



**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI, AMARJIT SINGH, JM**  
**ITA No.2195/Mum/2016**  
**(Assessment Year: 2012-13)**

ACIT – 17(3) Room No.137, 1 <sup>st</sup> Floor Aayakar Bhawan M.K.Road, Mumbai-400020	Vs.	M/s. Vijay Trading Co. 6/18-1, 2 <sup>nd</sup> Floor Grants Building, Arthur Bunder Road Colaba, Mumbai – 400 005
<b>PAN/GIR No.</b>		<b>AAAFV1167H</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

Assessee by	Shri V. Vidhyadhar
Revenue by	Shri Ishwar Prakash Rathi
<b>Date of Hearing</b>	<b>08/06/2018</b>
<b>Date of Pronouncement</b>	<b>08/06/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-28, Mumbai dated 12/01/2016 for the A.Y.2012-13, in the matter of order passed u/s.143(3) of the IT Act.

2. Following grounds have been taken by the Revenue:-

*1 "On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing the deduction of 'Building Repair Cess' of Rs.35,55,960/- and interest of Rs.4,20,000/- form the income from house property, without appreciating the facts that the assessee had chosen to offer rental income from building under the head "House Property" and at the same time knowing well that the building repair cess pertaining to this rental income is not entitled for deduction under the provisions of house property and also not claim the same in 'Return of Income' as the deduction from 'Income House Property'. Only the*

*assessee had chosen to book these expenses under the head 'Business Income', thereby reducing the business profits by booking an expenditure admittedly and knowingly that the same is not related to such business activities."*

*2 "On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the disallowance of interest attributable to debit balance in partner's capital account of Rs.7,91,575/- without appreciating the facts of that the books of account clearly revealed that the assessee-firm had not withdrawn by the partners.*

*3 "On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the disallowance of expenses on account of TDS Mismatch of TDS credit claimed as per 26AS vis-a vis computation of Rs.3,67,699/- without appreciating the facts of that assessee had not brought on record any corroborative evidence to justify the allowability of aforesaid undisclosed TDS. The assessee had simply submitted that the above difference had arise due to double time expenditure shown by Bharti Airtel Ltd."*

*2. "The appellant prays that the order of the AO should be restored and order of the CIT(A) should be set aside,"*

*3. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is a Partnership firm. It is engaged in the business of development of properties and also getting rental income from properties owned by them. During the year under consideration the appellant has received gross rent of Rs. 49,72,904/- which includes repair cess. In the final accounts, the gross rent was shown in credit side of the profit and loss account and the repair cess was debited separately to the profit and loss account on actual payment basis i.e. Rs. 35,55,960/-. However by inadvertent mistake the entire amount of gross rent was offered as income from house property and repair cess was claimed as business expenses.

4. The assessee claimed payment of interest as business expenditure in place of income from 'house property'. During the course of assessment, AO disallowed repair cess of Rs.35,55,960/- and interest of Rs.4,20,000/- being expenses relates to let out property. However, assessee admitted its mistake and filed revised computation of income in respect of income from 'house property' and claimed deduction of repairs cess and interest from rental income under the head income from 'house property.' However, the AO declined the same on the plea that assessee has wrongly claimed expenditure under the head 'business income.'
5. AO has also disallowed proportionate interest of Rs.9,05,000/- in respect of debit balance of partner's capital account by observing that interest bearing funds have been withdrawn by the partner, therefore, proportionate claim of interest cannot be allowed as business expenditure.
6. AO has also made an addition of Rs.3,67,699/- on account of extra rental income appearing in statement in form 26AS.
7. By the impugned order, CIT(A) partly disallowed assessee's claim after observing as under:-

*"I have carefully considered the matter. I find that the appellant has conceded ground no 1 which is against the disallowance of the building repair cess and interest while computing income under the head profits and gains. In the ROI filed, the appellant has returned business income of Rs 1,23,89,810 and the AO has added Rs 35,55,960 and Rs 4,20,000 on these two counts. In view of the submission of the appellant, the action of the AO is confirmed in respect of these two disallowances under head business income.*

*5.1 Ground 2: The appellant submitted that the building repair cess by its very nature is eligible for deduction under head house property. He*

*stated that the rental income collected is on cessed buildings which are very old and in need of fire repair. Towards this end, the MHADA charges the building repair cess from tenants and the appellant is mandated to collect the same on behalf of MHADA and remit the same to MHADA. The contention of the appellant is that the rental income collected by him and declared under head house property has the building repair cess on various tenements embedded in the same. I find that the repairs cess is a charge levied by MHADA on the cessed buildings as they take responsibility for its repairs. This cess is levied under the authority of the Building Repairs and Reconstruction Act 1969. The contention of the appellant that the rent collected includes repair cess has also been and found correct. In the circumstances, what is rent due to the appellant is rent portion collected from tenants and not the repairs cess which is a mere pass through in the hands of the appellant. I am therefore inclined to agree with the appellant that the rent net of repairs cess has to be assessed as the ALV of properties rented out. The AO is directed accordingly.*

*5.2 In respect of interest expense debited to the P&L A/c, I have already held that the same is rightly disallowed in the computation of business income. However, the alternate plea of the appellant that the interest is to be allowed as a deduction from house property income deserves to be accepted. Admittedly, this is the interest on loans borrowed and utilized by the appellant for payment of compensation to old tenants to vacate residential premises. Later these premises have been let out and the rental income offered as income from house property. On these facts, the interest is directly related to earning of rent and therefore allowable u/s 24(b). This plea of the appellant has been rejected by the AO stating that such a claim can be made only by filing revised return. In this regard, I find that the decision of the Hon'ble Bombay High Court in the case of Pruthvi Sharebrokers is directly applicable and the alternate plea can be entertained. I therefore direct the AO to allow this interest claim u/s 24(b). However I find that the computation of house property income in the ROI by the appellant is not proper. I find that the actual repair cess payable to MHADA out of the rental Income is only Rs 27,21,096 as against Rs 35,55,960 claimed in the ROI. The appellant has also conceded this point during appeal. The appellant has submitted a revised working of house property income as reproduced above. I therefore direct the AO to assess the income from house property at Rs 6,16,339 as against Rs 29,36,207 returned. However the disallowances of Rs 35,55,960 & Rs 4,20,000 out of business income are upheld. Ground 2 is partly allowed.*

*5.3 Ground3: This is directed against the action of the AO in disallowing interest on the overdrawn debit balance of the partners accounts. I find that the AO examined the year end balances in the*

partners capital accounts and observed that they were overdrawn debit balances. The AO straightaway came to the conclusion that there is diversion of borrowed funds into these accounts. He therefore disallowed interest of Rs 9,05,000 being 12% of these overdrawn balances. On examination of the capital accounts of the partners, it is seen that the AO has not considered the share of profit allocated to the partners as on 31/03/2012. For eg. The capital account of Mr. Ganesh Gupta shows an opening Cr balance of Rs 74,95,658 as on 01/04/2011. Against this has been withdrawn Rs 1,10,00,000 during the year. The considered the difference to be overdrawn capital. However while doing so, the AO has given a go by to the share of profit of this partner of Rs 38,85,912 as on 31/03/2012. Once credit for this is granted, the so called overdrawn balance turns into a Cr balance of Rs 3,81,570. There is therefore no case to hold that the capital account is overdrawn. Similar is the case with Abu Asim Azmi whose capital account shows a Cr balance of Rs 3,63,099 after granting credit to the share of profit. However in the case of the third partner Dilkush Doshi, I find that the capital account is overdrawn by Rs 50,00,000 for 69 days. When asked to clarify during appeal, the appellant conceded the fact and stated that the interest pertaining to this be disallowed. This amount works out to Rs 1,13,425. I therefore uphold the disallowance made by the AO to the extent of Rs 1,13,425. Ground 3 is partly allowed.

5.4 Ground 4: This is directed against the action of the AO in adding back the receipt from Bharti Airtel as reflected in the 26A5 statement. The AO made this addition by rejecting the submission of the appellant that this is a mistake on part of Bharti Airtel whereby the data has been uploaded twice. Before me, the appellant submitted the details of payment received from Bharti Airtel as well as the supporting agreement. I find that this payment is in respect of rent for mobile towers and is to be made annually. From the bank statement of the appellant it is seen that there is only one credit entry corresponding to the transaction reflected in the 26AS statement. From the facts it is obvious that this is a mere error on part of Bharti wherein the data for the same payment has been uploaded twice in the 26AS. Accordingly, the addition made by the AO of Rs 3,67,699 is deleted. Ground 4 is allowed.

8. Against the above order of CIT(A), Revenue is in further appeal before us.
9. We have considered rival contentions and carefully gone through the orders of the authorities below and found that after giving detailed

finding, the CIT(A) has allowed assessee's claim of building repairs cess from tenants, in so far as the assessee was under obligation to collect the same on behalf of MHADA and remit the same to MHADA. The repairs cess is charged by MHADA on the cessed building as they take responsibility for its repairs. The CIT(A) also recorded a finding to the effect that the cess is levied under the authority of the Building Repairs and Reconstruction Act 1969. The detailed finding so recorded by CIT(A) are as per material on record, accordingly, we do not find any infirmity in the order for allowing deduction of building repairs cess paid to the MHADA.

10. Interest expenditure which pertains to the loan taken for the payment of compensation to old tenants to vacate residential premises, was correctly allowed by CIT(A) after having a detailed finding at para 5.2 which has not been controverted. Accordingly, there is no infirmity in the order of CIT(A) for allowing deduction on account of interest on loans borrowed and utilized by assessee for payment of compensation to old tenants to vacate the premises, which was given on rent by the assessee and income of which was offered under the head income from 'house property'.

11. With regard to the disallowance of interest on the excess amount withdrawn by the partners, the CIT(A) found that in respect of two partners, the AO has not considered the profit accruing during the year while computing excess debit balance in the capital account. The CIT(A) found that AO has wrongly computed interest by taking the opening

balance and ignored the profit accruing during the year. After taking into account, the profit accruing during the year and taking the same to the credit of the partner's capital account, there was no debit balance, accordingly the disallowance of interest in respect of debit balance in the capital account of Ganesh Gupta, Abu Asim Azmi was not warranted. However, in respect of partner Dilkush Doshi, the CIT(A) found that there was overdrawn out of capital account by Rs.50,00,000/- on which interest works out to Rs.1,13,425/-. Accordingly, CIT(A) has confirmed disallowance of interest to the extent of Rs.1,13,425/-. The detailed finding so recorded by CIT(A) has not been controverted. Accordingly, we do not find any reason to interfere in the order of CIT(A) for partly deleting the disallowance of interest, which was disallowed by the AO on the plea of excess withdrawal by the partners out of borrowed funds.

11. The AO has also added a sum of Rs.3,67,699/- by pointing out difference in form 26AS being received from Bharti Airtel. The CIT(A) verified form 26AS and the details of payment received by assessee from Bharti Airtel as well as the supporting documents and found that this payment is in respect of rent for mobile towers and is to be made annually. The CIT(A) also verified bank statement wherein it was observed that there was only one credit entry corresponding to the transaction reflected in 26AS statement. Thus, it was found that it was mere error on the part of the Bharti Airtel, wherein data for the same payment has been uploaded twice in form 26AS. After considering all these fact, CIT(A) deleted the addition of Rs.3,67,699/- made by the AO.

The detailed finding so recorded by CIT(A) are as per material on record which did not require any interference on our part.

**12. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on this 08/06/2018

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 08/06/2018  
Karuna Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai