

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.2996/DEL/2018
Assessment Year: 2013-14

ITO, Ward-20(4), New Delhi.	v.	Radha Raj Infrastructure Pvt. Ltd., 5190, Lahori Gate, New Delhi.
TAN/PAN: AADCR 5123P		
(Appellant)		(Respondent)

Appellant by:	Shri C.P. Singh, Sr.D.R.		
Respondent by:	Ms. Sweety Kothari, CA		
Date of hearing:	13	09	2018
Date of pronouncement:	10	12	2018

ORDER

The aforesaid appeal has been filed by the Revenue against the impugned order dated 26.02.2018 passed by the Commissioner of Income Tax (Appeals)-VII, New Delhi for the quantum of assessment passed u/s. 143(3) of the IT Act, for the Assessment Year 2013-14. In the grounds of appeal, the Revenue has raised following grounds:-

1. *On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the disallowance of Rs. 67,61,126/- u/s 24b of the Act, as the assessee has failed to discharge its onus to produce legally acceptable evidence of purchase of property, addition/alteration. ”*
2. *“On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law and facts in deleting the addition of Rs.2,61,000/- on account of difference in the amount of rent mentioned in form 26AS to the amount declared in its P&L account. ”*

2. The facts in brief are that the assessee-company is

engaged in the business of real estate. The learned Assessing Officer on the perusal of the P&L account noted that assessee had shown rental income to the tune of Rs.63,93,841/- and against such income, it has claimed payments of interest amounting to Rs.67,61,126/- on loans taken. The bifurcation of the interest on loan was as under:

1. SBI (FY 2012-13)	Rs.18,93,354/-
2. Khushi Ram (F.Y. 2012-13)	Rs.35,71,985/-
3. SBI (1/5 th of previous year)	Rs.10,22,398/-
4. Khushi Ram (1/5 th prev. year)	Rs.2,73,389/-

3. In response to the query raised by the Assessing Officer, assessee submitted that it has taken loan for construction /acquisition of property; therefore, interest incurred for current period as well as previous period is to be allowed as deduction, accordingly, same has been claimed for preconstruction period of the installment as per the Act. The Assessing Officer, however, disallowed the claim of deduction u/s.24(b) on the ground that since no work related to construction/repair of building was done during the year under consideration, and therefore, held that the borrowed capital has not been utilized for the specified periods. Accordingly, he added back the entire claim of Rs. 67,61,126/-.

4. Before the Id. CIT (A), the assessee submitted that it had interest free funds of Rs.7.97 crore and interest bearing fund of Rs.7.44 crore and the major fund sums aggregating to Rs.13.73 crore were invested in two immovable properties and

in support fund flow statement were also filed to show that the interest bearing funds and also part of the non interest bearing funds were invested in the properties. Usage of interest bearing loans against purchase/construction of properties were established before the Assessing Officer in the earlier years which has been accepted after due verification. The assessee's submission in this regard was as under:

“In this case, the loan taken from SBI was reduced from Rs. 1,83,61,000/- as on 31/3/2012 to Rs. 93,80,216/- as on 31/03/2013 as can be verified from the enclosed copy of the SBI loan statement and the audited financial statements of the assessee. However, the loan taken from the firm Khushi Ram Behari Lai was increased from Rs. 5,17,61,815/- to Rs. 6,49,06,595/- during the year under consideration. Thus, it is not the case that the entire interest bearing funds were taken during the year.

1.13 A chart showing the outstanding balances of interest bearing funds borrowed since the ASSESSMENT YEAR 2009 10 to 2013-14. A perusal of the same shows that the balance of interest bearing funds as on 31/3/2010 was Rs.8.57 Crores which got reduced thereafter till 31/3/2012. However, the interest bearing funds increased by Rs.38.03 lacs (net) in the year under consideration.

1.14 The total investment in the said two properties as on 31/03/2010 was Rs. 13,15,94,315/- whereas the interest bearing funds outstanding then were just Rs.8,56,77,284/-. Thus, the usage of the said two interest bearing loans borrowed to the extent of Rs. 8.57 Crores for the purpose of investment in those two properties got established in the AY 2010-11 where the interest paid on the said two loans taken from these two parties was allowed as expenses u/s 24(b) of the Act in the assessment order

framed u/s 143(3) of the Act after thorough verification by the assessing officer.

Submission on allowability of 1/5th of the interest for pre-construction period claimed during the year.

1.15 Interest of Rs.51,11,992/- due on the SBI loan and Rs.13,66,944/- due on loan taken from Khushi Ram Behari Lai upto the year ended 31/03/2009 i.e. year prior to the financial year 2009-10 in which the construction of the said property was completed has been considered as 'interest for the pre-construction period' as per the provisions of law. The interest for pre-construction period is allowable in five equal installments from the year when the construction of the property is completed as per proviso to Explanation to Section 24.

1.16 The interest for pre-construction period represents the amount of interest on the loans for the period till the construction of the building is completed. This interest amount is not an expense incurred in the year under consideration but it is the amount of interest expense incurred on the loans in the earlier years prior to the year of completion. The same has to be allowed if and only if the conditions for its allowability have been fulfilled which are as under:

- a) the loans have been utilized towards purchase / construction of property and*
- b) the construction of property is complete and*
- c) the amount of interest under pre-construction has been computed correctly.*

1.17 The requisite fulfillment of these conditions has to be verified in the first year of deduction and not in every year unless there is a change in the facts of the case. The nexus of interest to the loans used for construction of the property has to be established in the year to which it pertains or in the year in which it has been first claimed as deduction. If the same has been allowed as deduction in

the year when it was first claimed, this means that the above mentioned conditions have been fulfilled. Once it is established, then deduction for interest for pre-construction period has to be allowed in the four subsequent years as well unless there is a change in the fact of the case or without bringing anything adverse on record. The allowance of interest for pre-construction period cannot be linked with the utilization of the loan during the year in any manner and has to be allowed in full.

1.18 The assessee claimed an amount of Rs. 12,95,787/- (Rs.10,22,398 plus 2,73,389) being 1/5th of the amount of interest for pre-construction period on the loans taken from SBI and KRBL Firm for the first time in AY 2010-11 as deduction from 'income from house property'. The said claim was allowed then after proper verification of the same as can be seen from the copy of the assessment order passed u/s 143(3) for the AY 2010-11 and thereafter has been allowed in subsequent two years also. This assessment year is the fourth assessment year.

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Submission on allowability of interest on the SBI Loan

1.23 As regards the allowability of interest of Rs. 18,93,354/- on SBI loan, it is submitted that an amount of Rs. 11.56 crores was sanctioned by SBI in the FY 2007-08 for the purpose of construction of the building at Plot no. A-12, Sector 33 & 34, Infocity Gurgaon as mentioned in the sanction letter of SBI. However, the said loan was downsized and only an amount of Rs. 4.52 crores was disbursed out of the said loan.

1.24 The fact that the loan taken from SBI has been used to construct the property at Infocity Gurgaon has been accepted by the Revenue in the earlier years and the interest on the said loan was allowed as deduction to the assessee in the preceding years. The said interest was first claimed in the AY 2009-10. The interest of Rs. 49,29,798/- claimed towards the SBI Loan having an

outstanding balance of Rs. 3.69 Crores as on 31/03/2010 has been allowed as deduction while framing the assessment u/s 143(3) of the Act for the AY 2010-11.

1.25 Loan from SBI was repaid by way of monthly installments. A copy of the SBI loan account in the books of the assessee for the year ended 31/03/2013 which shows that only repayment of the loan was made and no fresh loan was borrowed from SBI in the year under consideration.

1.26 Total amount invested in the construction of the building at the said plot of land was Rs. 8.02 crores as on 31/3/2013 which was much more than the amount of loan taken from SBI. The value of property was not reduced during this year and the loan taken was also not increased during this year. Thus, there was no change in the facts and the interest on the SBI loan should be allowed following the principle of consistency as explained above and the disallowance of interest of Rs. 18,93,354/- should be deleted.

Submission on allowability of interest on the loan taken from KRBL Firm

1.27 As regards the loan taken from KRBL firm, it is submitted that an amount of Rs. 5,17,61,815/- was outstanding as payable to KRBL Firm as on 31/3/2012 which increased to Rs. 6,49,06,595/- as on 31/3/2013. The usage of the said loan towards construction of building /properties has been accepted in the earlier years and the interest on the said loan claimed as deduction in the income-tax returns has also been allowed in the preceding years. In view of this fact, the utilization of the funds borrowed from the said firm in earlier years stands established and the interest due on the balance outstanding at the beginning of the year should be allowed as deduction following the rule of consistency as explained above.

1.28 As regards the amount of fresh loan taken during the year, it is submitted that an amount of Rs. 2,13,15,898/- was received

during the year from the said firm out of which an amount of Rs. 1,13,85,904/- was repaid during the year itself. Thus a net amount of Rs. 99,29,994/- was received during the year. An interest of Rs. 35,71,985/- (on which TDS of Rs. 3,57,199/- was also deducted) was paid for this year including on the opening loan amount already accepted for the property.

1.29 This borrowed amount from KRBL firm has been utilized undisputedly to repay the SBI housing loan which was reduced by an amount of Rs. 1,10,25,000/- (including interest). The interest on fresh additional loan taken from a lender to repay an old outstanding loan utilized for construction of the property has to be allowed as deduction as in that case, the new loan would be considered as utilized for the purpose for which old loan was used and thus the interest should be allowed as deduction. Thus, the disallowance of interest of Rs. 35,71,985/- on loan from KRBL firm should be deleted.”

5. Ld. CIT(A) after considering the assessee's explanation and on verification of the records found that there was a direct nexus of funds and its utilization in the building, therefore, same is allowable u/s.24(b).

6. After hearing both the parties and on perusal of the impugned material placed on record, we find that interest payable on a capital which has been utilized for acquisition/construction/repair/renew of the property is to be allowed as deduction u/s.24 of the Act. The interest attributable to the period prior to the completion of construction is to be aggregated and allowed in five successive financial years starting from the year in which the acquisition or construction is completed. Here, in this case, the assessee has taken loan from a firm Kush Ram Bihari Lal for

repayment of original loan on which interest paid. Interest on such fresh loan has to be allowed as deduction. The submissions made by the assessee as incorporated above clearly establishes that there was a direct nexus of funds and its utilization in the building and once that is so that even if the new loan which has been used for repayment of original loan then interest paid on such loan is to be allowed as deduction. Hence, we do not find any infirmity in the order of the Id. CIT(A) and the same is affirmed.

7. As regards addition of Rs.2,61,000/- on account of difference in the amount of rent mentioned in form 26AS and added back by the Assessing Officer on the ground that assessee has followed mercantile system of accounting and the income becomes chargeable on accrual and not on receipt basis, and therefore, difference of rent as per 26AS and as per P & L account is to be added.

8. Before the Id. CIT(A), assessee submitted that in so far as addition of Rs.2,61,000/- for rent receipt of M/s. Everon Business Education Ltd. The said party was paying a rent Rs.1,30,000 per month and due to some financial difficulty there was delay in payment of rent from April, 2012 and rent for the month of July, 2012 was paid on 01.08.2012 and later on no rent was paid for August, 2012 and the said company vacated the premises on 30.09.2012 and hence no rental income accrued to the assessee for two months; similarly with regard to rent received from Reebok India Company, assessee has declared rent of Rs.8,01,000/- in the P&L account as against the rent of Rs.8 lacs mentioned in the form no.26AS.

Ld. CIT(A) on this issue has held as under:

“4.2 I have carefully considered the assessment order and the submissions filed by the Ld. AR as detailed above in case of a dispute the rent was not realized. It is also submitted that benefit of TDS deducted or that amount has also not been taken. The o may verify the non-claim of TDS and delete the addition on their account. Therefore, this ground of appeal is ruled in favour of the appellant.”

9. Here, in this case, with regard to the rent receipt from Everon Business Education Ltd., it is not in dispute that the said company has vacated the premises on 30.09.2012 and the rental income accrued to the assessee only for the period of six months and once the rent could not be realized from the said party till March, 2013, the assessee did not declare the rental income for the last two months, i.e., August and September, 2012 as unrealized rent in its return of income nor claiming the benefit of TDS. Ld. CIT (A) has merely directed the Assessing Officer to verify the non-claim of TDS and delete the addition on their account, therefore, we do not find any infirmity in the order of the ld. CIT(A). Hence, the order of the ld. CIT(A) is affirmed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 10th December, 2018.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 10th December, 2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar

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