

यकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A', JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA Nos. 72 & 73/JP/2019
निर्धारण वर्ष/Assessment Years : 2010-11 & 12-13.

M/s. Dream Flats Pvt. Ltd., 8A, Kastiya Lane, Kanota Bagh, Takte Shahi Road, Jaipur.	बनाम Vs.	The DCIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABCD 2826 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)
राजस्व की ओर से / Revenue by : Ms Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 02.01.2020.
घोषणा की तारीख / Date of Pronouncement : 06/01/2020.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against two separate orders of the Id. CIT (A) both dated 26th December, 2018 for the assessment years 2010-11 and 2012-13 respectively. The assessee has raised common grounds in these appeals and the grounds raised for the assessment year 2010-11 are reproduced as under :-

- “ 1) Under the facts and circumstances of the case the learned CIT (A) has erred in confirming the action of the learned AO in passing the order u/s 143(3)/147 of the Income Tax Act, 1961.
- 2) Under the facts and circumstances of the case the learned CIT (A) has erred in confirming the disallowance of Rs. 5,58,285/- on account of interest claimed by the assessee u/s 24(b) of the Income Tax Act, 1961 where there is no interest free advances to the directors during the year.

- 3) The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

Ground No. 1 is regarding challenging the reassessment order passed under section 147 of the IT Act.

2. The Id. A/R of the assessee has not pressed ground no. 1 of the assessee's appeal. We further note that this ground was also not pressed before the Id. CIT (A). Accordingly, ground no. 1 of the assessee's appeal is dismissed being not pressed.

Ground No. 2 is regarding disallowance of interest under section 24(b) of the IT Act.

3. The assessee is a company and filed its return of income on 28th September, 2010 at total income of Rs. 98,800/-. The return of income was initially processed under section 143(1) on 25.05.2011. Subsequently, the AO reopened the assessment on the ground that the assessee has claimed deduction under section 24(b) at Rs. 22,05,416/- on account of interest on borrowed capital whereas the said borrowed fund was not utilized for acquisition of the house property against which the said deduction is claimed. In the reassessment proceedings, the AO noted that the assessee has acquired the house property in question by utilizing the loan taken from the Directors of the assessee and subsequently the assessee has also taken the loan from ICICI Bank which was not fully utilized for repayment of the loan taken from the Directors. Accordingly, the AO arrived to the conclusion that out of the total loan of Rs. 1,58,12,096/-, a sum of Rs. 44,30,000/- was not utilized for repayment of loan but it was utilized for excess payment to some of the Directors. Accordingly, the AO has made the proportionate disallowance of deduction on

account of interest under section 24(b) of the Act. The assessee challenged the action of the AO before the Id. CIT (A) and submitted that the cost of acquisition of the property in question was Rs. 1,82,89,238/- whereas the loan taken from the ICICI Bank was only Rs. 1,58,12,096/-. The entire loan amount was utilized by the assessee for repayment of the interest free advance taken from the Directors at the time of purchase of the property in question. Therefore, the said loan taken by the assessee from ICICI Bank was finally utilized for repayment of the loan taken from the Directors for the purpose of acquiring the property in question. Hence the assessee contended before the Id. CIT (A) that once the loan taken from the bank for repayment of the earlier loan taken for acquisition of the property in question, the interest on such loan is an allowable deduction under section 24(b). The Id. CIT (A) did not accept this contention of the assessee and confirmed the disallowance made by the AO on the similar reasoning that out of the loan amount, the assessee has utilized certain amount for excess payment to the Directors over and above the loan amount.

4. Before us, the Id. A/R of the assessee has submitted that the AO has considered the incorrect details of the loan and repayment of loan by the assessee to its Directors. He has referred to the details given by the AO at page 3 of the assessment order and submitted that the assessee has taken a loan of Rs. 53,50,000/- from Smt. Raj Kumari Agarwal which was repaid by the assessee by utilizing the loan taken from ICICI Bank. However, the AO has shown the loan taken from the Director at Rs. 30,00,000/- only as against Rs. 53,50,000/-. He has referred to the ledger account at page 38 of the paper book and submitted that the loan amount is clearly shown at Rs. 53,50,000/- whereas the AO has shown at Rs.

30,00,000/-. Similarly, the AO has also taken the wrong figure of loan amount and repayment in case of Shri Jugal Kishore. Hence the Id. A/R has submitted that the disallowance made by the AO is based on assumption of wrong facts. He has further contended that even at the end of the financial years 2006-07 and 2007-08 there was no debit balance in the account of the Directors but the assessee has fully repaid the loan amount and in some cases of Directors excess payment was made which was again received back and utilized for repayment of the loan amount of the other Directors. Thus the Id. A/R has submitted that when these accounts were settled before the end of the financial year 2008, then the interest cannot be disallowed for the years under consideration once the loan taken from the bank was finally utilized for repayment of the interest free loan taken from the Directors for acquisition of the property in question. He has referred to the ledger account of the individual Director showing the details of the advance taken by the assessee and repayment of the loan and submitted that as on 31st March 2008 there was no excess payment to any of the Directors. Therefore, the disallowance made by the AO and confirmed by the Id. CIT (A) is liable to be deleted.

5. On the other hand, the Id. D/R has submitted that the AO has clearly pointed out some part of the loan taken by the assessee from the ICICI Bank was not utilized for repayment of the loan taken from the Directors but the amount was utilized for excess payment to the Directors and, therefore, to that extent the AO was justified in disallowing the proportionate interest claimed by the assessee under section 24(b) of the Act. She has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as the relevant material on record. The facts as emerged from the assessment order regarding the acquisition

of property in question by the assessee as well as the loan taken from the Directors for the purpose of acquiring the said property and subsequently substituted by the loan taken from the ICICI Bank are that the assessee purchased the property in question on 06.10.2006 for a consideration of Rs. 1,82,89,238/- by utilizing a loan amount of Rs. 1,78,00,000/- taken from the three Directors, namely, Smt. Raj Kumari Agarwal, Shri Jagal Kishore and Smt. Jai Mala Agarwal. Thereafter, the assessee has taken a loan of Rs. 1,75,00,000/- from the ICICI Bank on 09.07.2007. The said loan was utilized by the assessee for making repayment of the loans taken from the Directors. However, the payment made to the Directors is not equivalent to the loan amount/advance taken from the Directors but in some cases the payment was short and in some cases it was more than the advance amount. The AO has taken the details of the repayment made by the assessee as on the table at page 3 of his order as under :-

Name	Loan amount	Repayment of loan	Excess payment
Smt. Raj Kumari Agarwal	30,00,000	53,50,000	23,50,000
Shri Jugal Kishore	1,03,00,000	52,20,000	-
Smt. Jai Mala Agarwal	45,00,000	65,80,000	20,80,000
Total	1,78,00,000	1,71,50,000	44,30,000

We find that the loan amount against Smt. Raj Kumari Agarwal is incorrectly shown at Rs. 30,00,000/- as against Rs. 53,50,000/-. This fact is verified from the relevant ledger account and we find that the loan amount was Rs. 53,50,000/- and the repayment was also of equal amount, therefore, there was no excess payment in case of Smt. Raj Kumari Agarwal whereas the AO has taken Rs. 23,50,000/- as excess payment. This is clearly an incorrect fact assumed by the assessee while

making the disallowance. Even the details of loan and repayment against Shri Jugal Kishore are also wrongly mentioned by the AO. In the said table, the loan amount was shown at Rs. 1,03,00,000/- and the repayment was shown only Rs. 52,20,000/-. In this case, the assessee has made excess payment initially. However, from the ledger account, we find that the said payment was again received back by the assessee before the end of the financial year in the month of August 2007 and in November, 2007 of Rs. 33,00,000/- and Rs. 5,70,000/- respectively. Therefore, this issue of re-payment of loan and settlement of account was over at the end of the financial year 2007-08. Similarly in case of Smt. Jai Mala Agarwal, the loan amount was Rs. 70,80,000/- whereas the AO has wrongly mentioned as Rs. 45,00,000/- and repayment was made by the assessee at Rs. 65,80,000/-, therefore, there is no excess payment in that case. Further, we find from the ledger account that the account of Smt. Jai Mala Agarwal was settled before the end of the financial year 2007-08 and there was no excess payment or outstanding. In view of these facts, once the accounts of these three directors were settled before the end of the financial year 2007-08 by utilizing the loan taken from the ICICI Bank, no disallowance on account of interest expenditure for the assessment years 2010-11 and 12-13 is called for. Since the entire loan amount availed by the assessee from ICICI Bank was finally utilized for repayment of the loans taken from the Directors before the end of the financial year 2007-08, then the issue was no more survived thereafter and consequently for the assessment year under consideration no disallowance is called for on account of interest expenditure. Accordingly, in the facts and circumstances of the case, we delete the disallowance made by the AO on account of interest payment under section 24(b) of the Act. The issue in both the

appeals is common and based on the same facts, accordingly, both the additions/disallowances made by the AO in respect of the assessment years 2010-11 and 2012-13 are deleted.

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

Order pronounced in the open court on 06/01/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/01/2020.

das/

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

1. अपीलार्थी / The Appellant-M/s. Dream Flats Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent-The DCIT, Circle-6, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 72 & 73/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar