

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'ई', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'E' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.5735/Mum/2015
Assessment Year: 2010-11**

Triumph Hospitals Pvt. Ltd. 801 and 802, Raheja Empress, Veer Savarkar Marg, Prabhadevi, Mumbai-400025	<u>बनाम/</u> Vs.	ACIT, Central Circle-29, Aayakar Bhavan, M. K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No. AABCT4993K		

निर्धारिती की ओर से / Assessee by	Shri Vinay Deshmane
राजस्व की ओर से / Revenue by	Shri V. Justin-DR

सुनवाई की तारीख / Date of Hearing:	17/05/2018
आदेश की तारीख / Date of Order:	17/05/2018

आदेश / O R D E R

Per Joginder Singh(Judicial Member)

The assessee is aggrieved by the impugned order dated 26/10/2015 of the Ld. First Appellate Authority, Mumbai. The first ground raised by the assessee pertains to confirming the disallowance of interest expenses of Rs.51,17,032/- made u/s 36(1)(iii) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, Shri Vinay Deshmane, Ld. counsel for the assessee, explained that the housing loan was obtained from the bank, which was used for business purposes, therefore, the disallowance of interest is not justified. The crux of the argument is identical which was raised before the Ld. Commissioner of Income Tax (Appeal). On the other hand, Shri V. Justin, ld. DR, defended the order by contending that the loan amount was not used for business purposes for which our attention was invited to the factual finding recorded in the impugned order.

2.1. We have considered the rival submissions and perused the material available on record. Before advertizing

further, now, we shall analyze section 36(1)(iii) of the Act, which is reproduced hereunder for ready reference:-

36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

- (i) *the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession;*
- (ia) *the amount of any premium paid by a federal milk co-operative society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk raised by its members to such federal milk co-operative society;*
- (ib) *the amount of any premium paid by any mode of payment other than cash by the assessee as an employer to effect or to keep in force an insurance on the health of his employees under a scheme framed in this behalf by—*
 - (A) *the General Insurance Corporation of India formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) and approved by the Central Government; or*
 - (B) *any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);*
- (ii) *any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;*
- (iia) *[Omitted by the Finance Act, 1999, w.e.f. 1-4-2000.]*
- (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 ⁹¹[] (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.***

Explanation.—Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;

2.2. The aforesaid section states that “the amount of interest paid in respect of capital borrowed for the purposes

of business or profession”, provided that any amount of interest paid, in respect of capital borrowed for acquisition of asset for extension of existing business or profession (whether capitalized in the books of accounts or not) for any period beginning from the date on which the capital was borrowed for acquisition of asset till the date on which such asset was first put to use, shall not be allowed as deduction. In the present appeal, the facts, in brief, are that the assessee company is in the line of healthcare from outpatient clinics to diagnostics to hospitals. The assessee took capital advances of Rs.5,14,00,000/- by utilizing overdraft facilities of Kotak Mahindra Bank. These funds were borrowed from the bank on account of home finance facility. The claim of the assessee is that borrowed funds were not utilized for purpose of acquisition of new capital asset like building/land. The assessee paid interest on the borrowed overdraft loan to the tune of Rs.67,85,546/-. The assessee was asked by the Ld. Assessing Officer to justify its claim of interest payment for non-utilization of overdraft loan for acquiring capital asset. In response to the show cause notice, the assessee submitted that the loan taken from Kotak Mahindra Bank was used to

invest in shares of Triumph Estate Pvt. Ltd. during Assessment Year 2010-11 and was shown as share application accounts, which were issued in subsequent year. The assessee invested the loan amount as share application money pending allotment of shares. This amount is appearing in finances of Triumph Estate Pvt. Ltd. as sub-part of equity capital grouping. The terms and conditions has already been discussed in the impugned order, therefore, are being not repeated in the present order. We find that the assessee on the one hand sanctioned home loan finance facilities through overdraft facilities for the development/purchase of property and on the other hand, diverted the funds for non-business purposes. It is further noticed that in both the companies, i.e. the assessee as well as M/s Triumph Estate Pvt. Ltd. the director is the same i.e. Mr. R. K. Deshpande, who is the beneficial owner of share holding more than 90% of voting powers in both the companies. We also observed that the borrowed funds were not utilized for the purpose of purchasing new capital asset i.e. building or land by the assessee but utilized/invested in acquiring shares of subsidiary company i.e. M/s Triumph Estate Pvt. Ltd. still

the assessee claimed the interest payment as deductible business expenditure. Even in the audit report (schedule-10)(para-j borrowing cost) states that sanctioned overdraft home loan finance facility were utilized for non-business purposes.

2.3. Considering the totality of facts, admittedly any and every payment, in the garb of interest, in excess of what can be really termed as interest, is not allowable. At the same time the deduction is not dependent on whether resulting profit is taxable or not. The word “borrowed” and “paid” in section 36(1)(iii) clearly postulate two different entities, one which lends capital and the other which borrows and pays interest. What section 36(1)(iii) emphasizes on its user of capital and not user of asset, which comes into existence as a result of borrowed capital, unlike section 37(1), which expressly exclude and expense of a capital nature. Legislature has, therefore, made no distinction in section 36(1)(iii) between “capital borrowed for revenue purposes” and “capital borrowed for capital purposes” and an assessee is entitled to claim interest paid on borrowed capital provided that capital is used for ‘business purposes’ irrespective of

what may be result of using such borrowed capital. Our view find support from the ratio laid down in DCIT vs Core Health Care Ltd. (2008) 167 taxman 206 (SC), CIT vs Monnet Industries ltd. (2012) 210 taxman 264 (SC), Vardhman Polytex Ltd. vs CIT 210 taxman 261 (SC), CIT vs Anand Technology Resources Park P. Ltd. (2011) 202 taxman 654. Hon'ble M.P. High Court in Birla Gwalior Pvt. Ltd. 44 ITR 847 (M.P.) holding that it is not necessary to show for the purposes of deduction under clause (iii) that the money borrowed was utilized for a particular branch of assessee's business. Identical ratio was laid down by Hon'ble jurisdictional High Court in CIT vs Bombay Samachar Ltd 74 ITR 723 (Bom.) and Amma Bai Hajee Issa vs CIT 51 ITR 835 (Mad.)

2.4. The expression "for the purposes on business" is wider in scope than "for the purposes of earning income" (Madhav Prasad Jatia vs CIT (118 ITR 200)(SC) and L.M. Thappar vs CIT 173 ITR 577 (Cal.). Interest on borrowal is allowable as deduction only when the borrowals are used for the purpose of business. In S.A. Builders Ltd. vs CIT (supra), where holding company had a deep interest in its subsidiary

and the holding company advances borrowed money to its subsidiary, the same was used by the subsidiary for business purposes, the holding company was held to be entitled to deduction of interest on its borrowed loans. The only condition is that it should be used for business purposes. The ratio laid down in CIT vs Motor General Finance Ltd. 272 ITR 550 (Del.) supports our view. If the aforesaid cases and the ratio laid down therein is analyzed with the facts of the present appeal, as mentioned earlier, the assessee has taken capital advances of Rs.5,14,00,000/- by utilizing the overdraft facility of Kotak Mahindra Bank on account of home finance facility/scheme, so any expenditure incidental to the same has to be capitalized for housing purposes only, whereas, the assessee diverted the funds for non-business purposes and invested in acquisition of shares of subsidiary company and claimed interest payment as deductible business expenditure. Thus, the company failed to establish that the expenditure was incurred for business purposes, therefore, we find no infirmity in the order of the Ld. Commissioner of Income Tax (Appeal). This ground of the assessee is dismissed.

3. The next ground raised by the assessee pertains to confirming the disallowance of 3/4th of expenses u/s 38(2) of the Act towards depreciation, repairs and maintenance expenses amounting to Rs.5,86,836/- and Rs.7,18,985/- respectively relating to the residential premises owned by the assessee. The assessee provided rent free accommodation to its directors Shri R. K. Deshpande. The plea before us as well as before the Ld. Commissioner of Income Tax (Appeal) is that the perquisite value of the rent free accommodation has been duly taxes in the hands of Shri R. K. Deshpande. The Ld. Assessing Officer invoked the provision of section 38(2) of the Act and disallowed 3/4th of the depreciation claimed on the residence as well as on repair and maintenance expenses. It was found that Shri Deshpande is a director in other companies also and thus the residence was not exclusively for the purposes of the business of the assessee. So far as, the cases relied upon by the assessee in DCIT vs M/s Prabhukripa Overseas ltd. (ITA Nos.1092 and 1093/Kol/2011) order dated 04/05/2012 and CIT vs New India Maritime Agencies pvt. Ltd. (207 ITR 392)(Mad.) is concerned may not help to the assessee being on different facts.

Because, in the present appeal, Shri R. K. Deshpande is also a director in other companies also and the present residence was not exclusively used for business purposes of the present assessee alone, therefore, 3/4th of the depreciation and repair & Maintenance were rightly disallowed. Considering the totality of facts, we find no infirmity in the stand of the Ld. Commissioner of Income Tax (Appeal), thus, this ground of the assessee is also having no merit, consequently, dismissed.

Finally, the appeal of the assessee is dismissed.

This Order was pronounced in the open court in the presence of Ld. representative from both sides at the conclusion of hearing on 17/05/2018.

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 17/05/2018

Shekhar, P.S.नि.स.

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

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**