

IN THE INCOME-TAX APPELLATE TRIBUNAL “C” BENCH MUMBAI

BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 2867/Mum/2016 (Assessment Year 2008-09)

ITA No. 2859/Mum/2016 (Assessment Year 2012-13)

Crimson Property Pvt. Ltd. 3 rd Floor, Sunama House, Kemps Corner, Opp. Shalimar Hotel, Mumbai-400036. PAN: AAACC2206R	Vs.	ITO Ward-5(1)(3), 5 th Floor, Room No. 569, Aayakar Bhavan, M.K. Road, Mumbai-400050.
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Appellant

Respondent

Appellant by : Shri Bhavin Parekh (AR)

Respondent by : Shri Ajay Kumar Kesheri (Sr. DR)

Date of Hearing : 30.04.2019

Date of Pronouncement : 31.05.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeal by assessee under section 253 of Income-tax Act ('Act') are directed against the separate orders of Id. Commissioner of Income-tax (Appeals)-10, Mumbai [hereinafter referred as Id. CIT(A)] dated 21.12.2015 for Assessment Year 2008-09 & 2012-13. Both the appeals were listed together and relates to the same assessee. Therefore, both the appeals were heard together and are decided by a consolidated order. In appeal for Assessment Year 2008-09, the assessee has raised the following grounds of appeal:

1. Without prejudice to the above Grounds of Appeal, the Commissioner of Income Tax, Appeals - 10, Mumbai, hereinafter referred to as the, Id. CIT

(A). Has erred in law and on the facts of the case in disallowing the business loss-of Rs.9,08,549/-.

2. On the facts and the circumstances of the case and in law, the Id. CIT (A) has erred in not allowing claim of Interest u/s. 24 (b) from the date of payment and has allowed it from the date of the agreement. Interest claim has to be allowed from the date of payment and not from the agreement date. We request your Honor to kindly allow the claim of interest from the date of payment.

2. Brief facts of the case are that the assessee is a company and allegedly engaged in the business of leasing out of property, filed its return of income for Assessment Year 2008-09 on 30.09.2018 declaring total income at Rs. 3,22,161/-. The return of income was selected for scrutiny. The Assessing Officer while passing the assessment order besides the other addition/disallowance disallowed the business los of Rs. 9,08,549/- and deduction on interest under section 24(b). On appeal before the Id. CIT(A), both the addition/disallowances were confirmed. Therefore, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Department Representative (DR) for the revenue and perused the material available on record. Ground No.1 relates to disallowance of business loss of Rs. 9,08,549/-. The Id. AR of the assessee submits that during the relevant financial year the assessee incurred expenses for development of another property. The venture

of property development was not successful and amount incurred by assessee on the business venture was claimed as business loss which consist of depreciation, salary and purchase of motor vehicle used by officer for carrying out new venture.

4. On the other hand, the Id. DR for the revenue submits that there was no business during the year. The assessee has not proved the expenditure that the expenses were incurred wholly and exclusively for the purpose of business and no documentary evidences was furnished by the assessee. The assessee has shown the income under the head “Income from House Property” and income under the head “Income from Other Sources”. The assessee has already claimed standard deduction under section 24(a) which covers all the expenditure under the head “Income from House Property”.
5. We have considered the rival submission of the parties and have gone through the orders of authorities below. During the assessment, the Assessing Officer noted that assessee has claimed loss from Business of Rs. 9,08,549/- which consist of the following expenses:

Particulars	Amount (Rs.)
Depreciation	3,34,574
Remuneration	3,60,000
Appeal Fees	1,000
Audit Fees	50,000
Professional Fees	38,000
Telephone Expenses	42,725
Salary to Staff	82,250
Total	9,08,549

6. However, in the return of income the assessee has shown the income under the head “Income from House Property” and under the head “Income from Other Sources” in its Profit & Loss A/c. The assessee has claimed slandered deduction under section 24(a) which covers all the expenses. The Assessing Officer issued show-cause notice to the assessee to substantiate the claim. The assessee filed its reply dated 21.12.2012 stating therein that assessee was intending to develop another property as a business of property development. However, the joint venture was not successful, therefore, the assessee claimed expenses and the head business expenses. The reply of assessee was not accepted by Assessing Officer holding that the claim of assessee is not supported with documentary evidence. The assessee was again asked to furnish the documentary evidence in support of claim. The assessee vide its reply dated 30.01.2013 stated that the new business venture undertaken by assessee was with reference to new project for consideration and sale. The assessee-company is in the real estate business since 1995 and the Director and staff have good knowledge of real estate business. The assessee decided to purchase new plot with intention of making construction on this plots and thereafter, either sale or leased the said unit. In this connection, the assessee incurred expenses. The assessee-company did not receive any response from new

business and continued the same. The explanation furnished by assessee was again not accepted by Assessing Officer holding that no supporting evidence is furnished by assessee. The Assessing Officer concluded that assessee has not furnished any evidence to prove that assessee carried out any new business activity during the year despite issuing various show-cause notices as the assessee has not supporting evidence to prove the claim of business activities. The assessee has already allowed the deduction under section 24(a) which covers all the expenses for earning the rental income. Hence, the Assessing Officer disallowed the claim of business loss.

7. The Id. CIT(A) confirmed the action of Assessing Officer almost on similar line holding that the adjustment of addition and disallowance of loss of Rs. 9,08,549/- was claimed after claiming expenses like depreciation, remuneration to Directors, appeal fees, audit fees, professional fees and telephone expenses. As per Profit & Loss A/c, the assessee offered income under two heads only (i) Income from House Property and (ii) Income from Other Sources. In the Profit & Loss A/c, no business income was shown. As the assessee is already allowed the benefit under section 24(a). Therefore, the Id. CIT(A) concurred with the finding of Assessing Officer.
8. Before us the assessee has neither furnished any documentary evidence nor disclosed the details particulars of new business venture which was

undertaken by the assessee. No name or municipal number of property in connection of which the assessee allegedly selected for such business venture. Moreover, while perusal of details of expenses, we have noted that the assessee has claimed depreciation, remuneration to Directors, appeal fees, audit fees, professional fees and telephone expenses. All the expenses were included in the standard deduction claimed by the assessee. In our view, the assessee failed to substantiate the business activities as no details particulars regarding the alleged new business venture undertaken by assessee is furnished. Therefore, we do not find any merit in the ground of appeal raised by assessee.

9. In the result, ground no.1 of the appeal is dismissed.
10. Ground No.2 relates to disallowance of claim of interest under section 24(b). The Id. AR of the assessee submits that the assessee purchased a property known as Dhanwatay House. The acquisition and payments made for acquisition of property was made from borrowed funds are not in dispute, the only question in dispute is from which date, the assessee is eligible to claim interest on the loan. During the period under consideration, the assessee made a payment of Rs. 5.28 Crore to Vedant Property P. Ltd. for acquisition of Dhanwatay House. The assessee purchased the said property vide agreement to sale dated 31.03.2008. The Assessing Officer considered the interest expenses from the date of agreement and not from the date of payment. The date of payment was

on 14.02.2008. There is no dispute that the property was purchased / acquired from the borrowed funds and the assessee is entitled for interest from the date of borrowing. The Id. AR of the assessee further submits that the ownership of the property is not a criteria for claiming deduction under section 24(b).

11. On the other hand, the Id. DR for the revenue supported the order of lower authorities. It was submitted that the assessee acquired property on the last date of Financial Year as per agreement dated 31.03.2008. As there was no existence of property with the assessee, therefore, no borrowed loans were attributed to this property during the relevant Financial Year.

12. We have considered the rival submission of the parties and have gone through the orders of authorities below. During the assessment, the Assessing Officer noted that assessee acquired a part of Dhanwatay House on the last date of Financial Year i.e. on 31.03.2008. The assessee was asked to explain as to why the interest expenses for whole year were claimed. The assessee filed its reply dated 18.02.2013. In the reply, the assessee stated that the agreement dated 31.03.2008 was executed after a term of the deal was completed. The assessee has paid advances towards the acquisition prior to the execution of the agreement. The interest claimed is applicable from the payment of acquisition of the said property. The contention of assessee was not accepted by Assessing

Officer holding that share of property was acquired on the last day of the year. No income under the head “Income from House Property” is taxable from such property during the year. Therefore, the interest expenses under section 24(b) are not allowable during the year on this property. The contention of assessee is that interest expenses on advance payment are allowable under section 24(b) was also not accepted holding that as per explanation 24(b) the interest expenses of prior period to acquisition of property has to be allowed in five equal installments from the year in which the income from the said property is offered for taxation. The Assessing Officer further concluded that the interest payable on borrowed capital is to be allowed only when the assessee furnishes a certificate from the person to whom the interest is payable, specifying the amount of interest payable on the loan utilized for acquiring of the property and that the assessee has not furnished such certificate. The Id. CIT(A) confirmed the action of Assessing Officer holding that the property was not in the ownership of the assessee till 31st March 2008. Thus, there is no acquisition of attributing any borrowed loan and interest thereon.

13. Before us, the Id. AR of the assessee submitted that during the year, the assessee made payment of Rs. 5.28 Crore to Vedant Property Pvt. Ltd. on 14.02.2008. There is no dispute that the agreement for acquisition of part of Dhanwatay House was executed only on 31.03.2008. There is no

dispute that during the relevant period that the assessee has offered the rental income of part of Dhanwatay House. The intention of assessee was further to let out the property and to earn the rental income. In our view, when the availing of finance and payment interest thereon is not in dispute the assessee is entitled for interest allowance irrespective of fact that finally agreement to sale for change of ownership was executed subsequently. Therefore, in our considered view, the assessee is entitled for proportionate allowance of interest on the payments of Rs. 5.28 Crore paid to Vedant Property Pvt. Ltd. Hence, the Assessing Officer is directed to compute the interest allowance from the date of payment i.e. on 14.02.2008. In the result, this ground of appeal is allowed.

14. In the result, appeal of the assessee is partly allowed.

In ITA No. 2859/Mum/2016 for A.Y. 2012-13

15. The assessee has raised the following grounds of appeal:

1. On the facts and the circumstances of the case and in law, the ld. CIT (A)-10 has erred in law and on the facts and in the circumstances of the case and in the law, the ld. CIT(A) & Ld. AO has erred in determining capital gains of Rs. 61,68,015/- as against the NIL returned by the appellant.

16. Brief facts of the case are that during the assessment proceeding for the year under consideration, the Assessing Officer noted that from the statement of investment in the balance-sheet as on 31.03.2011, the assessee has shown Rs. 9.63 Crore as investment in property. It was further noted that on 31.03.2012, the assessee has shown Rs. 5.46 Crore

as investment in property. There being a deduction in value of property, the assessee was asked to explain the fact. The assessee vide reply dated 29.04.2014 stated that during the year, the assessee surrendered part of the property which was purchased from Vedant Property P. Ltd. back to Vedant Property, hence, the investment has been reduced by receiving consideration from the Vedant Property P. Ltd. Therefore, net investment of Rs. 5.46 Crore is reflected in the balance-sheet. And accordingly, the share of assessee in Dhanwatay House which was original Rs. 52.79% has now been reduced to 31.07%. On the direction of Assessing Officer, the assessee furnished the bank statement showing receipt from Vedant Property P. Ltd. of Rs. 2.56 Crore as on 13.03.2012, Rs. 39 lakh on 27.12.2012 and Rs. 2.23 lakh on 28.03.2012 i.e total of Rs. 4.97 Crore in respect of transfer/surrender of 41.70 pies. On the basis of statement furnished by the assessee, the Assessing Officer took his view that assessee has transferred/ surrendered the part of Dhanwatay House for a consideration of Rs. 4.97 Crore, which is not offered for any capital gain. The assessee was asked to explain why the purchase and sale price should not be treated as capital gain. The assessee vide reply dated 09.12.2014 furnished calculation of capital gain in the following manner:

“Acquisition cost for 34.277 Pies in a Y 2009-10	Rs. 3,20,00,000
Acquisition cost for 07.427 Pies in a Y 2010-11	Rs. 73,00,000
Add: Interest capitalized for the above acquisition in A Y 2011-12	Rs. 42,20,619

A Y 2012-13	Rs. 62,02,916	
Total acquisition cost		Rs. 4,97,23,535
Amount received		Rs. 4,97,23,535
As such excess received		Rs. 0

17. The assessee also submitted that there is no capital gain as capitalization of interest of the said property was duly discussed at the time of assessment proceeding for Assessment Year 2011-12 and there is no change in the current year. The contention of assessee was not accepted by Assessing Officer. The Assessing Officer on the basis of total interest capitalized and calculating the working of total value of property, calculated Short Term Capital Gain of Rs. 61,68,015/- by holding as under:

“7.6 It is noticed from the balance sheet that the assessee has capitalized the interest in respect of the investment in property and the entire property of 101.365 Pies was acquired with the borrowed capital therefore, the interest is allowed to be capitalized on proportionate basis. The same is calculated as under;

Total interest capitalized	Rs. 1,22,47,918/-
Total value of the property of 101.365 Pies	Rs. 9,21,00,000/-
Proportionate interest = $1,22,47,918 \times \frac{3,93,00,000}{9,21,00,000}$	= Rs. 42,55,520/-

Therefore, the proportionate interest of Rs. 42,55,520/- is allowed to be capitalized to the value of the property of 41.704 Pies. Considering the above the cost of acquisition of the property 41.704 Pies is treated at Rs. 4,35,55,520/- (3,93,00,000 + 42,55,520). In this respect the capital gain on account of transfer/surrender of the property is calculated as under;

Sale consideration (amount received on account of transfer)	Rs. 4,97,23,535
Less: cost of acquisition	<u>Rs. 4,35,55,520</u>
Capital gain	Rs. 61,68,015/-

18. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. The Id. CIT(A) while confirming the action of assessing officer concluded that the assessee has not furnished the copy of agreement or any document in respect of transfer of property. Therefore, on the basis of receipt of substantial payment on account of surrender/transfer part of property, it is considered that property was transferred within the period of three years; hence, capital gain was rightly treated as Short Term Capital Gain. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.
19. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Department Representative (DR) for the revenue and perused the material available on record. The Id. AR of the assessee submits that assessee purchased a Dhanwatay House for a total amount of Rs. 9.21 Crore, out of which Rs. 5.28 Crore was paid during the Assessment Year 2008-09, Rs. 3.20 Crore in Assessment Year 2009-10 and Rs. 73 lakh in Assessment Year 2010-11. The entire cost of acquisition is out of borrowed fund. The assessee capitalized interest of Rs. 42.20 lakh in Assessment Year 2011-12 and Rs. 62.02 lakh in Assessment Year 2012-13. No interest was capitalized in Assessment Year 2009-10 and 2020-11 as initially the said acquisition was made from interest free fund, share receipts by interest bearing loan in Assessment Year 2011-12. The only point to dispute between the

assessee and Assessing Officer is with regard to the amount of interest capitalized pertaining to the property sold during the year under consideration. The Assessing Officer made disallowance under section 24(b) in respect of loan of Rs. 5.28 Crore, which is not a issue and part of present appeal. The action of Assessing Officer in capitalizing the interest is not proper. The interest capitalized pertains fully and totally in respect of property surrendered during the year and the assessee is entitled for full claim of deduction on such interest.

20. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

21. We have considered the rival submission of the parties and have gone through the orders of authorities below. During the assessment, the Assessing Officer on scrutiny of investment in property, the Assessing Officer noted that there was a difference in investment in property. The Assessing Officer asked the assessee to explain the fact. On perusal of submission of assessee, the Assessing Officer noted that assessee surrendered 41.704 Pies of Dhanwatay House to Vedant Property P. Ltd. for Rs. 4.97 Crore but not offered any amount for capital gain. The assessee was asked as to why the sale price should not be treated as capital gain. The assessee furnished calculation of capital gain and claimed that there is nil excess received and that no capital gain was earned. The assessee also furnished working of the capitalization of

interest. On the basis of details of investment in acquisition of property, the Assessing Officer calculated the capital gain of Rs. 61,68,015/- and treated the same as Short Term Capital Gain in absence of any documentary evidence regarding transfer/surrender of the property. Before the Id. CIT(A), the assessee again not furnished any documentary evidence in respect of transfer/surrender of property. The Id. CIT(A) confirmed the action of Assessing Officer holding that in absence of any documentary evidence and on the basis of receipt on substantial payment, the transfer was within the period of three years. The Id. AR of the assessee vehemently argued before us that variation is only on account of capitalization of interest. Before us, the assessee failed to disclose the date of acquisition of different share of Dhanwatay House in earlier Assessment Year i.e. 2008-09, 2009-10 or 2010-11. In absence of any documentary evidence, we are unable to convince ourselves about the allowance of capitalization of interest for Assessment Year 2010-11 & 2011-12. In the result, ground of appeal raised by assessee is dismissed.

22. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 31/05/2019.

Sd/-
G.S. PANNU
VICE-PRESIDENT
Mumbai, Date: 31.05.2019
SK

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**