

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri Waseem Ahmed, AM & Hon’ble Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 704/Kol/2016

Assessment Year :2009-10

JCIT(OSD),Cir-2(1), Kolkata

-vs-

M/s Bengal Intelligent Parks Pvt. Ltd.

[PAN: AACCB 0276 E]

(Appellant)

(Respondent)

For the Appellant : Shri Arindam Bhattacharjee, Addl.CIT.

For the Respondent : Shri A.K.Tibrewal,FCA

Date of Hearing : 01.01.2018

Date of Pronouncement : 25.01.2018

ORDER

Per Waseem Ahmed, AM

This appeal by the Revenue arise out of the order of the Learned Commissioner of Income Tax(Appeals)-15, Kolkata [in short the Id CIT(A)] in dated 25.01.2016 against the order passed by the ITO,Ward-8(1), Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 30.12.2011 for the Assessment Year 2009-10.

2. The Revenue has raised the following grounds of appeal:

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of disallowance of loan processing fees of Rs. 60,18,065/- which is an inadmissible expenses and not allowable as deduction u/s 24.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred clarifying about sec. 2(28A) of the Act, there is no specific clarification from which it may clearly be stated that the expenses is exclusively allowable as deduction u/s 24 of the I.T. Act, 1961.

3. The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.

2. The solitary issue raised by the Revenue in this appeal is as to whether the Ld. CIT(A) erred in deleting the addition made by the AO for Rs. 60,18,065/- on account of loan processing fee.

3. Briefly stated facts are that the assessee in the present case is a private limited company and engaged in the business of the real estate infrastructure and related activities. The assessee, for the year under consideration, has filed its return of income declaring its total income under the head “business, other sources and house property”. The assessee while computing the income under the head “house property” has claimed the deduction of interest u/s 24(b) of the Act. The amount of interest was inclusive of loan processing fees of Rs. 60,18,065/- only. The AO was of the view the amount of loan processing fee is not allowable deduction while determining the income under the head house property u/s 24(b) of the Act. On being confronted for the aforesaid deduction, the assessee submitted that it is an allowable expenditure under the provisions of the Act. However, the AO disregarded the contention of the assessee and disallowed the amount of loan processing fee and added to the total income of the assessee.

4. Aggrieved the assessee preferred an appeal to the Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that the loan processing fee is part and parcel of interest expenses as per the provision of section 2(28A) of the Act. The Ld. CIT(A)

after considering the submission of the assessee deleted the addition made by the AO by observing as under:

“I have gone through the assessment order and the submission of the AR. As per provisions of section 2(28A), the loan processing fee is part and parcel of interest. Hence, the deduction is to be allowed to the assessee. Thus, the disallowance of Rs. 60,18,065/- is deleted.”

Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

5. The ld. DR before us submitted that it is not clear from the order of lower authorities whether the impugned loan processing fee pertains to pre-construction period as per the explanation to Clause (b) of section 24 of the Act. The Ld. DR vehemently supported the order of AO. He left the issue to the discretion of the Bench.

On the other hand, the Ld. AR reiterated the submissions as made before the Ld. CIT(A) and relied on the order of Ld. CIT(A).

6. We have heard the rival contention and perused the material available on record. The limited issue in the instant case relates to the fact whether the loan processing fee is eligible for deduction u/s 24(b) of the Act. At this juncture, we are inclined to reproduce the provision of section 2(28A) of the Act which read as under:

“Interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.”

From the plain reading of the above provision, we note that the amount of interest is inclusive of loan processing fee. Thus, we conclude that the amount of loan processing fee claimed by the assessee is very much eligible for deduction u/s 24(b) of the Act.

6.1. The argument advanced placed by the DR whether the loan processing fee pertains to the pre-construction period is not arising from the order of lower authorities. As the issue is not arising from the order of AO therefore no new dimension can be given to the impugned issue. Therefore, we do not find any merit in the argument advanced by

the DR. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A). We uphold the same. Hence, the ground of appeal raised by the Revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 25.01.2018

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[Waseem Ahmed]
Accountant Member

Dated : 25.01.2018
SB, Sr. PS

Copy of the order forwarded to:

1. JCIT(OSD), Cir-2(1), Kolkata, Aayakar Bhawan, 7th Floor, P-7, Chowringhee Square, Kolkata-69.
2. M/s Bengal Intelligent Parks Pvt. Ltd., 9B, Wood Street, 3rd Floor, Kolkata-700016.
- 3.C.I.T.- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
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By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches