



IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.813/Mum/2012

(Assessment Year :2008-09)

M/s. Quantum Real Estate and Property Development India Ltd., 101, Kapadia Apartment S.V. Road, Vile Parle (W) Mumbai – 400 056	Vs.	DCIT, CC-39 Aayakar Bhavan Ground Floor, M.K. Road Mumbai – 400 020
<b>PAN/GIR No.AAACQ1375R</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Narayan Atal
Revenue by	Shri E. Sridhar
<b>Date of Hearing</b>	<b>19/09/2018</b>
<b>Date of Pronouncement</b>	<b>03/10/2018</b>

**आदेश / ORDER**

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

This is an appeal filed by the assessee against the order of CIT(A)-41, Mumbai dated 08/12/2011 for A.Y.2008-09 in the matter of order passed u/s.143(3) of the IT Act.

2. In this appeal, assessee is aggrieved for disallowance of interest to the extent of Rs.50,11,602/- out of total interest of Rs.56,09,241/- u/s.36(1)(iii) of the Income Tax Act, 1961.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that assessee is engaged in business of investment and trading in real estate. During the course of scrutiny assessment the AO has noticed that the assessee company has share capital of Rs.1,00,000/- and received interest bearing loan of Rs.9,54,10,559/-. It was further noticed that the assessee has shown Rs.23,20,824/- under the head of fixed assets and Rs. 8,52,45,000/- under the head of loans and advances. The detail of the loans and advances is given at page 2 of the assessment order. Accordingly, the assessee was asked to justify the loans and advances given in view of the claim of interest of Rs. 56,09,241/- as per the provisions of section 36(1)(iii) of the I.T. Act. In response to this show cause notice, the A.R. of the assessee has submitted its reply along with the copy of sale agreement dated 24.2.2006 in which the terms and conditions of payment are given which is discussed by the A.O. in para 3.1 of the assessment order. From the perusal of the reply of the assessee, the A.O. has again asked to explain as to why the interest claimed should not be disallowed as no explanation was submitted in justification for diversion of interest bearing funds for non -business purpose. In response to this show cause notice, the A.R. of the assessee has failed to submit any reply before the A.O. The A.O. has also discussed the provisions of section 36(1)(iii) that as per this provision there are conditions that capital must have been borrowed and used for the business purpose, the interest should have been payable and if the borrowing is not for the business purpose,

interest paid cannot be allowed as deduction u/s. 36(1)(iii). The A.O. has also relied on the decision of the Hon'ble Madras High Court in the Case of P.R.M.S. Ramanathen Chettiar v. CIT 72 ITR 534, M.S.P. Raja v. CIT 105 ITR 295, K. - Somasundiiram & Bros. v. CIT 238 ITR 939 and in the case of CIT v. Abhishek Industries Ltd. 156 Taxman 257. In view of the facts that although the assessee has claimed in the balance sheet that advances were given against property but nothing has been brought on record to establish the same and relying on the decision of the Hon'ble Courts the A.O. has held that the assessee has failed to justify the claim of interest of Rs, 56,09,241/- u/s. 36(1)(iii), Therefore, he has made the disallowance of Rs. 50,11,602/- as computed at page No. 5 of the assessment order and added back to the taxable income of the assessee.

5. By the impugned order CIT(A) confirmed the action of the AO.

6. We have considered rival contentions and found from record that the amount of loan has been alleged to be utilized for payment of advances to various parties for purchase of land / property for business purpose in an earlier year. In fact the A.O. has himself in the assessment for A. Y. 2007-08 has noted that assessee is engaged in investment and trading of real estate and accordingly allowed the deduction of interest u/s. 36(1)(iii) of the Act as claimed in the return. Since, there is no dispute to the fact that assessee is engaged in the business of investment and trading in real estate, we do not find any merit for the disallowance so made by the assessee in respect of interest expenditure which was

incurred on the loans utilized for the purpose of business in giving advances. Accordingly, we restore the matter back to the file of AO to verify the factum of advance being given to trade parties. AO may further verify as to crystallisation of such transaction of advance in subsequent years. Assessee should be given due opportunity before deciding the issue.

**7. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on this 03/10/2018

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

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

Mumbai; Dated 03/10/2018

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai