

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR (SMC)**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER

I.T.A. No. 385/Asr/2016

Assessment Year: 2007-08

Amita Narang,
D-103, Anand Niketan,
New Delhi
[PAN: AALPN 1549E]

(Appellant)

vs. Dy. C.I.T., Circle 2, Jammu

(Respondent)

Appellant by : Sh. K. R. Jain (Adv.)

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 14.02.2019

Date of Pronouncement: 29.03.2019

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals), Jammu ('CIT(A)' for short) dated 23.3.2016, partly allowing the assessee's appeal contesting her assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) dated 29.12.2009 for the Assessment Year (AY) 2007-08.

2. The issue at large in the instant appeal is the allowability of the interest on borrowed capital employed by the assessee for purchasing a capital asset, i.e., in computing short-term capital gain (STCG) arising on its' transfer, which in the present case is by way of sale of a house property in January, 2007, i.e., within a period of less than ten months of its' purchase by the assessee in April, 2006.

3. The assessee before me relied, as was the case before the Id. CIT(A), on the decisions in *CIT v. Mithlesh Kumari* [1973] 92 ITR 9 (Del) and *CIT (Addl.) v. K.S. Gupta* [1979] 119 ITR 372 (AP). The Id. Departmental Representative (DR), Sh. Charan Dass, would rely on *CIT v. Vardhman Polytex Ltd.* [2008] 300 ITR 186 (P&H), rendered following *CIT v. Vardhman Polytex Ltd.* [2008] 299 ITR 152 (P&H)(FB).

4. I have heard the parties, and perused the material on record.

4.1 Section 48, which provides the manner of computation of capital gains chargeable u/s. 45 of the Act, reads as under in its relevant part:

‘48. Mode of computation.

The income chargeable under the head “Capital gains” shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:—

(i) expenditure incurred wholly and exclusively in connection with such transfer;

(ii) the cost of acquisition of the asset and the cost of any improvement thereto:

Provided.....

Explanation.—For the purposes of this section,—’

4.2 It is clear, therefore, that the cost incurred by the assessee, deduction for which in computing capital gains, short-term or long-term, could be allowed, other than where incurred in connection with the transfer, is that incurred on the acquisition or improvement of the capital asset transferred, i.e., capital costs. Whether a particular cost qualifies to be a cost of acquisition, as the interest cost is claimed to be in the instant case, or cost of improvement, is primarily a matter of fact, being the cost laid down or suffered to obtain anything (*Habib Hussein v. CIT*

[1963] 48 ITR 859 (Bom)). That the cost is to correspond with the common notion thereof, i.e., as understood commercially or which an ordinary man of business will resort to when making computation for his purposes, was reiterated, again in the context of computation of capital gain/loss, by the Apex Court in *Dhun Dadabhoy Kapadia v. CIT* [1967] 63 ITR 651 (SC). What, therefore, is to be seen, as clarified in *Challapalli Sugars Ltd. v. CIT* [1975] 98 ITR 167 (SC), is whether the cost incurred is necessary to bring the relevant asset into existence and to put it in working condition. The said decision, though rendered in the context of cost for the purpose of claim of depreciation, the principle involved is the same, i.e., what could, or could not, under the given facts and circumstances, be regarded as a qualifying cost to the assessee, either toward acquisition or, after acquisition, its' improvement. Again, it is immaterial whether the capital asset under reference is a business asset, eligible for depreciation on its' user, or a non-business (personal) asset. The decision is thus equally applicable in the context of computation of capital gains, as indeed was in *K.S. Gupta* (supra). The said decision by the Apex Court stands in fact followed by Hon'ble Courts throughout the country, as indeed by the Hon'ble jurisdictional High Court, as in *CIT v. Vardhman Polytex Ltd.* [2006] 205 CTR 457 (P&H); *CIT v. Punjab Tractors Ltd.* [2007] 289 ITR 130 (P&H); and by its full bench *Vardhman Polytex Ltd.* (reported at 299 ITR (supra)).

4.3 The principle that, therefore, emerges is that only the cost laid out or incurred toward acquisition of a capital asset, or for effecting any improvement thereto, as understood by a man of commerce, applying principles of commercial accounting, would stand to be included as part of its' capital cost and, accordingly, deducted in computing the capital gain on its' transfer. Guarantee commission paid to a bank for acquiring a capital asset was accordingly held as a part of its' cost of acquisition in *CIT v. Fort Gloster Industries Ltd.* [1971] 79 ITR 48 (Cal). Any cost

incurred for holding a capital asset, i.e., after its' acquisition, or for its' maintenance, would, accordingly, not stand to be allowed. This, in fact, is also the ratio of the decision in *Mithilesh Kumari* (supra), the relevant part, to reproduce verbatim, reads as under: (pg. 14 of the Reports)

'It would be reasonable, in our view, to include in the actual cost of the capital asset expenses which were incurred by the assessee, in acquiring the capital asset, as distinct from the items of expenditure, which were incurred by him in acquiring the capital asset as distinct from the items of expenditure which were incurred by him for *retaining or the maintaining the capital asset.*' [emphasis supplied]

The Hon'ble Court did not, accordingly, consider the assessee's claim for ground rent of the land – the capital asset under reference, as valid. The interest cost on capital borrowed for purchase thereof, for the period after its' acquisition, and up to the date of its' sale, was, however, allowed. How could, one wonders, the same be regarded as a cost of acquisition which gets crystallized on the date of acquisition, or for effecting any improvement, while none has been in the instant case, to be allowed as deduction? The same can only be regarded as a cost incurred in retaining or holding the asset, as for example, the ground rent, disallowed by the Hon'ble Court itself, even as it allows the claim of the interest incurred for the period following the acquisition. There is, in principle, no difference between ground rent, disallowed, and interest, allowed, per the said decision, both being for the purpose of retaining or holding the asset. The said decision, thus, with respect, is in contradiction of the ratio – stated hereinabove, laid down thereby, which alone is binding (*Sree Bhagavathi Textiles Ltd. v. CIT* [2000] 244 ITR 496 (Ker)), as well as that by the several judicial precedents, including the two decisions followed by the Hon'ble Court, viz. *Fort Gloster Industries Ltd.* (supra) and *Habib Hussein* (supra).

4.4 The question of change in the cost of acquisition, subsequent thereto, has been considered at length by the Apex Court in *Saharanpur Electric Supply Co. Ltd. v. CIT* [1992] 194 ITR 294 (SC). Ordinarily, therefore, there is no occasion for a change in the cost of acquisition, which stands determined on the date of acquisition, or even prior thereto.

4.5 At this stage, it may also be relevant to dwell on the nature of the interest cost. The interest cost represents the time cost of funds. That is, relates to the period for which the funds are borrowed or made available by one person, at a cost, to another. The same would stand to be incurred irrespective of the purpose for which the funds borrowed are deployed. Where, therefore, the acquisition of an asset itself involves, and essentially so, time, as where it is under construction, the corresponding interest cost, i.e., relatable to the construction period, would qualify as a cost of acquisition in-as-much as the same is incurred for bringing the asset into existence, as approved in *Challapalli Sugars* (supra), a decision followed in *CIT v. Bokaro Steel Ltd.* [1999] 236 ITR 315 (SC) and *Collector of Central Excise v. Dai Ichi, Karkaria Ltd.* [1999] 156 CTR 172 (SC), upholding the principle of commercial accounting, which in fact stands since formalized per accounting standard, stating likewise (refer AS 10 by ICAI). How would then, a cost, which has nothing to do with the acquisition cost of the asset and, besides, relates to the period after its' acquisition, be regarded as a part of the acquisition cost? How, one may ask, could the acquisition cost vary with the period for which the capital asset is held, as the interest cost would? Again, how could the date of its' sale and, thus, the period for which it is held prior thereto, determine its' cost. If, for example, the capital asset is sold after one month or six months or a year, over which period the borrowing continues, as it did in *Mithilesh Kumari* (supra), the interest cost would vary accordingly, altering the cost of acquisition of the asset with the period for

which it is held! Why, the borrowed capital may be repaid immediately, while the acquisition, since complete, and thus its' cost, would remain unaltered. Again, the borrowed capital may not be repaid even after the asset is sold, and interest may continue to be incurred, deploying the sale proceeds for any other purpose. In a given case, the asset may be sold on credit, so that interest cost continues to be incurred. The same, in short, it needs to be appreciated, is a holding cost, i.e., cost of holding the asset, post acquisition, allowable as a revenue expenditure where the asset is to be used for the purpose of business. As explained in *CIT v. Tata Iron and Steel Co. Ltd.* [1982] 231 ITR 285 (SC), reference to which was also made during hearing, there is a fundamental difference between the cost of an asset and the means of its' financing. The manner or mode of repayment of the loan obtained to acquire an asset has, therefore, nothing to do with the cost of the asset acquired for the purpose of the business.

5. There is, in view of the fore-going, no basis either on facts or in law to consider the interest cost for the period for which the capital asset was retained or held by the assessee prior to being sold/transferred as a capital cost and, thus, deductible u/s. 48 in computing capital gain u/s. 45. I decide accordingly.

6. In the result, the assessee's appeal is dismissed.

Order pronounced in the open court on March 29, 2019

Sd/-

(Sanjay Arora)

Accountant Member

Date: 29.03.2019

/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Appellant: Amita Narang, D-103, Anand Niketan, New Delhi
- (2) The Respondent: Dy. C.I.T., Circle 2, Jammu
- (3) The CIT(Appeals), Jammu

- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

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By Order