

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2376/Ahd/2015  
Assessment Year 2010-11**

Purshottam B. Pitroda, Prop. M/s. J.P. Fabricators Opp. Ambalal Estate, Nr. Cadila Baridge, Ghodasar, Ahmedabad PAN: ABWPM6274B (Appellant)	Vs	The ACIT, Circle-12, Ahmedabad (Respondent)
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**Revenue by: Shri L.P. Jain, Sr. D.R.  
Assessee by: Shri A.C. Shah, A.R.**

Date of hearing : 16-07-2019  
Date of pronouncement : 01-10-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2010-11, arises from order of the CIT(A)-6, dated 06-01-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has filed return of income on 25<sup>th</sup> Sep, 2010 declaring total income at Rs. 138810/-. The case was subject to scrutiny. Assessment order u/s. 143(3) of the act was passed on 28<sup>th</sup> Feb, 2013. In the instant

appeal, the assessee has contested the following additions made by the assessing officer and sustained by the Id. CIT(A).

- (i) Disallowance of interest of Rs. 17,35,912/- u/s. 36(1)(iii)
- (ii) Disallowance of Rs. 1,01,574/- u/s. 40(a)(ia) of the act
- (iii) Disallowances of interest of Rs. 1,25,93,747/- paid for acquisition of land
- (iv) Addition as income from self-occupied property of Rs. 62,307/-
- (v) Disallowance of repair expenditure of Rs. 6,62,345/-

The fact pertaining to all the additions made by the assessing officer are discussed as under:-

(i) Disallowance of interest of Rs. 17,35,912/- u/s. 36(1)(iii)

3. During the course of assessment, the assessing officer observed that assessee has advanced Rs. 80,89,066/- interest free and further advanced Rs. 63,76,877/- as interest free fund for purchase of land therefore the assessing officer asked the assessee to explain why amount of Rs. 17,35,912/- @ 12% per annum on amount of Rs. 1,44,65,937/- should not be added u/s. 36(1)(iii) of the act. The assessee explained that major part of the loan advanced was brought forward from the earlier year and there was sufficient amount of interest free funds and profit generated during the year and no interest bearing fund has been used for the said advances. The assessing officer has not accepted the explanation of the assessee stating that the assessee has not derived any benefit out of the interest free advances, therefore, the assessing officer has added the deemed interest @ 12% of the advances to the amount of Rs. 17,35,912/- to the total income of the assessee. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal

of the assessee after following the decision of Id. CIT(A) for earlier assessment years.

4. We have heard the rival contention and perused the material on record. The assessee has explained that out of total advance of Rs. 80,89,700/- there was opening balance of Rs. 56,89,000/- and during the year further advance of Rs. 24,00,000 was provided. In respect of other interest free advance of Rs. 63,96,877/- the assessee had also explained that there was opening balance of Rs. 43,76,877/- and further advance of only Rs. 20,00,000/- was provided during the year. The assessee has also submitted that he was having total interest free fund to the amount of Rs. 44554690/- and also there was profit of Rs. 84,27,511/- generated during the year. The assessing officer has reported these undisputed material facts at page 2 to 4 of the assessment order. The assessee has also submitted details before the assessing officer that for assets like plant and machinery vehicles etc. he has obtained secured loan from the bank and financial institutions. The Id. counsel has also contended that the ITAT Ahmedabad for assessment year 2008-09 vide ITA No. 80/Ahd/2012 dated 31-07-2017 in the case of the assessee on the similar issue on the identical facts has decided the matter in favour of the assessee. The Id. counsel has placed copy of the referred order at page no. 36 to 39 of the paper book. With the assistance of the Id. representatives, we have perused the order of the ITAT as cited above and the relevant part is reproduced as under:-

*“10. As exhibited at page 61 of the paper book, thus, it can be seen that in addition to the own capital of 22.54 crores, the assessee had interest free borrowings of 8.62 crores which means that the assessee had about 31 crores of interest free funds available with him. Therefore, in our considered opinion, the interest free advances to the tune of Rs. 3.63 crores can be safely concluded to have come out from the interest free funds. Therefore, no disallowance is warranted.*

*We accordingly, set aside the findings of the ld. CIT(A) and direct the assessing officer to delete the disallowance of Rs. 36,71,548/-. Ground No. 1 and all its sub-grounds are allowed."*

After considering that there was adequate interest free funds available with the assessee, therefore, respectfully following the decision of the Co-ordinate Bench as supra this ground of appeal of the assessee is allowed.

ii) Disallowance of Rs. 1,01,574/- u/s. 40(a)(ia) of the act

5. During assessment, the assessing officer observed that assessee has credited/paid contractual payment of Rs. 1,01,574/- to various parties without deduction of tax at source u/s. 194C of the act. The assessee explained that provision of section 194C was not applicable since payment made to each party was less than 20,000/- per entry. However, the assessing officer was of the view that all the credit entries were less than Rs. 20,000/- but the assessee had made payment of Rs. 20,000/- in a single day. Therefore, the assessing officer has disallowed amount of Rs. 1,01,574/- for not deducting tax u/s. 40(a)(ia) and added to the total income of the assessee. The assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

6. We have heard the rival contentions on this issue and perused the material on record. The ld. Counsel has contended that in none of the three cases the credit entry was exceeded to Rs. 20,000/- and the aggregate amount of payment was also not exceeded Rs. 50,000/-. In this regard, the ld. counsel has referred pages 43 to 45 of the paper book pertained to the ledger account of the payees which was also furnished at the time of assessment proceedings. The ld. counsel has referred section 194C(1) of the

act that the assessee is required to deduct tax at source at time of credit of such sum or at the time of making payment whichever is earlier. We observe that the lower authorities has not given any specific findings on the above referred copies of the ledger account filed by the assessee, therefore, we restored this issue to the file of the assessing officer for adjudicating afresh after examination of the supporting material furnished by the assessee.

(iii) Disallowances of interest of Rs. 1,25,93,747/- paid for acquisition of land

7. During assessment, the assessing officer noticed that assessee has claimed short term capital loss of Rs. 1,48,37,847/-. The assessing officer observed that the assessee had sold land at Rs. 6,00,00,000/- which was purchased at the cost of Rs. 6,15,56,785/-, therefore, the assessee was asked to explain why the capital loss should not be reduced to Rs. (-1556,780/-). The assessee has explained that the cost of the land also included the amount of interest of Rs. 1,25,93,747/- as the same was directly taken for the purchase of the land which was sold. The interest was paid on the amount borrowed from Kalupur Commercial Bank for acquiring the sold land. The assessing officer was of the view that interest expenditure incurred to acquire capital asset cannot be added while calculating capital gain u/s. 48 of in accordance with law. Therefore, the assessing officer has disallowed the short term capital loss amounting to Rs. 1,25,93,747/-. The Id. CIT(A) has dismissed the appeal of the assessee stating that assessee has not substantiated the contention that interest paid of Rs. 1,25,93,747/- was in connection with the acquisition of the land in 2008 which was sold in the year under consideration. The Id. CIT(A) further stated that assessee has

also not furnished evidence to show that the said interest expenditure was not claimed as business expenditure in the preceding years.

8. We have heard the rival contentions and perused the material on record. During the course of appellate proceedings before us the ld. counsel has referred pages 40 to 63 of the paper book pertaining to the ledger account of land, ledger account of interest paid to KCCB and the copy of bank pass book along with bank book of the Kalupur Commercial Co-operative Bank Ltd. The ld. counsel has also referred judicial pronouncement i.e. *Gayatri Maheshwari Vs. ITO (2017) 187 TTJ 33 (Jodhpur) ITAT* wherein it is held that where property was purchased from borrowed funds interest paid on which borrowing would be part of cost of acquisitions. The ld. counsel has also placed other judicial pronouncements in the paper book. In the light of the above facts, we are of the view that if the impugned land of the assessee was purchased from the borrowed funds of KCCB then the claim of the interest on such borrowing would be allowed to be part of the cost of acquisitions of the sold land provided that such interest expenditure was not claimed as business expenditure in the preceding years. We could not find any specific findings on the fact that such expenditure was not claimed as business expenditure in the preceding years, therefore, we restore this issue to the file of the assessing officer to allow the claim of the assessee after examination that assessee has purchased the sold land through loan amount and the interest expenses incurred on the loan amount included in the cost of acquisition of the sold land was not claimed as business expenditure in the earlier year. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

(iv) Addition as income from self-occupied property of Rs. 62,307/-

9. This ground of appeal was not pressed, therefore, the same stands dismissed.

(v) Disallowance of repair expenditure of Rs. 6,62,345/-

10. The assessing officer noticed that assessee has claimed repairing expenses amounting to Rs. 6,62,345/- incurred on the cold storage. The assessing officer observed that assessee has already shown the income earned from cold storage under the head self property after claiming 30% standard deduction, therefore, assessee cannot claim separately repair expenditure in his P & L account. Therefore, the assessing officer has disallowed the claim of repair expenses of Rs. 6,62,345/-. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

11. We have heard the rival contentions and perused the material on record on this issue. The Id. counsel has contended that the cold storage was let out only up to 30-09-2010 and thereafter it was used for the purpose of business. The Id. counsel has referred page no. 64 to 97 placed in the paper book comprising of letter of tenant, ledger account of rent received from tenant, ledger account of the cold storage repairing expenditure etc. It is claimed that the cold storage was vacant after 30<sup>th</sup> Sep, 2009 and the entire repairing expenditure has been incurred after 30<sup>th</sup> Sep, 2009. After perusal of the material placed in the paper book, we observed that the lower authorities had not considered the various material and submission of the assessee in their findings, therefore, we restore this issue also to the file of

the assessing officer to examine that the various submissions and materials furnished by the assessee that after 30-09-2009 the cold storage was used for business purpose and also examined that repair expenses were incurred for business purposes. Therefore, this ground of appeal of the assessee is also allowed for statistical purposes.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 01-10-2019

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 01/10/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क०० तालम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलअध अधिकरण,  
अहमदाबाद