

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1362/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Mont Vert Needs
129/2, Mont Vert Marc,
Pashan Sus Road,
Pashan, Pune – 411021

.... अपीलार्थी/Appellant

PAN: AAJFM3208K

Vs.

The Jt. Commissioner of Income Tax,
Range 4, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte

प्रत्यर्थी की ओर से / Respondent by : Shri Ashok Babu, JCIT

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| सुनवाई की तारीख / Date of Hearing : 07.08.2018 | घोषणा की तारीख / Date of Pronouncement: 28.08.2018 |
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-3, Pune, dated 03.08.2015 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law, the lower authorities have erred in disallowing a sum of Rs.83,07,018/- being*

expense on interest on loan, Loan proposal expense, Commission and brokerage for arranging the loan and also erred in treating the same as expenditure attributable to inventory for an incomplete project and in increasing the value of closing WIP by disregarding appellants contention.

2. *On the facts and in the circumstances of the case and in law, the lower authorities have erred in incorrectly applying the principles as laid down in Accounting Standard 2 – 'Valuation of Inventories', to the appellant by disregarding the fact that AS 2 does not apply to construction activities.*

3. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in the present appeal is squarely covered by the order of Tribunal in the case of M/s. Kumar Company Vs. JCIT in ITA No.900/PN/2013 and cross appeal in ITA No.1147/PN/2013, relating to assessment year 2009-10, order 29.01.2016.

4. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

5. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee is a registered partnership firm and engaged as a promoter & builder and carries out construction work. For the year under consideration, the assessee had capitalized most of the revenue expenses and added the same in closing WIP for the year. However, the assessee had claimed the expenses of ₹ 79,67,176/- for the interest on loan, ₹ 30,000/- for loan proposal expenses and ₹ 3,09,842/- for commission and brokerage for the arranging the loan in the Profit and Loss Account. These expenses had not been capitalized by the assessee. The Assessing Officer was of the view that where the assessee had completed the project in September 2012 and hence these expenses needed to be capitalized. The

Assessing Officer rejected the explanation of assessee and added sum of ₹ 83,07,018/-.

6. The CIT(A) confirmed the order of Assessing Officer.

7. We have heard both the learned Counsels, wherein the claim of assessee is that recognition of income as per established Accounting Principles would not determine the allowability of the claim of certain expenditure, in the hands of assessee, in the year of incurring the same.

8. We find that the issue raised in the present is squarely covered by the order of Tribunal in the case of M/s. Kumar Company Vs. JCIT (supra), wherein the Tribunal had held as under:-

"21. We have heard the rival contentions and perused the record. The assessee was a partnership firm, engaged in the business of real estate, construction, development of housing projects, trading of land and windmill power generation. During the year under consideration, the assessee had undertaken several projects for development. Out of total 17 projects being developed by the assessee, the proportionate sale of 5 projects was recognized as revenue income and other 12 projects were under development and no part of the said projects were ready for sale. In addition, the assessee was also holding stock of lands and had also made advances for purchase of lands. During the year under consideration, the assessee had claimed interest expenditure of Rs.14,43,90,385/- as revenue expenditure. The claim of the assessee was that it had incurred the above said interest expenditure for the purpose of carrying on its business and the same was allowable as revenue expenditure in its hands irrespective of some of the projects not being available for sale. The assessee for the year under consideration had shown total turnover of Rs.29.87 crores and had offered sum of Rs.39.08 lakhs as profit from construction business. The assessee was undertaking two types of projects i.e. one set of projects which were eligible for deduction under section 80IB(10) of the Act and the second set of projects which were not eligible for deduction under section 80IB(10) of the Act. The finance charges of Rs.14.43 crores debited to the Profit & Loss Account constituted of sum of Rs.9.14 crores paid as interest on unsecured loans amounting to Rs.100.80 crores and the balance sum of Rs.5.29 crores was paid as interest on secured loans amounting to Rs.15.44 crores. The case of the Assessing Officer was that where the assessee had made investment of Rs.221.79 crores, then the proportionate interest cost attributable to such investment was to be disallowed in the hands of the assessee under section 43(1) of the Act. On the other hand, the claim of the assessee was that the entire interest cost was attributable to funds utilized for carrying on the business of the assessee and hence, was allowable expenditure under section 36(1)(iii) of the Act. The

Assessing Officer on the other hand, was also of the view that in view of the proviso to section 36(1)(iii) of the Act, where the assets have not been put to use, then the interest relating to such assets is not allowable as deduction in the hands of the assessee. In this regard, the Assessing Officer made a reference to the schedules attached to the Balance Sheet and noted that the assessee had paid sum of about Rs.28 crores towards advances for properties, had invested sum of Rs.33.90 crores in properties shown as inventories and sum of Rs.93.94 crores in project sites and work-in-progress of various projects amounting to Rs.65.95 crores, totaling Rs.221.79 crores. The Assessing Officer further relied on the Accounting Standard No.7 and Accounting Standard No.16 issued by ICAI for the proposition that where the finance costs were specifically attributable to a particular contract, then the same had to be included as part of the contract costs. Since the assessee had recognized the revenue on sale of 5 projects only and the balance 12 projects were under construction, the Assessing Officer was of the view that the aforesaid building projects would come under the definition of qualifying assets as referred to in schedule 16 issued by ICAI and relating interest cost had to be capitalized as part of cost of that asset. The case of the assessee before us on the other hand was that the interest cost was in the first instance relating to the entire business carried on by the assessee whether i.e. for construction or for sale and purchase of properties and even if part of borrowed funds were utilized for construction of the infrastructure of the properties, sale from which is not recognized in the present year, were stock in trade of the assessee and hence, business assets and there was no merit in capitalizing any part of the borrowing cost being relating to cost of such project. The assessee was recognizing the cost of the project, which had not been sold during the year under the umbrella of work-in-progress but the case of the assessee was that no part of finance cost was to be treated as part of work-in-progress since the provisions of section 36(1)(iii) of the Act made the interest cost as eligible for deduction.

22. The provisions of section 36(1)(iii) of the Act and the proviso thereunder read as under:-

“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) and (ii) *****

(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 for extension of existing business or profession (whether capitalized 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 fulfill such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause.”

23. The substantive provisions of the Act entitle the assessee to claim deduction on account of interest paid in respect of capital borrowed for the purpose of business or profession. The intention of the statute is to allow the expenditure on account of finance cost as allowable in the hands of the

assessee where the capital borrowed has been utilized for the purpose of business or profession. The ambit of expression 'purpose of business' has to be considered for allowing the deduction on account of interest paid in respect of such capital borrowed, which in turn, has been utilized for carrying on the business of the assessee. The proviso thereunder restricts the disallowance of amount of interest paid, in respect of the capital borrowed for acquisition of an asset for expansion of existing business or profession, for any period beginning 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. The proviso under sub-section states that the interest relatable to such period is not allowable deduction. The provisions of the statute have to be read in entirety and the same cannot be given a meaning by way of reading the provisions in dis-jointed manner. No doubt, under the proviso, the reference is made to the borrowal of capital for acquisition of asset for expansion of existing business or profession, but the concluding para refers to an asset put to use i.e. for determining the period of disallowance of interest, is to start from the date on which the capital was borrowed till the date on which such asset was first put to use. In other words, the proviso makes a reference to capital asset which is acquired by the assessee out of borrowed funds for the expansion of an existing business or profession, which is capitalized in the books of account or not, then the interest which is relatable to the period beginning from the date on which capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, is not to be allowed as deduction. Reading the proviso clearly establish that the said provisions are applicable to capital assets acquired by the assessee and are not relatable to current assets. In case, we accept the proposition offered by the Revenue authorities, then in order to work out the disallowance of interest in the hands of assessee in respect of current assets held by the assessee i.e. the investment in properties which has not been sold during the current year, then the date on which such asset was first put to use cannot be applied, because once the current assets held by the assessee is complete in all respects, the same will not be put to use, but would be sold in the market to the prospective buyers. In such circumstances, we hold that there is no merit in the observations of the Revenue authorities that the proviso is applicable both to the current and / or capital assets. In our opinion, the proviso is clearly applicable only to capital assets and has no relevance in respect of current assets. In other words, if the amount of capital borrowed by the assessee is utilized for acquisition of non-capital assets, then such interest is allowable in the hands of the assessee, in view of main substantive provisions of section 36(1)(iii) of the Act. The proviso restricts the disallowance of interest only for the period till which the asset is not put to use. Once the asset is put to use, then the interest relatable to acquisition of such capital asset is also allowable as deduction in the hands of assessee as the asset after being put to use is utilized for the purpose of carrying on the business.

24. The second aspect of the issue is the Accounting Standard 16 issued by ICAI. In the first instance, we agree with the proposition raised by the learned Authorized Representative for the assessee that where the deduction or otherwise of an expenditure is covered by the substantive provisions of the Act, there is no merit in referring to the accounting standards issued by ICAI for working out the disallowance in the hands of assessee. In this regard, we find support from the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. M/s. Reliance Industrial Infrastructure Ltd. in Income Tax Appeal No.3611 of 2010, order dated 17.08.2015.

25. Under para 6 of accounting standards 16, it is prescribed that the borrowing costs which are directly attributable to acquisition, construction or production of qualifying asset, then the same should be capitalized as part of the cost of that asset. Undoubtedly, the assessee is engaged in the business

of construction and had borrowed funds for carrying on the construction activities. The issue which arises before us is whether overriding provisions of section 36(1)(iii) of the Act, which entails that the interest cost attributable to borrowed funds utilized for the purpose of business are to be allowed as deduction, can the provisions of accounting standards 16 override the provisions of the Act. We find no merit in the stand of the authorities below in this regard, in view of the specific provisions of the Act i.e. section 36(1)(iii) of the Act, which covers the allowability or otherwise of the interest cost of capital borrowed by the assessee for the purpose of carrying on its business and no resort can be made to any accounting standards by way of any directions / rules / provisions of other statutes / bodies / regulators for disallowing the expenditure in the hands of the assessee. In this regard, we find the mandate of Hon'ble Supreme Court in *Southern Technologies Ltd. Vs. JCIT* (supra) being squarely applicable. Further, where the interest cost is not attributable to the specific project undertaken by the assessee and constitute mixed funds in the hands of assessee, which in turn, were utilized for carrying on of the business in entirety, there is no merit in relying on Accounting Standard 16 to work out the disallowance of interest expenditure. Para 6 of Accounting Standard 16 clearly prescribed the borrowing costs which are directly attributable to acquisition, construction or production of qualifying asset, then the same is to be capitalized as part of the cost of assessee. The authorities below have failed to point out the borrowed finances were directly attributable to the construction of specific project, against which the disallowance is being made. In the absence of any identification of the finance costs being directly relatable to the so-called project under consideration, we find no merit in the reliance placed upon by the authorities below on the said Accounting Standards. In this regard, we find support from the ratio laid down by the Pune Bench of Tribunal in *DCIT Vs. Thakkar Developers* (supra).

26. Further, the issue before the Hon'ble Bombay High Court in *CIT Vs. K. Raheja Pvt. Ltd.* (supra) was as under:-

- (i) whether on the facts and the circumstances of the case and in Law the Hon'ble ITAT was right in holding that claim made by the assessee for deduction of Finance Cost by way of interest is in conformity with the Accounting Standard-7 issued by the Institute of Chartered Accountants of India and the exemptions provided therein?

27. The Hon'ble Bombay High Court held as under:-

"The finding of fact recorded by the Tribunal is that there is no identity between a particular borrowing and a particular line of business and there is no basis for coming to a conclusion that interest attributable to the loans should be appointed amongst the various business activities of the assessee and the portion attributable to the construction activity should be deferred and made a part of the work in progress to defer the interest expenditure till completion of the project. In our opinion, the issue raised in this appeal are squarely covered by the judgment of this Court in the case "*Commissioner of Income Tax. Vs. Lokhandwalal Construction Inds. Ltd.*, reported at 260 ITR 579". In this view of the matter, therefore, we see no merit in the appeal, the appeal is dismissed.

28. Following the above said proposition, we find no merit in the orders of authorities below in working out the interest attributable to the loans relatable to 12 projects under construction, has been not allowable as deduction in the hands of assessee. The assessee was following unit sale method of accounting, where revenue was recognized on sale of the units completed by it.

The assessee was not following project completion method. Though the assessee was capitalizing the cost of projects which were under consideration, the revenue relatable to units of such projects was offered to tax as and when the units were sold by the assessee. Thus, in such circumstances, there is no merit in holding that the interest attributable to the alleged loans utilized for 12 projects under consideration is to be disallowed in the hands of assessee. We find no merit in the orders of authorities below in this regard."

9. The issue arising in the present appeal is similar to the issue before the Tribunal and following the same parity of reasoning, we hold that expenditure claimed by the assessee totaling ₹ 83,07,018/- are to be allowed as revenue expenditure for the year under consideration. The grounds of appeal raised by the assessee are thus, allowed.

10. In the result, the appeal of assessee is allowed.

Order pronounced on this 28th day of August, 2018.

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| Sd/- (ANIL CHATURVEDI) | Sd/- (SUSHMA CHOWLA) |
| लेखा सदस्य / ACCOUNTANT MEMBER | न्यायिक सदस्य / JUDICIAL MEMBER |

पुणे / Pune; दिनांक Dated : 28th August, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-3, Pune;
4. The Pr.CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune