

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3137/MUM/2016
Assessment Year: 2012-13**

Deegee Software Pvt. Ltd.
44 Ajaydeep Building, 240
Perin Nariman Street,
Mumbai-400001

Income Tax Officer,
Ward 5(1)(3),
Vs. Aayakar Bhavan,
Churchgate
Mumbai.

PAN No. AABCD5971F
Appellant

Respondent

Assessee by : Ms. Dinkle Hariya, AR
Revenue by : Mr. M.C. Omi Ningshen, DR

Date of Hearing : 06/04/2018
Date of pronouncement : 25/04/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-10, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The 1st ground raised by the assessee in this appeal is against the order of the Ld. CIT(A) confirming the disallowance of interest expenditure of Rs.85,19,732/- claimed by the assessee.

3. Briefly stated, the facts of the case are that in the computation of income, under the head 'Income From House Property', the assessee has shown loss of Rs.85,19,732/-. The assessee had claimed deduction u/s 24 on account of interest payment. The Assessing Officer (AO) found that the assessee was not having any house property, there was only under-construction building, expenses incurred on which was shown under the head 'Capital WIP'. As per the AO, the said building was demolished in the second half of the financial year (FY) 2010-11 and therefore, in the assessment year (AY) 2011-12, the income from house property was offered by the assessee only for first half of the FY 2010-11 for six months only. However, in the return of income the assessee had claimed interest for the full year. As there was no house property, the AO denied the claim of deduction u/s 24 made by the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A), following the order of his predecessor for the AY 2011-12 dismissed the above ground filed by the assessee.

5. Before us, the Ld. counsel of the assessee submits that the above issue has been decided in favour of the assessee by the ITAT 'D' Bench Mumbai in ITA No. 7553/Mum/2014 for the AY 2011-12.

On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. We find that the same issue arose before the Tribunal in AY 2011-12, wherein it is held:

“7. We are of the considered view that though at the first blush, on a plain reading of Sec. 24, no such precondition emerges, from where it could be gathered that for allowability of 'Interest on borrowed capital', the property which had been acquired, constructed, repaired, renewed or re-constructed, should be existing during the year after it has been used/let out, nor on such *prima facie* perusal, we come across any such embargo, which therein contemplates that despite the fact an assessee had satisfied all the requisite conditions under Sec. 24, he would however stand disqualified from raising the claim, for the reason that the property had ceased to be in existence. We are however of the considered view, that a careful perusal of Section 24, which contemplates that the deductions are to be allowed at the time of computing the 'Income chargeable under the head 'Income from house property', thus presupposes the very existence of the 'Annual Value' of the property, failing which, the entitlement of the assessee towards claim of deductions contemplated therein, would stand jeopardized. Thus, now when the determination of the 'Annual Value', as stands gathered from a conjoint reading of Sec. 22 r.w Sec. 23 of the 'Act', itself requires the existence of the property, therefore, we though find ourselves to be in agreement with the view of the A.O, that to the extent where a property is not in existence during the whole year then, in the backdrop of the absence of the 'Annual Value', there remains no occasion for computing the income of the assessee under the head 'Income from house property', and thus no claim for deduction under Sec. 24(b) can be raised. However, such an interpretation cannot be transposed and read into in case as that of the present assessee before us, where the property which is though in existence during part of the year, had however ceased to exist thereafter, because the very existence of the

property during any part the year would therein render it eligible for determination of its 'Annual value' under Sec. 23, and resultantly entitle the assessee to claim deduction towards 'Interest on borrowed capital' under Sec. 24(b). Thus, to be brief and explicit, we are of the considered view that as long as the 'Annual value' of a property can be determined under 23, there would be no embargo as regards claim of 'Interest on borrowed capital' under Sec. 24(b). We are further of the considered view that though a restriction as regards the quantum of deduction of 'Interest on borrowed capital' in respect of certain 'residential properties', is provided in the first proviso of Sec. 24 of the 'Act', however nothing emerges from the statute, which therein contemplates the jeopardizing of the claim of the assessee towards interest on borrowed capital, in a situation as that in the case of the present assessee, where though the property was in existence during part of the year, but thereafter had ceased to exist during the remaining part of the year. We are of the considered view, that in the absence of anything being provided in the statute, as regards restricting the entitlement of the assessee towards the 'Interest on borrowed capital', only for the period during which the property had been in existence, no such interpretation which would militate against the plain meaning of the said statutory provision, can be permitted in eyes of law. That as per the settled position of law, that even *casus omissus* can also not be supplied while interpreting a statutory provision, as the same remains the exclusive domain of the legislative wisdom, we therefore refrain from reading into the aforesaid statutory provision, a restriction/embargo, which is consciously, purposively and intentionally not made available on the statute by the legislature in all its wisdom. We being not oblivious of the fact, that by subscribing to the view adopted by the lower authorities, and therein upholding the pro rata disallowance of 'Interest on borrowed capital', for the part of the year during which the property of the assessee had ceased to be in existence, we would be doing violence to the literal interpretation of the aforesaid statutory

provision, which would blatantly militate against its plain meaning. We thus, in light of our aforesaid observations are unable to persuade ourselves to subscribe to the findings of the lower authorities, who we are of the considered view, had erroneously restricted the claim of the assessee towards interest payable on the borrowed capital, only for the part of the year during which the property had remained in existence. We are persuaded to observe that if the legislature would have intended to restrict such a claim of the assessee, then the same would have specifically been provided for in the statute. We are thus of the considered view that the CIT(A) had erred in sustaining the order of the AO and thus misinterpreting the scope and gamut of Section 24(b), had wrongly disallowed 50% of the aforesaid 'Interest on borrowed capital' of Rs.40,63,453/- in the hands of the assessee. We thus set aside the order of the CIT(A), and allow the appeal filed by the assessee."

6.1 Facts being identical, we follow the above order of the Co-ordinate Bench and allow the 1st ground of appeal.

7. The 2nd ground raised by the assessee in this appeal is against the order of the Ld. CIT(A) in confirming the action of the AO of not allowing claim of set off of interest expenditure to the tune of Rs.1,02,23,721/- against interest income earned although direct and proximate nexus is established among surplus borrowed fund used for fixed deposit made from which interest income is earned.

8. During the course of assessment proceedings, the AO noticed that the assessee had earned interest income, which has nothing to do with capital work-in-progress. However, the interest expenses were required to be capitalized as the project is under completion. The AO came to a finding that as per the provisions of the Act, interest income accrued/earned at Rs.1,02,23,721/- on bank FDR by the assessee was

required to be offered for taxation under the head 'income from other sources'. The AO found that there was no direct and proximate nexus between the funds parked with the banks in the form of FDRs or kept in the form of Short Term Deposit Receipts (STDRs). The AO arrived at a finding that in the present case the interest earned from such FDRs/STDRs have no direct co-relation with the business activity of the assessee. The AO relied on the decision in 248 ITR 449 (SC) wherein it is held that taking FDRs and pledging them as securities for taking loans are two different transactions and the interest in such FDRs is 'income from other sources'. On the above reasons, the AO treated the interest of Rs.1,02,23,721/- on FDs as 'Income from Other Sources' and brought the same to tax.

9. In appeal, the Ld. CIT(A) held that (i) the interest paid has nothing to do with the interest earned, (ii) the assessee has not borrowed the funds for the purpose of keeping in fixed deposits with the banks so as to entitle him to claim the expenditure of interest from the income received in the form of interest, (iii) as the assessee has not borrowed for the purpose of depositing in FDs to earn interest, a co-relation between the interest earned and interest paid cannot be established and therefore, netting of interest is not available to the assessee.

On the above reasons, the Ld. CIT(A) differed from the decision of his predecessor and dismissed the appeal filed by the assessee.

10. Before us, the Ld. counsel of the assessee files a Paper Book (P/B) containing (i) copy of ITAT order for Ay 2011-12, (ii) copy of computation of income for AY 2012-13, (iii) copy of computation of

income for AY 2013-2014, (iv) copy of assessment order u/s 143(3) of the Act for AY 2013-14, (v) copy of submissions for Assessing Officer for AY 2013-14 [(a) letter dated 06.11.2015, (b) letter dated 29.02.2016] and (vi) copy of CIT(A) order for AY 2011-12.

The Ld. counsel submits that as there is direct and proximate nexus between borrowed fund and money pledged as short term deposits with bank, the interest expenditure was claimed as set off against interest income.

11. On the other hand, the Ld. DR relies on the order of the Ld. CIT(A).

12. We have heard the rival submissions and perused the relevant materials on record. It would be relevant to go through the submission made by the assessee before the Ld. CIT(A), which has been filed before the Tribunal. There, it was submitted that (i) during the AY 2011-12, the assessee has used borrowed money to the tune of Rs.17,30,80,000/- by investing in short term deposit with bank to the tune of Rs.16,50,00,000/-, (ii) the said borrowing to the tune of Rs.17,30,80,000/- was done for construction of immovable property which was under progress during the year under consideration, (iii) during the year the assessee has further borrowed to the tune of Rs.2 crore from M.C. Davar Holdings Pvt. Ltd. which have been used to place fixed deposit with the bank of Rs.2.30 crore, (iv) on total fixed deposits placed during the preceding year i.e. AY 2011-12 and fixed deposits placed during the AY 2012-13, the assessee has earned interest income of Rs.1,02,23,721/-.

Also it was submitted before the Ld. CIT(A) that as there is direct and proximate nexus between borrowed money and money placed as short term fixed deposits with bank, interest expenditure was claimed as set off against interest income. It is stated that the same is evident from the Fixed Deposit ledger account as well as Bank Book for the year under consideration as well as of preceding year.

12.1 We find that in the present case the above facts were not verified either by the AO or the Ld. CIT(A). Therefore, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a fresh order after examining the contentions of the assessee delineated at para 12 hereinbefore. Particularly, the AO would examine the Fixed Deposit ledger account as well as Bank Book for the year under consideration as well as of preceding year. We direct the assessee to file the relevant documents/evidence before the AO. Needless to say, the AO would give a reasonable opportunity of being heard to the assessee before finalizing the order. Thus the 2nd ground of appeal is allowed for statistical purposes.

13. The 3rd ground of appeal is against the disallowance of business loss of Rs.7,894/- claimed by the assessee. The AO disallowed on the ground that the assessee has not done any business activity during the year under consideration and in the earlier years. The Ld. CIT(A) agreed with the reasons given by the AO and dismissed the appeal of the assessee.

We have perused the relevant materials on record. It is found from the annual accounts that the assessee has claimed a deduction of

Rs.7,894/-. It represents expenditure on rates and taxes to the tune of Rs.14,768/-. Out of the above sum, an amount of Rs.6,876/- has been disallowed u/s 14A of the Act. We further find that the above expenditure claimed is towards maintaining existence of the company. In view of the above facts, we delete the disallowance of Rs.7,894/- made by the AO and allow the 3rd ground of appeal.

14. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 25/04/2018.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 25/04/2018

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai