

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI RIFAUH RAHMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.846/Ahd/2015

निर्धारण वर्ष/Asstt. Year: 2010-11

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| M/s.Lavender Buildcon P.Ltd. Central Mall Ambawadi Ahmedabad. PAN : AABCL 5863 E | Vs. | ITO, Ward-4(3) Ahmedabad. |
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| अपीलार्थी (Appellant) | प्रत्यर्थी (Respondent) |
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| Assessee by : | Shri T.P.Hemani, AR |
| Revenue by : | Shri Vinod Tanwani, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 19/06/2019

घोषणा की तारीख/Date of Pronouncement: 24/06/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad dated 13.3.2015 passed for the Asstt.Year 2010-11

2. The assessee has taken three grounds of appeal along with sub-grounds, but its grievance revolves around a single issue viz. the Id.CIT(A) has erred in confirming the disallowance of Rs.1,47,65,934/- which was claimed as interest expenditure under section 24(b) of the Income Tax Act.

3. Brief facts of the case are that the assessee is company engaged in the business of construction and leasing of immovable property. It has filed its return of income electronically on 30.9.2010 declaring total income at Rs.14,77,719/-. M/s.Navratna Organizer & Developer P. Ltd. ("NODPL" for short) has constructed a commercial property known as "Kollanade Centre" situated at Ambawadi, Ahmedabad. This property was constructed with the help of borrowed fund from HUDCO. Later on this property was purchased by the assessee from "NODPL". The assessee has shown rental income from the property. The case of the assessee is that purchase price remained unpaid and became an outstanding debt due from the assessee to "NODPL". Interest expenditure upto the date of completion of construction has been crystallized in the purchase cost and after completion of the building, interest expenditure relating to unpaid purchase price has been claimed as deduction under section 24(b) of the Act. The Id.AO did not allow this claim of the assessee by holding that term loan was taken by "NODPL" from HUDCO for construction of property. It is not a liability of the assessee, more so in the conveyance deed there is no clause regarding payment in any form including interest to "NODPL". Thus, according to the AO, there was no obligation on the part of the assessee to pay interest on the term loan obtained by "NODPL" from HUDCO. Appeal to the CIT(A) did not bring any relief to the assessee.

4. The Id.counsel for the assessee at the very outset submitted that both authorities have failed to appreciate the controversy. He took us through page no.21 of the paper book and submitted that as on 31.3.2010 Kollanade building is being shown in the schedule of fixed asset having value of Rs.59.24n cores. Report to this

effect is given in the balance sheet, copy of which placed on page no.21 of the paper book. It reads as under:

"FIXED ASSETS

31st March,
2009

31ST March,
2010

NIL KOLONNADE BUILDING (SCHEDULE-B) 592,99,461"

5. He thereafter made reference to page no.20 of the paper book and submitted that under the head "current liabilities and provisions" the assessee has shown Rs.25.77 crores against the name of "NODPL". There was no liability *qua* this as on 31.3.2009, the liability has been recognized on 31.3.2010. He thereafter made reference to the copy of the ledger account available on page no.60 of the paper book. Group summary of fixed assets has been shown on this page and this building is available. The Id.counsel for the assessee thereafter made reference to the ledger account of "NODPL" in its books of accounts including outstanding interest on page nos.31 and 32 of the paper book. The Id.counsel for the assessee also contended that upto November, 2009 interest was capitalized i.e. before the date of acquisition. He pointed out that date of acquisition is 14.11.2009; interest upto this date was capitalized in the cost of purchase. Thereafter from November to March, interest expenditure has been claimed. The details to this effect have been placed in the ledger account on page no.30 of the paper book. He took us through these details. For buttressing his contentions, he relied upon the decision of the ITAT, Jodhpur Bench in the case of Gopi Kishan Purohit Vs. DCI, 20

taxmann.com 257 (Jodh.). He placed on record copy of the Tribunal's order. On the other hand, the Id.DR relied upon the orders of the Revenue authorities.

6. We have duly considered rival contentions and gone through the record carefully. Deduction from "Income from House property" has been provided in section 24. Therefore, it is imperative upon us to take note of relevant clause which reads as under:

"24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

(a)

(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

7. Similarly, expression "interest" has been defined under section 2(28)(a). This definition reads as under:

(28A) "interest" means 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 utilised ;

8. In the light of the above, let us examine facts of the present case. There is no dispute with regard to the fact that "NODPL" has constructed commercial building, viz. Kollanade Centre. This is also not in dispute that construction was completed with help of borrowed funds from HUDCO. The AO has also not disputed that upto the date of acquisition or purchase, whatever interest

expenditure is incurred by the erstwhile builder/vendor that interest amount has been capitalized in the cost of purchase. The only dispute is that part of the purchase cost in the hands of the assessee remained unpaid. In other words, the assessee has not paid full cost of purchase to "NODPL", and that cost in a presumptive way being treated as outstanding debt *qua* the assessee in the books of "NODPL". In other words, the assessee became debtor of "NODPL" for a sum of Rs.25.77 crores which was due on the date of acquisition. The assessee has recognized purchase price as a liability payable to "NODPL". These facts are not in dispute. It is so discernible from the ledger account of "NODPL" in the books of assessee available on page no.32. The debit balance shown as on 31.3.2010 is Rs.25.77 crores. The ITAT, Jodhpur Bench has considered an identical situation and observed as under:

"3.2 We firstly observe that the amount, interest on which is being claimed as deduction u/s. 24(b) of the Act, is unpaid purchase price of the property under reference. The first question (A), therefore, that arises and this needs to be answered, is if the same, i.e., the unpaid purchase price, could be considered as 'borrowed capital' for the purpose of sec. 24(b) of the Act. In our view, the interest payable to RFC would qualify as interest on borrowed capital as envisaged u/s. 24(b) of the Act. This is as the term 'interest' is defined comprehensively u/s. 2(28A) to include on any debt and, more importantly, the same is in respect of 'capital borrowed'. The word 'capital' is wider in scope than the term 'money', and under appropriate circumstances, as the present one, include part of the debt that the seller, a financial institution, has agreed to extend, on charge of interest, to the assessee- purchaser.

3.3 The next question (B) would be as to whether the assessee's claim for deduction is to be restricted to the interest that it would be liable to pay had it adhered to the agreed schedule of repayment of the borrowing, i.e., as per the agreement. We do not think it as so; there being nothing in the language of sec. 24(b) to warrant so. The interest deductible is the actual interest

payable by the assessee in respect of the capital borrowed, and not one which would have been payable under a different fact setting than the actual one. The interest payable, deduction for which is claimed, is only that charged in terms of the agreement entered into between the parties, so that it could not be limited or restricted with reference to some predefined or hypothetical circumstances, which may have obtained or were conceived to be so when the agreement was entered into. Of course, the claim must be genuine and not a result of an artifice, arising as a device to inflate the interest expense with tax or other motivation. Why, if the assessee had pre-paid the debt, even the interest as initially contemplated would not have arisen for payment, in which case the assessee's interest liability and, thus, expense would be lower, and his income correspondingly increased to that extent."

9. A perusal of orders both the authorities would reveal that they have failed to appreciate the true facts in right perspective. The assessee is able to demonstrate that in a constructive manner it has proved outstanding debts out of which it has acquired this property which has resulted in rental income. Therefore, the expenses incurred by the assessee for acquisition of the property in shape of interest, is admissible to it as an expenditure. Respectfully following orders of the ITAT (copy thereof is available on record) and in view of the above discussion, we allow this ground of appeal, and delete disallowance made by the AO, and confirmed by the CIT(A).

10. In the result, appeal of the assessee is allowed.
Order pronounced in the Court on 24th June, 2019.

Sd/-
(RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 24/06/2019