

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'SMC', JAIPUR

श्री विजय पाल राँव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 500 & 501/JP/2018
निर्धारण वर्ष/Assessment Years : 2014-15 & 15-16.

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| Kalyan Vihar Buildhome Pvt. Ltd., D-25, Lal Bahadur Nagar, JLN Marg, Jaipur. | बनाम Vs. | The Income Tax Officer, Ward 6(1), Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN No. AACCK 4105 D | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)

राजस्व की ओर से / Revenue by: Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 19.09.2019.

घोषणा की तारीख / Date of Pronouncement : 29/10/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

These two appeals by the assessee are directed against two separate orders of Id. CIT (Appeals)-2, Jaipur both dated 27.03.2018 for the assessment years 2014-15 and 15-16 respectively. The assessee has raised common grounds in these appeals except the quantum of disallowance. The grounds raised for the assessment year 2014-15 are as under :-

1. Under the facts and circumstances of the case the learned CIT (A) has erred in sustaining the addition of Rs. 40,24,782/- by not allowing interest expenses claimed by the assessee against the interest income of Rs. 42,01,020/- shown by the assessee.

2. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing."

2. The assessee is a private limited company and engaged in the business of construction and real estate development. The assessee filed its return of income on 30th September, 2014 declaring total income at Rs. 1,68,187/-. The A.O. while completing the assessment under section 143(3) of the IT Act disallowed the interest of Rs. 40,24,782/- on the ground that the fund was borrowed for business purposes whereas the same was used for giving advances to the sister concerns on specified interest, therefore, the interest expenditure is not allowable against the interest income on advances to the sister concerns. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before the Tribunal, the Id. A/R of the assessee has submitted that the assessee has invested borrowed funds on which interest has been paid to the bank. The funds have been utilized partly for the investment in purchasing the land and remaining borrowed funds were utilized for advancing the loans to M/s. Green Valley Ventures LLP and M/s. Shri Kalyan Holdings Ltd. from where the assessee company has received interest @ 14.50% and 14.75% respectively. Thus the total interest income during the year earned by the assessee from these two companies is Rs. 41,41,096/-. The assessee has proportionately divided the interest expenditure for investment in land and for advances given to these two entities. The assessee suo moto capitalized its investment in land and shown in the Balance Sheet. The remaining interest was claimed against the interest income. The Id. A/R has further contended that the assessee was also having interest free funds as a loan of Rs.

47,65,000/- taken from the Director of the assessee company on which no interest was paid. Thus the Id. A/R has submitted that when the interest expenditure has direct nexus with the interest income, then the same is allowable under section 57(iii) of the IT Act. The AO has not disputed the fact that the advances to the other parties were given from the borrowed funds and assessee has earned the interest income on said advances given to these two parties, therefore, the corresponding interest expenditure is an allowable deduction against the interest income. The AO in his remand report has accepted that the assessee has capitalized part of the interest payment on land investment and only remaining interest payment was set off against the interest income. Alternatively, the Id. A/R has submitted that when the AO has disallowed the interest expenditure against the interest income on the ground that the funds were borrowed for business purposes then the said interest expenditure would result a business loss which is eligible to set off against the interest income. Therefore, even otherwise, the interest expenditure which is claimed against the interest income would be set off against the interest income.

4. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the assessee borrowed funds from bank for business purposes, however, the same was utilized for the purpose of giving advances to the other concerns, therefore, the interest expenditure incurred by the assessee is not for earning the interest income but for business purposes. Hence there is no nexus between the interest paid to bank on the loans taken for the business purposes and the interest income earned by the assessee by diverting the funds for advancing to other concerns. She has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as the relevant material on record. The assessee has paid total interest of Rs. 58,55,000/- in respect of loan of Rs.3,80,00,000/- taken from bank. The part of the interest expenditure to the extent of Rs. 18,30,000/- was capitalized by the assessee to the land investment account and shown in the balance sheet as the assessee utilized the borrowed funds for the purpose of acquiring the land. The balance amount of interest of Rs. 40,25,000/- was claimed against the interest income of Rs. 41,41,000/-. The assessee after utilization of the borrowed funds to the extent of Rs. 1,61,71,033/- has given the balance amount of Rs. 2,19,19,555/- to the other concerns for earning the interest income. The AO has not disputed that the assessee has interest income @ 14.50% and @ 14.75% respectively. Thus the interest income earned by the assessee is more than the proportionate interest expenditure of the borrowed funds which were given to other concerns. The AO as well as the Id. CIT (A) have rejected the claim of interest expenditure on the ground that the loan was taken from the bank for business purposes and, therefore, the interest expenditure to the extent of the borrowed fund utilized for advancing to the other concerns is not incurred for earning the interest income. It is pertinent to note that even if the said interest expenditure is considered to have been incurred for the business purposes then it will result a business loss in the absence of any business income during the year under consideration. It is also undisputed proposition of law that as per provisions of section 71(2A) the business loss is eligible to be set off against any other income except the salary income. Therefore, in view of the matter when the business loss is eligible to be set off as against the income from other sources being interest income, then the claim of

interest expenditure against the interest income is otherwise allowable. Hence in the facts and circumstances of the case, the claim of interest expenditure disallowed by the AO and confirmed by the Id. CIT (A) is not justified and consequently the same is allowed.

6. For the assessment year 2015-16, an identical issue is raised in respect of disallowance of interest Rs. 31,97,756/- against the interest income of Rs. 32,63,486/-. The finding for the assessment year 2014-15 is applicable for the assessment year 2015-16. Accordingly the claim of the assessee is allowed.

7. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 29/10/2019.

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 29/10/2019.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Kalyan Vihar Buildhome Pvt. Ltd., Jaipur.
2. The Respondent – The ITO Ward 6(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 500 & 501/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

