of the same to the income of the appellant.

(ii) During the appellate proceedings, it was claimed by the appellant that the plots have been acquired for constructing go- downs thereon considering business expansion and for ensuring better fund utilization cum savings in expenses. The appellant had achieved total turnover of Rs 10,08,23,511/- (Rs 11,81,03,048/- in PY) yielding G. P. Rate of 5.96%(3.15% in PY). The trading results were better and Net profit for the year was Rs 4,82,205/- (Rs 4,00,269 in PY) despite of increase in interest cost to Rs 34,67,957/- in comparison to Rs. 22,91,794 in PY, which means the interest bearing funds were effectively utilized by it in the promotion of business. It was further stated that the go-down rent has increased to Rs 4,38,478/- from Rs 3,46,797/- in the previous year and buying the land for expansion of business and future savings in go-down rent was ultimately having direct nexus with the business expenditure and it is expeditious and directly incidental to the business so the same should be allowed. It was another contention that the AO has not established that the borrowed funds have been used for purchase of these plots.

(iii) It was also submitted that as per section 36(1) (iii) of the Act, the deduction of interest paid in respect of capital borrowed for the purpose of business shall be allowed while computing the income of the assessee. Here the relevant wording of the Act is for the purpose of business and the entire funds on which interest were paid is directly and incidentally infused for business purpose. It is well established

proposition that when the revenue fails to establish any nexus between the borrowed funds and the funds diverted/lent, any denial of allowances of interest under Section 36[1] (iii) is not permissible. It was the contention of the appellant that the proviso to section 36(1) (iii) was amended w.e.f. 1.4.2016 by deleting the words "for extension of existing business or profession" and in the relevant assessment year i.e. AY 12-13, being prior to amendment effective from AY 2016-17, the deduction was allowable for extension of business & profession. In support of its contentions, the appellant has relied upon a number of judicial pronouncements.

- (iv) *I have duly considered the submissions of the appellant, assessment order and the material placed on record. I have also considered the judicial pronouncements relied upon by the appellant and found them to be distinguishable on facts. It is noted that the appellant was engaged as a trader/commission agent of Khal for which its required go-downs and looking to the increase in godown rents, it purchased two plots for the purposes of extension of its business. It would be appropriate to reproduce the provisions of section 36(1) (iii) of the Act as under:*

"36(1) (iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :

Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction."

- (v) *It is clear from the proviso to section 36(1)(iii) of the Act as reproduced above that interest paid in respect of an asset required for extension of existing business cannot be allowed till the date such asset was put*

to use. It is evident from the depreciation chart filed by the appellant that there was no addition to these plots in terms of boundary wall etc. and the appellant has incurred a sum of Rs. 16,01,000/- thereof in the FY 2012-13 i.e. the plots purchased by the appellant could not be used for the purposes of the business of the appellant during the year under consideration. It may be mentioned that in the case of Breeze Constructions (P.) Ltd. Vs ITO [2012] 21 taxmann.com 114 (Delhi), it was held by the Hon'ble ITAT that:

"A reading of section 36(1) (H i) makes it amply clear that interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession; for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction. By implication this proviso is also applicable when assets are acquired for new business. If the proviso is interpreted to signify that the same will not be applicable to such acquisition of assets, it will defeat the whole purpose of the proviso. Thus, the assessee's plea that proviso is not applicable, is not sustainable. In the background of the aforesaid discussion, the Commissioner (Appeals) has passed a reasonable order which does not need any interference and, accordingly, the same was to be upheld. As regards the assessee's alternative submission the expenditure involved be allowed to be capitalized, the same is acceptable. Hence, the disallowed expenditure be allowed to be capitalized. [Para 7.4]"

(vi) *It is also observed from the material placed on record that as on 31.03.2012, the partner's capital was to the tune of Rs. 2,60,742/- only and the unsecured loans were to the tune of Rs. 3,72,38,259/- which has increased from Rs. 2,48,69,710/- as on 31.03.2011. In view of these facts, it can be concluded that the investment in the plots to the tune of Rs. 31,68,995/- was made out of the borrowed funds i.e. there is a direct nexus between the borrowed funds and investment in plots. The expenditure may be required as a commercial expediency is of no relevance here as a capital asset was acquired by the appellant, which was not put to use during the- year under consideration.*

(vii) Thus, in view of the above discussion and looking to the facts and circumstances of the case, it is held that the AO was justified in making disallowance of Rs. 2,37,675/- out of the interest expenses claimed by the appellant. Hence, this ground of appeal is hereby rejected."

5. I have heard both the sides on this issue. From the facts of the case, it is clear that the assessee has achieved the turnover of Rs. 10,08,23,511/- and the declared the gross profit rate @ 5.96%, which is higher than the immediate preceding year when it was 3.15% only. The purchase of the plot was to expand the business of the assessee to make go-down as the assessee was paying rent on the go-downs. Thus, there was a direct nexus of this expenditure with the business of the assessee. Since this expenditure was directly related to the business of the assessee, the interest paid on the borrowed money cannot be disallowed. The Id. CIT(A)'s observation that these plots were not utilized for the purpose of business is misplaced. The P&L account of assessee shows that the assessee was paying go-down rent of Rs. 6,90,366/- for the year under consideration F.Y 2012-13. Subsequently it was reduced to Rs. 3,29,264/- (F.Y 2013-14), which is evident from page No. 13 and 15 of the paper book respectively. Further the fixed assets schedule also shows that the assessee has

spent on construction Rs. 16,01,000/- on these plots during the year under consideration. These plots are being utilized for the business purposes. The disallowance of interest on borrowed money was not justified as the money was utilized for business purposes only. Therefore, I allow the appeal of the assessee.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10/11/2017.

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10th November, 2017

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Padam & Co., Sikar Road, Jaipur.
2. प्रत्यर्थी / The Respondent- The Ward-3(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 252/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar