

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3583/Del/2014  
(Assessment Year: 2009-10)

Narendra Impex Ltd, 12, Ringh Road, Lajpat Nagar-IV, New Delhi PAN: AABCN0182A	Vs.	DCIT, Central Circle-12, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri DC Aggarwal, Adv Shri R. N. Poonia, Adv
Revenue by:	Ms. Pramita M. Biswas, CIT DR
Date of Hearing	15/01/2019
Date of pronouncement	12/03/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT(A)-XXXI, New Delhi dated 31.01.2014 for the Assessment Year 2009-10.
2. The assessee has raised the following grounds of appeal:-
  - “1. *The Ld CIT (A) has erred on facts and in law in acting on presumptions and assumptions, contrary to the facts stated in the assessment order, without giving any opportunity of being heard to the appellant indeducing that the interest disallowance made by the AO was not under section 36(1) (iii) of the Act and further presuming that the issue in question is the disallowance of interest claimed to have been incurred on capital borrowed for acquisition or construction of house property.*
  2. *The Ld CIT (A) has erred on facts and in law in not correctly understanding the provisions of section 24(b) of the Income*

tax Act, 1961 and has further erred in applying the provisions of section 24(b) of the Act by selectively looking at certain aspects of the facts and without appreciating the facts and circumstances of the appellant's business in totality.

3. The Ld CIT (A) has erred on facts and in law in holding that in a particular year if no revenue is booked than it should be concluded that the appellant had not carried out any business activity during the year without appreciating the fact that the appellant is a company duly registered under the Companies' Act and is governed by its AOA and MOA.
4. The Ld CIT (A) has erred on facts and in law in holding that only the interest on loan raised during F.Y. 2007-08 and used for the purpose of acquisition of the property is eligible for deduction under section 24(b) of the IT Act 1961 and further holding that the loans raised during the F.Y. 2008-09 are not in the nature of loan raised for repayment of existing loan which was previously used for acquiring property.
5. The Ld CIT(A) has erred on facts and in law in holding that the appellant is eligible to claim interest at the rate of 12% on the amount of Rs. 54,67,25,522/- only when indisputably the property given on rent cost the appellant around Rs 160 crores.
6. The Ld CIT(A) has erred on facts and in law in enhancing the income of the appellant by enhancing interest disallowed by the AO to Rs. 12,40,76,960/- against the original interest disallowed of Rs. 5,38,91,150/- by the AO and has further erred in initiating penalty under section 271(1)(c) on the same.
7. The ld CIT(A) has erred on facts and in law in upholding the disallowance of Rs. 70,11,200/- being commission brokerage paid by holding that this expenditure is not related to business of the assessee but relates to property income and has further erred in holding that the aforesaid expenditure is not allowable under the head Income from House Property.
8. The ld Ld CIT (A) has erred on facts and in law in holding that the finance charges namely stamp duty on mortgage deed and upfront fee for term loans have been spent on term loans amounting to Rs. 61,00,000/- have not been used either for acquiring property in question or in any business of the appellant and upholding the additions made by the AO and therefore not an allowable expenditure.

9. *The Ld CIT (A) has erred on facts and in law in acting totally on assumptions and presumptions in upholding the disallowance of Rs. 33,41,152/- by treating legal and professional expenses as non business expenses.*
  10. *The Ld CIT (A) has erred on facts and in law in disallowing the preliminary expenses written off entirely on assumptions and presumptions without appreciating the provisions of section 35D of the Income tax Act.”*
3. At the time of hearing of the appeal assessee has moved following additional ground of appeal and also made prior that though the legal grounds which goes to the root of the matter, does not need any further investigation of the facts and therefore should be admitted.
- i. The learned CIT – A has erred on facts and in law in assessing the appellant under section 153C of the income tax act, 1961 without satisfying the substantive and procedural requirements under section 153C of the income tax act
  - ii. without prejudice to the other grounds of appeal, the learned AO has erred on facts and in law in passing the assessment order under section 143 (3) of the income tax act, 1961 with the approval of the additional Commissioner of income tax, range – III, New Delhi vide his letter F. no. Additional – CIT (CR) –III /2010 – 11/795 dated 22/12/2010 when law does not stipulate any such requirement, order passed by the AO deserves to be quashed
  - iii. without prejudice to the other grounds of appeal, the learned CIT – A has erred on facts and in law in making the additions which are not based on the incriminating material found and seized during the course of search.

4. The assessee also submitted that from the additional grounds of appeal are on the validity of the assessment especially in view of the fact that the assessment of the appellant for assessment year 2008 – 09 has been quashed by the coordinate bench by order dated 22/12/2016. He further stated that it is also not based on any incriminating material found during the course of search, is also not relatable to the material assumed to be belonging to the appellant. He further referred to assessment order dated 22/12/2010 which is titled as passed u/s 143(3) of the act but para no 11 shows that the assessment order is passed with the prior approval of the Additional CIT central range –III, New Delhi vide letter dated 22/12/2010 vide No F. No. Addl CIT (CR) –III/2010-11/795 . he stated that there is no provision u/s 143 (3) of the act to take approval of any body . He referred to provision of section 153D of the act which provides for Prior approval. Hence, he submitted that though the order is titled as passed u/s 143(3) of the act but in fact is passed u/s 153A/ 153 C of the act. He therefore submitted that the additional grounds of appeal are in the nature of legal grounds and a settled law that the additional grounds of appeal which are legal in nature or which raises question of law which involves interpretation of circular notification et cetera can be taken aforesaid at any level of adjudication. Therefore he stated that the application for the admission of additional grounds is covered with rule 29 of The Income Tax Appellate Tribunal Rules and is supported by the decision of the Honourable Supreme Court in case of National thermal Power Corp Ltd 229 ITR 383. He therefore submitted that above grounds of appeal may be admitted.

5. The learned departmental representative vehemently objected to the admission of the additional ground of appeal and stated that such ground of appeal have not been taken by the assessee before the lower authorities and therefore now it cannot be questioned. He further submitted that according to section 292BB of the income tax act , assessee now cannot question the jurisdiction of the learned assessing officer when it was not objected before at the time of hearing before the learned assessing officer.
6. We have carefully considered the rival contention and perused the additional ground raised by the assessee along with the application raised under rule 29 of the income tax appellate tribunal rules. The grounds raised by the assessee are purely legal in nature, goes to the root of the matter and challenges the jurisdiction of the learned assessing officer. As such, it does not require any adjudication or investigation of the fresh facts. Therefore, these grounds deserves to be admitted in view of the decision of the honourable Supreme Court relied upon by the learned authorised representative. Hence, they are admitted for adjudication.
7. The learned authorised representative submitted that the above appeal pertains to the assessment year 2009 – 10 and appellant belongs to the group of cases where a search u/s 132 of the act was conducted in July 2008. He submitted that the assessment in the case of the appellant was in fact completed under section 153C of the act though titled u/s 143 93) of the act. He referred to prior approval paragpah mentioned in the order. For the assessment year 2008 – 09 the assessment was also completed under section 153C which was passed by the coordinate bench

wide order dated 22/12/2016. For the assessment year 2009 the stand of the order has been shown to have been passed under section 143 (3) the appellant submits that the aforesaid order should be considered to have been passed under section 153C of the act. He further stated that similar controversy was also involved in 3 other cases of the group where identical question was involved. In all these 3 cases the orders for the assessment year 2009 – 10 of coordinate benches in the appeal of the department against the such orders before the Honourable High court have also been dismissed. He therefore submitted that the issue of in the case of the jurisdiction is squarely covered in favour of the assessee.

8. The ld DR stated that merely because the prior approval is taken by assessee even when it is not required by law, does not vitiate the order of the ld AO.
9. We have carefully considered rival contentions and perused the orders of the lower authorities. The above order is though titled as passed u/s 143 (3) of the act but on conjoint reading of para no 11 of the order shows that it has been passed after obtaining prior approval of the CIT . Such approval is only required if the order is passed u/s 153A or 153C of the act. Similar controversy was involved in three other cases of the group where identical question was involved. In these three cases namely M/s Natural Product Bio-Tech Ltd, M/s Global Heritage Venture Ltd. and M/s N.S. Software under similar circumstances orders for the AY 2009-10 were quashed by the Hon'ble Tribunal and the appeal of the department against the said orders of the Hon'ble Tribunal have been dismissed by the Hon'ble jurisdictional High Court. In case of M/s Natural Products Bio-Tech Ltd ITAT passed order

for the A.Y. 2006-07 to A.Y. 2009-10 on 28.11.2014 in [ITA No. 3086 to 3089/Del/2013] quashing the assessments passed by the Assessing Officer. The aforesaid orders were subject matter of appeal before the Hon'ble Delhi High Court in the ITA No. 569 to 571/2015 dated 14.08.2015 wherein the appeal of the department for AY 2006-07 to AY 2008-09 were dismissed. For the AY 2009-10, the department raised specific issue that the aforesaid assessment order has been passed u/s 143(3) hence the Tribunal has erred in quashing the said order assuming it to have been passed u/s 153C. For this reason, the Hon'ble High Court passed a separate order in ITA No. 568/2015 dated 14.08.2015 giving further time to the department till 29.09.2015. On 29.09.2015, the department submitted that the stand of the counsel of the assessee was correct. The Hon'ble High Court then passed order dated 29.09.2015 approving the quashing of assessment order for AY 2009-10 that was covered by ITA No. 568/2015. Further in case of M/s Global Heritage Venture Ltd ITAT passed order in the case of M/s Global Heritage Venture Ltd. for the A.Y. 2009-10 on 21.16.2016 [ITA No. 3197/Del/2013] quashing the assessment order passed by the Assessing Officer. The aforesaid order was subject matter of appeal before the Hon'ble Delhi High Court in the ITA No. 76/2015 dated 26.04.2017 wherein the appeal of the department for AY 2009-10 was dismissed. Further in case of M/s N.S. Software (Firm) ITAT passed order in the case of M/s N.S. Software (Firm) for the A.Y. 2005-06 to A.Y. 2009-10 on 28.02.2017 [ITA No. 3584 to 3588/Del/2014] quashing the assessments passed by the Assessing Officer. The order of the Hon'ble Tribunal for the AY 2005-06 & AY 2008-09 were subject

matter of appeal before the Hon'ble Delhi High Court wherein the appeals of the department were dismissed vide order dated 13.09.2017. The order of the Hon'ble Tribunal for the AY 2009-10 was subject matter of appeal before the Hon'ble Delhi High Court in the ITA No. 791/2017. A question of law was framed by the Hon'ble jurisdictional High Court vide order dated 12.01.2018 wherein the question was raised as follows:-

"(1) Did the Income Tax Appellate Tribunal (ITAT) fall into error in quashing the assessment on the ground that it was not based upon a notice under Section 153C of the Income Tax Act, 1961 ?"

The Hon'ble High Court passed order dated 18.04.2018 wherein the departmental appeal was dismissed.

The Ld DR could not controvert the above facts and also could not show us any reason that why these orders does not bind us. In view of the above facts , respectfully following the decisions of honourable delhi high court in assessment orders framed by respective ld AOs In similar manner for AY 2009-10 , we also quash the assessment made by the ld AO. Accordingly appeal of the assessee is allowed on this additional ground alone.

10. As we have quashed the order of the ld AO as above all other grounds are not required to be adjudicated.

11. Appeal of the assessee is allowed.

Order pronounced in the open court on 12/03/2019.

-Sd/-

(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 12/03/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi