

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No.7605/Mum/2016 (Assessment Year 2012-13)

M/s Ashish Land & Property Developers Pvt. Ltd. 215, Atrium, 10 <sup>th</sup> Floor, Near Marriot Courtyard Hotel, Andheri-Kurla Road, Andheri (E), Mumbai-400093. <b>PAN: AAGCA2673J</b>	Vs.	ITO-9(1)(4) Aayakar Bhavan, New Marine Lines, Mumbai.
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Appellant

Respondent

Appellant by : Shri Anuj Kisnadwala (AR)  
Respondent by : Shri Rajesh Kumar Yadav (DR)  
Date of Hearing : 01.05.2018  
Date of Pronouncement : 31.07.2018

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**  
**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee under section 253 of the I.T. Act (the Act) is directed against the order of Id. Commissioner of Income-tax (Appeals)-16, [Id. CIT(A)] Mumbai dated 02.09.2016 for Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

1. The learned Commissioner of Income Tax, erred in law & facts in confirming order of Assessing officer -of disallowing alternate claim of appellant in respect of allowance of proportionate interest u/s 36(1)(iii) on advances made for purchases of property amounting to Rs.5,51,85,094/-. The advances are made in the course of business of the appellant being builders & developers and not for acquiring capital assets and nor for extension of existing business. The same is for the main business as builder & developers. The same should be allowed as business expenditure.

2. Brief facts of the case are that the assessee is a Builder and developer, filed his return of income for Assessment Year 2012-13 on 26.09.2012 declaring

Nil income. The assessment was completed under section 143(3) on 22.03.2015. In the return of income, the assessee claimed interest expenses of Rs. 2,02,23,916/- against the rental income of Rs. 2,21,99,988/- under the head "Income from House Property". The Assessing Officer noted that assessee has shown rental income under the head "Income from House Property" from R.B. Kanakia School Building, Meera Road from two parties. The assessee has shown rental income of Rs. 1,62,52,912/- and Rs. 59,47,076/- from M/s Babubhai Kanakia Foundation and M/s Trivenibaa Madhavji Trust respectively. The assessee claimed interest expenses of Rs. 1,25,32,897/- to M/s Yes Bank Ltd., Rs. 20,48,819 to Shri Rasesh B. Kanakia and Rs. 45,94,350/- to M/s Kanakia Spaces Pvt. Ltd. The Assessing Officer also noted that there is no investment in the property i.e. R.B. Kanakia School Building as compared to preceding year. The Assessing Officer took the view as there is no addition of value in the House Property either on account of acquisition, construction, repair or renewal. The assessee has claimed interest expenses in respect of Long Term and Short Term borrowing. Since there is no increased in the value of House Property, therefore, the loan cannot be said to be utilized for the purpose of acquisition, construction or re-construction of the property. The assessee was asked to furnish the statement of utilization of borrowed capital and interest expenses claimed against the House Property. The assessee furnished its reply dated 09.02.2015. Along with the reply, the

assessee filed copy of sanctioned letter and interest accrued and paid, rate of interest from M/s Yes Bank. From the loan taken from Shri Rasesh B. Kanakia, the assessee furnished the copy of ledger account specified the amount of interest paid by assessee for the purpose of acquisition of property. The information furnished by assessee was not accepted by the Assessing Officer holding that the amount borrowed from M/s Kanakia Spaces Pvt. Ltd. is not utilized for any purpose specified in section 24(b) or in relation to House Property against the property from which Income from House Property was shown. Therefore, the Assessing Officer disallowed the interest expenditure of Rs. 45,94,350/-. The assessee in alternative claimed the interest expenditure under section 36(1)(iii). In alternative claim the assessee contended that part of loan was given as a property advance. After perusal of confirmation letter furnished by assessee, the Assessing Officer took his view that said loan was not given as advance for acquisition of development right; therefore, alternative contention of the assessee was also discarded. On appeal before the Id. CIT(A), the assessee challenged the disallowance on proportionate interest under section 36(1)(iii) only. The Id CIT(A) confirmed the action of assessing officer, therefore, further aggrieved the assessee has filed the present appeal before us raising the grounds of appeal as mentioned above.

3. The perusal of records reveals that the appeal is filed 10 days beyond the prescribed period of limitation. In support of condonation of delay, the

assessee has filed an application along with the affidavit of Ashish R. Kanakia. In the affidavit, it is contended that the order of Id. CIT(A) was received on 19.10.2016, the deponent-Director of the assessee was travelling to Gujarat from 12.12.2016 till 22.12.2016. After returning from journey, appeal fees of Rs. 10,000/- was paid on 23.12.2016 and the appeal was filed on 28.12.2016, therefore, there is delay of 10 days in filing the present appeal. Apart from the contents of affidavit, it is contended in the application that there is marginal delay in filing the appeal; the delay was not intentional or deliberate and the same may be allowed. The Id. AR for the assessee made is submissions on similar lines. The Id. AR submits that the assessee has good case on merit and is likely to succeed.

4. On the other hand, the Id. DR for the Revenue submits that there is gross negligence on the part of Director of assessee. There is no genuine reason pleaded in the application for contention of delay. The Id. DR for the Revenue prayed for rejection of application of contention of delay.
5. We have considered the rival submission of representative of the parties and have noted that there is only 10 days delay in filing the present appeal. The Director of the assessee has filed affidavit inter alia deposing that the delay was neither deliberate nor intentional but due to the reason that he was out of station for 10 days. Considering the contents of application and the affidavit, the delay is condoned.

6. On merit, the Id. AR of the assessee submits that assessee is in the business of real estate development. During the course of business, the assessee made advance of Rs. 5,00,18,171/- to Periwinkle Construction Pvt. Ltd. and Rs. 51,66,926/- to R & H Real Estate Developer. The Assessing Officer not allowed the alternative claim holding that as per proviso of section 36(1)(iii), interest on money borrowed for acquiring a capital asset till the date on which assets was brought to use even if it is for extension of business, is not allowable as revenue deduction. The Id. CIT(A) sustained the action of Assessing Officer holding that as on date of acquisition, no construction work was stated on the development right taken by the assessee. Therefore, proviso of section 36(1)(iii), interest on money for acquisition of capital asset till the date on which asset was brought to use is not allowable deduction. The Id. AR of the assessee submits that the proviso to section 36(1)(iii) is not applicable to the assessee. In support of his submission, the Id. AR of the assessee relied upon the decision of Hon'ble Delhi High Court in case of CIT vs. Dhoomketu Builders and Developers Pvt. Ltd. (Del. HC) (368 ITR 680), decision of single bench of Jaipur Tribunal in case of ACIT vs. Aditya Propcon P. Ltd. (ITA No. 760/JP/2014) dated 30.01.2014.
7. On the other hand, the Id. DR for the Revenue supported the order of authorities below. The Id. DR further submits that as per the proviso of section 36(1)(iii) interest on money borrowed for acquiring a capital asset

till the date on which assets was brought to use even if it is for extension of business, is not allowable as revenue expenditure.

8. We have considered the rival submission of the parties and have gone through the orders of the authorities below. There is no dispute that the assessee has given advance for acquisition of developments rights of certain properties. The assessee is engaged in the business of property development. The Hon'ble Delhi High Court in case of CIT vs. Dhoomketu Builders & Developers (supra) held that setting up of business is enough for claiming deduction under section 36(1)(iii). It was further held that commencement of the real estate business starts with the acquisition of land or immovable property. Further, single bench of Jaipur Tribunal in Aditya Propcon P. Ltd. (supra) held that purchase and holding of inventory is a business activity. The proviso has been inserted to disentitle claim of interest on funds borrowed for acquisition of capital asset for the period upto the asset is put to use. The term 'put to use' here applies to capital asset only because a capital asset is held to facilitate the business activity and some time it need to be prepared after acquisition for being used to facilitate the business activity. Therefore, the interest on funds borrowed to purchase land which is a part of inventory of assessee-company is an allowable deduction.
9. Considering the above factual and legal discussion, we direct the Assessing Officer to allow proportionate deduction of interest under section 36(1)(iii)

on advances made for purchase of property of Rs. 5,51,85,094/-. Hence, the ground of appeal raised by assessee is allowed.

10. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on 31.07.2018.

**Sd/-**  
**G.S. PANNU**  
**ACCOUNTANT MEMBER**  
Mumbai, Date: 31.07.2018  
SK

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "A" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**  
**Dy./Asst. Registrar**  
**ITAT, Mumbai**