

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

1. ITA Nos.1649/Bang/2017
(Assessment year: 2012-13)
2. ITA No.730/Bang/2018
(Assessment year: 2013-14)
and
3. ITA No.731/Bang/2018
(Assessment year; 2014-15)

M/s.Mfar Developers Pvt. Ltd.
No.3, Lavelle Road,
Bengaluru-560 001.
PAN:AAFCEM 6271 M

... Appellant

Vs.

1-2. Assistant Commissioner of Income-tax,
Circle 4(1)(2),
Bengaluru.

3. Deputy Commissioner of Income-tax,
Circle 4(1)(2),
Bengaluru.

... Respondent

Appellant by : Shri K.K.Chythanya, Advocate.
Respondent by : Dr. P.V.Pradeep Kumar, Addl.CIT(DR)

Date of hearing: 22/03/2019
Date of pronouncement: 24/04/2019

ORDER

Per PAVAN KUMAR GADALE, JM:

The assessee has filed appeals against different orders of the CIT(A) for assessment years 2012-13, 2013-14 and 2014-15.

2. As far as ground No.2 in respect of disallowance of proportionate interest u/s 24(b) of the Income-tax Act,1961 ['the Act' for short], the assessee has raised similar grounds of appeal for assessment years 2012-13, 2013-13 and 2014-15. Similarly, for the assessment year 2012-13, the assessee has raised an alternative plea to allow interest u/s 36(1)(iii) which is also ground of appeal in assessment years 2013-14 and 2014-15. For the assessment year 2012-13, the assessee raised ground for allowance of deduction towards processing fees and pre-payment charges u/s 24(b) of the Act. For the assessment year 2013-14, the assessee has raised a ground for disallowance of Rs.25,77,78/- under the provisions of section 14A of the Act.

3. Since all these appeals are connected and relate to same assessee, they were heard together and disposed of by this common order.

4. For the sake of convenience, we shall take up the assessee's appeal for assessment year 2012-13 in ITA No.1649/Bang/2017 and the assessee has raised the following grounds of appeal:

1. The Order of the Learned Commissioner (Appeals) is not justified in law and on facts and circumstances of the case.
2. As regards disallowance of proportionate interest of Rs.2,44,76,557/-under section 24 (b) of the IT Act:

2.1. The Learned Commissioner (Appeals) is not justified in upholding the disallowance of proportionate interest claimed by the Appellant under section 24 (b) of the IT Act in respect of loan borrowed for acquisition of property.

2.2. The Learned Commissioner (Appeals) and Learned Assessing Officer have erred in disallowing interest by failing to appreciate that the entire loan of Rs. 64.50 Crores borrowed by the Appellant was utilised partly towards re-payment of old loan of Rs. 45 Crores and partly towards discharge of: purchase consideration of Rs. 19.50 Crores.

2.3. The Learned Commissioner (Appeals) is not justified in upholding the disallowance of interest merely on the basis of surmises and conjectures and assumptions contrary to the facts of the case and documents on record and without bringing any evidence in support of said disallowance.

2.4. The Learned Commissioner (Appeals) and Learned Assessing Officer have erred in perversely holding that purchase of building complex along with related liabilities was slump purchase of business.

2.5. The Learned Commissioner (Appeals) has erred in perversely holding that the Appellant itself reflected business income in its return of income.

2.6. The Learned Commissioner (Appeals) and Learned Assessing Officer having assessed that the rental income from the building complex unc head 'income from House Property', erred in disallowing the interest on capital borrowed and used for acquiring the said building complex.

2.7. The Learned Commissioner (Appeals) and Learned Assessing Officer having allowed interest in respect of Rs. 45 Crores which was utilised towards re-payment of old loan, have erred in disallowing interest in respect of balance Rs. 19.50 Crores which was utilised for payment of purchase consideration, thus taking contradictory positions in respect of very same loan of Rs.64.50 Crores.

3. As regards alternate plea to allow the impugned interest under the head profits and gains from business:

Without prejudice to the above, the Learned Commissioner (Appeals) having held that the Appellant acquired business, has erred in denying deduction of the impugned interest under section 36 (1) (iii) of the IT Act.

4. As regards allowance of deduction towards processing fees and prepayment charges under section 24 (b) of the IT Act:

The Learned Assessing Officer and Learned Commissioner (Appeals) ought to have allowed deduction towards pre-closure charges on old term loan of Rs.69,01,621/- and processing charges on new term loan of Rs.34,73,644/- under section 24 (b) of the IT Act;

For the above reasons and for such other reasons which may be allowed by the Honourable Members to be urged at the time of hearing, it is prayed that the aforesaid appeal be allowed.”

5. The brief facts of the case are that the assessee is in the business of leasing of properties and maintenance filed the Return of income electronically for the assessment year 2012-13 on 29/09/2012 with total income of Rs.98,70,230/- and the Return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/ss 143(2) and 142(1) of the Act were issued. Due to change in jurisdiction, notice was issued again and in response the learned AR appeared from time to time and produced the details. The AO, on perusal of income-tax Return found that the assessee has claimed interest on borrowing u/s 24(b) and submitted copy of the agreement dated 30/03/2009 entered

between M/s. Manyata Promoters Pvt. Ltd. and M/s.Mfar Holdings Pvt. Ltd. As per agreement, an amount of Rs.31,66,28,000/- has to be paid as sale consideration and was discharged by issue of shares. Subsequently sale deed was entered for same transaction and a sum of Rs.31,66,000/- was paid by way of cheque. It was submitted that the loan taken over of Rs.44,04,52,711/- which had been availed of by M/s. Mfar Holdings from Union Bank of India was closed and another loan Rs.64.50 crores was availed form Axis Bank and the balance consideration of Rs.19.50 crores was paid. The learned AR submitted that the entire loan was towards investment and interest has to be allowed whereas the AO is of the opinion that it is in nature of slump sale and the details of investments and loan are classified as under:

Sl. No.	Particulars	Amount (Rs.)
1	MMTP- INVESTMENT	79,51,74,939
2	BESCOM DEPOSIT	31,17,389
3	MMTP- HASE IV	<u>1,27,38124</u>
	TOTAL (A)	<u>81,10,30,45,</u>
1	TERM LOAN FROM UNION BANK OF INDIA	44,04,52,711
2	RENT DEPOSIT FROM PHILIPS ELETRONICS INDIA LIMITED	1,47,13,965
3	RENT DEPOSIT FROM NX SEMICONDUCTORS INDIA PVT LTD	2,58,07,173
4	MMTP- PROJECT RELATED CREDITORS/	<u>1,35,29,017</u>
	TOTAL (B)	<u>49,44,02,866</u>
	NET CONSIDERATION BY ISSUE OF	
	SHARES (A) - (B) OR	

5. The AO is of the opinion that purchase of asset which is composite in nature has been made by term liability and therefore, liabilities cannot be set off against rental income and made a proportionate disallowance of interest of Rs.2,44,76,557/-/ and passed the order u/s 143(3) of the Act dated 27/03/2015 determining the total income of Rs.3,43,46,787/-

6. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). The CIT(A) having considered the observations of the AO and the assessment record, has concurred with the action of the AO and dismissed the appeal.

7. Aggrieved by the order, the assessee has filed the appeal before the Tribunal. The learned AR, at the time of hearing, submitted that there is no disallowance of interest in respect of assessee's claim by th AO for the assessment years 2006-07 to 2008-09 but since the sale deed was executed on 9/10/2009, the AO, considered the transaction of the assessee with bank loan account of these parties came to the conclusion that the assessee is not entitled for entire deduction of the interest and the learned AR substantiated his arguments with paper book and judicial decisions.

Contra, learned DR relied on the order of the CIT(A) and vehemently opposed the submissions of the learned AR and prayed for dismissal of the appeal.

8. We heard rival submissions and perused material on record and the documents filed in the course of hearing proceedings. The only disputed issue is in respect of disallowance of interest u/s 24(b) of the Act. The AO, in the course of assessment, was of the opinion that the transaction of the assessee is in the nature of slump sale and referred to the assets and liabilities whereas the learned AR heavily contested that it is in the nature of take over of the asset along with liability and does not come under the purview of slump sale. The learned AR's contention that to discharge the liability, the assessee has taken over the loan of Rs.44,04,527/- availed by M/s. Mfar Holdings, from Union Bank of India and this loan was closed by the assessee after availing loan of Rs.64.5 crores from Axis Bank. The learned AR substantiated and reiterated his arguments that in the earlier years, the claim was made in the books of account and referred to the computation of income and copy of income-tax return (ITR) at pages 138 to 160 of the paper book and in particular at page No.147 where the details of house property was disclosed in the Schedule HP in the Income-tax Return where the assessee has disclosed interest

payable on borrowed capital in this assessment year. Further, the learned AR referred to the assessment order for the assessment year 2010-11 filed at pages 161 to 163 of the paper book passed u/s 143(3) dated 30/11/2012. On further clarifications, the learned AR filed a copy of computation of income for the assessment year 2011-12 where the assessee has disclosed these facts in the ITR in schedule HP in the ITR filed where the interest component was claimed. For the present assessment year, the Return of income was filed on 29/09/2011 and claimed the interest component which is not disputed. The learned AR supported his argument relying on the following judicial decisions:

- i. *CIT vs. R.P.Goenka and J.P.Goenka* (233 ITR 123)(Cal),
- ii. *CIT vs. Sunil Kumar Sharma* (254 ITR 103) (Punjab & Haryana),
- iii. *Aryan Arcade Ltd. vs. CIT* (250 Taxman 138)(Guj),
- iv. *Sankeshwar Printers (P.) Ltd. vs. Dy.CIT* (218 Taxman 360)(Karnataka),
- v. *CIT vs. Gujarat Guardian Ltd.* (177 Taxman 434)(Del).

9. We are of the considered opinion that the assessee has been claiming interest in the earlier assessment year and it was accepted in the scrutiny assessment and there is no dispute with respect to acquisition of asset availing loan and payment of interest. The acquisition made by the assessee cannot be

considered as slump sale as the assessee has discharged the liability of other sister concern and obtained the property on loan which is not disputed by the Revenue. The assessee filed submissions on these aspects at the appellate stage which were not considered as envisaged by the learned AR. We found para.8 of the decision in the case of *R.P.Goenka and J.P.Goenka* (supra) relied by the assessee, reads as under:

“8. In the result, insofar as whether the Tribunal misdirected itself in law in admitting that the unpaid sale price could be treated as borrowed capital within the meaning of clause (vi) of section 24 is concerned, we answer this question in the negative, *i.e.*, in favour of the assessee and against the revenue. Insofar as whether the Tribunal was justified in holding that the assessee was entitled to deduction of all interest paid to the vendor company on the balance purchase price as interest to Badridas Keshav Prosad on such sum borrowed subsequently for payment of principal sum of unpaid purchase price to the vendor company is concerned, we answer it in the affirmative, *i.e.*, in favour of the assessee and against the revenue.”

In the case of *Sunil Kumar Sharma* (supra), the observations at para.8 and 9 are as under:

“8. In *Four Fields (P.) Ltd.'s* case (supra), this Court was dealing with a case where the property along with other assets and the liabilities had been taken over by one partner on dissolution. The dissolution deed provided for payment of certain amounts to the outgoing partners by 31-12-1976. It was further stipulated that in case the payment was not made by that date, the assessee was liable to pay interest on the amounts due to the outgoing partners. There was some delay in payment to the outgoing partners and the interest was paid to them. Since one of the assets taken over by the continuing partner was a building, the assessee claimed that he was entitled to deduction of such interest under section 24(1)(vi). This claim was negated on the ground that there was no specific borrowing by the assessee from the outgoing partners

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to acquire that property and, therefore, the incurring of the liability could not be considered as capital borrowed for acquiring such building. It was further held that when all the assets and liabilities of the firm were taken over by the assessee, it could not be said that any particular asset, out of the total assets of the firm, was taken over with the aid of outstanding due to the outgoing partners. Such is not the case before us. The liability is clearly relatable to the acquisition of the property.

9. We are, therefore, of the considered view that the Commissioner (Appeals) and the Tribunal were justified in holding that the interest portion of the purchase price included in the instalments was allowable as deduction under section 24(1)(vi). There is, thus, no infirmity in the view taken by the Tribunal.”

The head-note of decision in the case of *Aryan Arcade Ltd.*(supra) reads as under:

“Section 24, read with section 263, of the Income-tax Act, 1961 - Income from house property - Deductions (Interest) - Assessment year 2011-12 - Assessee-company was engaged in renting of property - During relevant period assessee raised funds by issuing debentures - Funds raised through such debentures were utilised for repayment of past loans taken for purpose of construction of building - Assessee pointed out this aspect to Assessing Officer during original assessment - Through accounts assessee could establish precise correlation between debentures and repayment of past loans - Assessing Officer after examining issue accepted assessee's claim for deduction under section 24(b) even with respect to interest paid on debentures which were utilised for repayment of past loans used for purpose of construction of building - Further, CBDT in its circular dated 20-8-1969 had clarified position that if second borrowing had really been used merely to repay original loan and this fact was proved to satisfaction of Income-tax Officer, interest paid on second loan would also be allowed as a deduction - Whether view of Assessing Officer being plausible, it was not open for Commissioner to take such order in revision - Held, yes [Para 16][In favour of assessee]”

We found the submissions of the learned AR are supported with the decisions and facts which could not be overlooked. Since

the assessee has been offering income from house property and claiming interest income from earlier years which is not disputed and accepted by the revenue and fits into legal proposition of claim u/s 24(b) of the Act. Accordingly, we set aside the order of the CIT(A) on this ground and direct the AO to allow the claim made by the assessee as deduction from income from house property. The ground of appeal of the assessee is allowed.

10. Since the disputed issues in the ground of appeal No.2 in the assessment years 2013-14 and 2014-15 are similar to assessment year 2012-13, we accordingly direct the AO to allow the claim made of deduction of interest to the assessee from the income from house property.

11. The ground of appeal in respect of processing fee and pre-payment charges to be allowed u/s 24(b), the learned AR substantiated his argument relying on the decision of the Tribunal in the case of *Pentagram Properties Pvt. Ltd. vs. Dy.CIT* in ITA No.3713/Mu/2010 & ITA No.4526/Mum/2010 dated 12/08/2011 and referred to paras. 4, 5 and 6 of the Tribunal order which read as under:

“4. The assessee appealed to the CIT(A), who held that the processing fee of 255,00,000/- was not allowable as a deduction since it cannot be considered as interest as defined in section 2 28A) of the Act. The balance disallowance was deleted.

5. The assessee is in appeal questioning the decision of the CIT(A) regarding the allowance of processing fees. Section 24(b) allows deduction in respect of any interest payable on capital borrowed for the purpose of acquiring, constructing, repairing or renewing the property. Section 2(28A), which was inserted by the Finance Act, 1976, with effect from 1st June 1976 defines "interest" as interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized. It is seen from the definition that even a service fee paid in respect of the moneys borrowed is included in the definition of "interest". The processing fee is charged by the lender since the processing of the loan application and connected documents involves a service rendered by him to the borrower. By virtue of the definition of the word "interest", the processing fee, which perhaps may not otherwise fall to be considered as interest, is to be treated as interest and allowed as a deduction under section 24(b) of the Act. If we may say, that with respect, the CIT(A) would appear to have lost sight of the fact that it is by definition of the word "interest" that the processing fee is to be treated as interest and the fact that the processing is done before the grant of the loan cannot be put against the assessee in the light of the definition. The assessee's contentions are also supported by the order of the Single Member, Pune Bench in the case of Chintamani Hatcheries (P) Ltd. vs. DCIT (2000) 75 ITD 116 (Pune) (SMC). where it has been held that processing fee for obtaining a loan is a service fee and has to be allowed as interest in view of the definition in section 2(28A). The Circular No. 202, dated 5th July 1976, issued by the CBDT (copy filed) while explaining the provisions of section 2(28A) also clarify the position. We therefore accept the assessee's claim based on section 2(28A) and direct the Assessing Officer to allow the processing fee of 255.00.000/- as deduction under section 24(b) while computing the property income. The appeal is allowed.

6. ITA No: 4526/Mum/2010 is the appeal by the department, in which the order of the CIT(A) is questioned, in so far as it relates to the deletion of the disallowance of the interest. The Assessing Officer has invoked section 50C to

hold that since the properties have been acquired at a much higher price than their market value, the borrowings to the extent of the difference between the price paid and the market value will not be considered as borrowings for the purpose of acquiring the properties. Whether such an action of the Assessing Officer is correct has come up before the Mumbai Bench of the Tribunal in the case of ITO vs. Grandeur Properties Pvt. Ltd., in ITA No: 2056/Mum/2010. By order dated 28th January 2011 (copy filed), the Tribunal has held as under: -

"8. We have noted that there is no dispute that a borrowing by way of debentures, in respect of which interest is claimed as deduction, is duly utilized for the purposes of purchase of the property. There is also no dispute that there is no specific legal provision enabling disallowance of interest in respect of excess consideration. even if that be so, paid for purchase of property. In any event. neither stamp duty valuation is a conclusive proof of value of property, nor a valuer's report, as is submitted by the assessee in support of the purchase price, can be simply brushed aside. We are unable to see any merits in the action of the Assessing Officer. The transfer pricing regulations and the provisions under section 40A(2), which have been referred to in the grounds of appeal, have no application to the facts of this case either. In our considered view, learned CIT(A) was fully justified in deleting the impugned disallowance of interest. and his order does not call for any interference.

9. Ground Nos.1 to 3 is thus dismissed'."

12. The headnote of the decision of the co-ordinate bench of Tribunal in the case of *Peepul Tree Properties (P.) Ltd. vs. ACIT* (71 taxmann.com 332)(Mumbai – Trib) read as under:

“Section 24 of the Income-tax Act, 1961 - Income from house property - Deductions (Interest) - Assessment year 2010-11 - Whether prepayment charges and processing fee made for purpose of availing loans at lower interest cost are allowable under section 24(b) -

Held, yes [Paras 4.7 & 4.11] [In favour of assessee]

Section 23, read with section 24, of the Income-tax Act, 1961 - Income from house property - Annual value (Disallowance of claim) - Assessment year 2010-11 - Assessee earned income from leasing out of property and offered it under head income from house property on which it claimed maintenance charges as deduction - Assessing Officer refused to grant this claim on ground that there was no such provision under sections 23 or 24 to grant benefit of such deduction under head income from house property - Assessee thus offered and requested Assessing Officer to treat impugned rental income as income from other sources and allow aforesaid maintenance expenses as a deduction - Whether where assessee wanted its income to be assessed under different head as per provisions of law, then, he should have filed a revised computation sheet of income offering income in proper heads and make appropriate claims against each and every head separately - Held, yes [Para 5.5] [In favour of assessee/Matter remanded]

Circulars and Notifications: CBDT Circular No. 202, dated 5-7-1976”

13. We found the submissions of the learned AR supported with judicial decisions are realistic. The learned AR also substantiated with judicial decisions which cannot be overlooked. Accordingly, following the ratio of the above decisions, we are inclined to allow the grounds of appeal of the assessee on this ground and direct the AO to allow deduction of pre-closure charges on term loan and processing charges of new term loan u/s 24(b) of the Act.

14. The ground of appeal with regard to disallowance u/s 14A for assessment year 2013-14 was not pressed at the time of hearing. Accordingly, this ground of appeal is dismissed.

15. In the result, the assessee's appeal for assessment year 2012-13 is partly allowed.

16. For the assessment year 2013-14, ground No.2 is with regard to disallowance of proportionate interest is allowed and since the ground of appeal No.4 is not pressed and the appeal of the assessee is partly allowed.

17. For the assessment year 2014-15 ground of appeal is in regard to proportionate disallowance of interest as decided in the assessment year 2012-13, the same decision is applicable. Accordingly, the ground of appeal is allowed.

18. In the result, assessee's appeals in ITA No.1649/ang/2017 and ITA No.730/Bang/2017 are partly allowed and the appeal ITA No.731/Bang/2018 is allowed.

Order pronounced in the open court on 24th April, 2019.

sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 24/04/2019
srinivasulu, sps

sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

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By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore