

IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA

Before Shri Satbeer Singh Godara, Judicial Member

I.T.A. No. 2430/KOL/2019
Assessment Year: 2015-2016

*TropicanaExportsPrivate
Limited,.....Appellant*
*23, Sarat Bose Road, 3rd Floor,
Flat No. 31, Kolkata-700020
[PAN:AAACT9574H*

-Vs.-

Income Tax Officer,.....Respondent
*Ward-12(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

Appearances by:

Shri Simran Sakunia, Advocate, for the Appellant
Smt. Ranu Biswas, Addl. CIT, for the Respondent

Date of concluding the hearing : January 28, 2020

Date of pronouncing the order : January 31 , 2020

O R D E R

1. This assessee's appeal for assessment year 2015-16 arises against the CIT(A), 17, Kolkata's order dated 12-09-2019 passed in case no. 271/CIT(A)-17/Kol/17-18 involving proceedings u/s 143(3) of the Income-tax Act, 1961 (in short 'Act').

Heard both the learned parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal challenges the correctness of both the lower authorities' action disallowing interest claim of Rs.30,02,821/- in the course of

assessment as well as in the lower appellate proceedings. The learned CIT(A)'s detailed discussion reads as under:-

Decision

4.1 There are two grounds of appeal in this case.

The Ld. A.O. has allowed the interest of R.30,02,821/- after considering relevant case laws and other facts as per the assessment order as under: -

“Thus, for allowance of a claim for deduction of interest under this provision following three conditions are there:

(i) The money, That is capital, must have been borrowed by the assessee.

(ii) It must have been borrowed for the purpose of business.

(iii) The assessee must have paid interest on the borrowed amount i. e. he has shown the same as an item of expenditure.

The above mentioned three conditions have been established legally by Supreme court judgement in the case of Madhav Prasad Jatia vs. CIT, (1979) 118 ITR 200(SC).

The primary condition for allowing deduction of interest in the computation of business income is that the interest was paid on capital borrowed for the purpose of business of profession. If the borrowed capital is utilized not in the business whose income is assessable, but in earning some non assessable or exempt income, the interest paid thereon, is not an allowable deduction under these provisions. Hence, expenditure which is incurred to earn exempt income should not be considered in the computation of total income. This would result in double advantage to the assessee.”

During appellate proceedings, the appellant has submitted as under:

"Background:

The assessee/appellant has been in various commercial activities for a long time. In the initial part of the business, the assessee/appellant was an exporter of live decorative fishes for the purpose of aquariums. However, due to adverse market condition and delay in transporting the fishes to its respective destination, the assessee/appellant had to incur huge losses and closed down The business.

Meanwhile, the assessee/appellant started business of export of paper and paper products as well as Trading 0 F7J.'er in the local mark t. The assess e has been continuing with the business and for the assessment 2015-16, the assessee/appellant has made a sizable turnover out of the business of the paper.

The assessee/appellant has also entered into an arrangement to run and operate a Hotel in the Jaipur by the name of "Sirsi Haveli". The property has been taken on lease and the assessee/appellant has made a sizable investment in the said property in order to operate the said property as a heritage properly. The assessee/appellant has also entered into an agreement with the 'Welcome Heritage' - an unit of the ITC Ltd. for branding and marketing of the aid property. Unfortunately, the hotel business has a longer gestation period to start making profits.

Therefore, it is completely wrong on part of the A.O. to state that the assessee/appellant has not been able to establish any commercial expediency of incurring huge interest expenses. The assessee/appellant has borrowed money for its various business interests which are being duly looked after and as stated above, the business of running and operating hotel has a much longer gestation period. Moreover, in the previous year also, the assessee has paid interest over such amount borrowed and which has been allowed by the A.O after scrutinizing the records.

Therefore, this transaction is nothing new to the financial accounts of the assessee/appellant and therefore, the A.O. should not have disallowed such expense towards interest.

The A.O. during the course of the hearing, did not raise any objections to such interest amount claimed as an expenses in the books of the assessee/appellant and nor did he call for any papers from the assessee/appellant in this regard. Therefore, it is clear that the interest amount as disallowed by the A.O. is suo motu and arbitrary and without any basis.

The assessee/appellant has been regularly deducting TDS on the interest being paid to the lender. Therefore, it is clear and apparent that the lender has been recording such interest as an income in its books and paying necessary taxes on it. A copy of the confirmation of accounts of the lender is also enclosed herewith and marked as Annexure- A. Therefore, under no circumstances, the interest amount be disallowed as an expense in the Income Tax returns of the assessee/appellant.

The judgements as relied upon by the A.O are all in favour of the assessee/appellant and it is very clear that the A.O. without any application of mind and just for the sake of disallowing certain expenses has disallowed the interest of Rs. 30, 02, 211-."

3. Learned Counsel vehemently contended during the course of hearing that both the lower authorities have erred in law as well as on facts in disallowing the impugned interest claim.

4. The Revenue's case on the other hand is that since the assessee could not prove any commercial expediency qua the payment of interest in case of group entity M/s. Padrone Marketing Pvt. Ltd., its interest sum has been rightly disallowed by both the lower proceedings. Case records suggest that the assessee has not been able to pin point and prove the corresponding commercial expediency involved in payment of the impugned interest on capital

borrowed for the purpose of its business. I, therefore, deem it appropriate in the larger interest of justice that Assessing Officer needs to examine the instant sole issue as per law afresh within three effective opportunities of hearing afforded to the taxpayer to prove the commercial expediency involved.

5. This assessee's appeal is allowed for statistical purpose in above terms.

Order pronounced in the Court on 31 -01-2020

Sd/-
(Satbeer Singh Godara)
Judicial Member

Kolkata, the 31st day of January, 2020

- Copies to :*
- (1) Tropicana Exports Private Limited,
23, Sarat Bose Road, 3rd Floor,
Flat No. 31, Kolkata-700020*
 - (2) Income Tax Officer,
Ward-12(3), Kolkata, Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*
 - (3) Commissioner of Income Tax (Appeals)-17, Kolkata;*
 - (4) Commissioner of Income Tax- , Kolkata*
 - (5) The Departmental Representative*
 - (6) Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

** PP/Sr. P.S.*