

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai**

**Before Shri Manoj Kumar Aggarwal, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 6597 /Mum/2016
(Assessment Year: 2012-13)**

M/s Khurana Exports Pvt. Ltd.
501, Raheja Centre,
Free Press Journal Marg,
214, Nariman Point,
Mumbai-400 021

Vs.

Asst. Commissioner of Income Tax
Central Circle-3(2),
Room No. 402, 4th Floor,
Aayakar Bhavan,
Mumbai-400 020

PAN – AAACK1611L

Assessee

Revenue

Assessee by: Mrs. Renu Kapoor, A.R
Revenue by: Shri Manoj Kumar Singh, D.R

Date of Hearing: 11.09.2018
Date of Pronouncement: 19.09.2018

ORDER

Per Ravish Sood, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)- 51, Mumbai, dated 30/08/2016, which in turn arises from the order passed by the A.O under Sec. 143(3)(ii) of the Income-tax Act, 1961, dated 30.03.2015 for A.Y 2012-13. The assessee has assailed the order of the CIT(A) on the following short grounds of appeal:

- “1. The learned CIT(Appeals) has erred in law and on the facts of the case in sustaining the disallowance of interest Rs.6,32,141/- u/s 24(b) of the Income Tax Act.
2. The assessee company craves leave to add, alter or amend the above ground of appeal.”

2. Briefly stated, the assessee company which during the year under consideration was not having any business activity, but deriving its income from house property and other sources had filed its return of

income for A.Y 2012-13 on 29.09.2012, declaring total income of Rs. 25,95,084/-. The return of income was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2).

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had shown rental income from a property at Apsara CHS Ltd., NCPA, Nariman Point, Mumbai. Further, it was noticed by the A.O that the assessee had claimed a deduction of interest under Sec. 24(b) of Rs. 6,32,141/- in respect of the aforesaid property. In order to verify the veracity of the claim of the aforesaid interest expenditure the assessee was called upon by the A.O to furnish documentary evidence establishing that loan funds in respect of which the interest expenditure was claimed as deduction were utilised for the purpose of purchase of the aforesaid property. The unsubstantiated explanation of the assessee that the interest expenditure pertained to a loan which was raised from Sh. Puneet Khurana for acquiring the subject property did not find favour with the A.O and was rejected by him. The A.O *inter alia* disallowed the interest expenditure claimed by the assessee and reworked the Net annual value of the aforesaid property at Rs. 59,92,560/-.

4. Aggrieved, the assessee assailed the aforesaid disallowance of interest expenditure claimed by him under Sec. 24(b) before the CIT(A). During the course of the appellate proceedings the assessee submitted before the CIT(A) that as the interest expenditure was allowed by the revenue in the earlier years, thus the same was not liable to be disallowed during the year under consideration. However, the CIT(A) observed that as the assessee despite repeated opportunities could not substantiate its claim of interest expenditure and establish that the loan funds were utilized in relation to the subject property, upheld the disallowance.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that the assessee has filed an application under Rule 29 of the Appellate Tribunal Rules, 1963

seeking liberty for placing on record certain documents by way of additional evidence. The ld. A.R submitted that as the said documents which clearly established the nexus between the loan funds and the acquisition of the subject property has a strong bearing on the issue under consideration, thus liberty may be granted for placing them on record. On a query, as to why the said documents which were claimed to have a material bearing on the adjudication of the issue under consideration were not filed before the lower authorities, it was submitted by the ld. A.R that as the loan funds were raised in the preceding years and interest expenditure as claimed by the assessee was allowed in the said respective years, thus the assessee remained under a *bonafide* belief that there was no requirement for again establishing the nexus between the loan funds and the subject property. It was submitted by the ld. A.R that as the interest expenditure pertaining to the aforesaid loan funds was allowed by the revenue in the preceding years, thus the interest expenditure pertaining to the brought forward balances of such loans could not have been disallowed during the year under consideration. The ld. Departmental representative (for short 'D.R') objected to the admission of the additional evidence. It was submitted by the ld. D.R that as the assessee who had sufficient opportunity to produce the said documents in order to establish the nexus between the loan funds and the subject property before the lower authorities, had however failed to do so, thus the same may not be admitted.

6. We have heard the authorised representatives of both the parties in context of the issue pertaining to admission of additional evidence filed by the assessee. We find from a perusal of the orders of the lower authorities that the assessee despite sufficient opportunity had failed to substantiate his claim of deduction under Sec. 24(b) before them. However, we find force in the contention of the ld. A.R that as its claim of deduction of the interest expenditure pertaining to the loan funds which were raised for the subject property in the preceding years was accepted by the revenue in those years, thus there was sufficient reason for the assessee to believe

that there was no requirement of again establishing the nexus between the loan funds and the subject property during the year under consideration. We thus, in terms of our aforesaid observations admit the additional evidence filed by the assessee.

7. We have perused the additional evidence and find that it is the claim of the assessee that it had purchased the property under consideration viz. Apsara CHS Ltd., NCPA, Nariman Point, Mumbai, vide a registered purchase agreement on 17.04.2003 for a consideration of Rs. 5,30,00,000/-. The assessee explaining the source of the aforesaid purchase consideration and other incidental expenses viz. Stamp duty, Collector fees, NCPA, Transfer fees and Professional fees, had at Page 1 of his application for admission of additional evidence filed a 'Chart' explaining the source of the aforesaid funds. It is claimed by the assessee that the investment in the aforesaid property was made out of funds raised from viz. (i). Sh. Puneet Khurana: [Rs. 70,41,000/- (on 20.03.2003) & Rs. 1,25,00,000/-(on 16.04.2003)]; (ii). Security Deposit adjusted as per purchase deed : Rs. 3,00,00,000/- (on 16.04.2003) ; and Sh. P.K Khurana : [Rs. 40,55,000/-(on 04.09.2003) & Rs. 1,72,00,000/- (on 16.04.2003)]. The assessee had in his chart further made a mention as regards the utilisation of the aforesaid amounts for acquisition of the subject property. We further find that at Page 10-26 of the 'Paper book' of the assessee (for short 'APB') a copy of the registered 'Agreement for purchase' pertaining to the subject property has been filed. We find from a perusal of the purchase agreement that the subject property was transferred to the assessee for a consideration of Rs. 5,30,00,000/- (excluding registration charges etc.) on 17.04.2003.

8. We are of the considered view that as the assessee had failed to substantiate its claim in respect of deduction of interest expenditure under Sec. 24(b), and the documents filed by the assessee before us by way of additional evidence to support his aforesaid claim were not there before the A.O, thus, in all fairness restore the matter to the file of the A.O

for fresh adjudication of the said claim of the assessee. The assessee shall during the course of the set aside proceedings substantiate on the basis of documentary evidence that an amount of Rs. 6,32,141/- as claimed in its return of income was incurred/payable towards interest expenditure during the year under consideration in respect of the loan funds which were utilised for the subject property. Further, the A.O shall during the course of the set aside proceedings verify that no part of the brought forward balances of the respective loans on 01.04.2011, which as claimed by the assessee were raised from the aforesaid lenders in the F.Y 2002-03 and F.Y 2003-04 viz. (i). Sh. Puneet Khurana: [Rs. 70,41,000/- (on 20.03.2003) & Rs. 1,25,00,000/-(on 16.04.2003)]; (ii). Security Deposit adjusted as per purchase deed : Rs. 3,00,00,000/- (on 16.04.2003) ; and Sh. P.K Khurana : [Rs. 40,55,000/-(on 04.09.2003) & Rs. 1,72,00,000/-(on 16.04.2003)], does arise from diversion/utilisation of the said funds except for the purpose of acquisition of the subject property under consideration. We thus, set aside the matter to the file of the A.O for fresh adjudication in terms of our aforesaid observations.

9. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19th September, 2018

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 19.09.2018

Ps. Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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