

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER</b>

I.T.A. No.719/Coch/2019
Assessment Year : 2009-10

Mavoor Trade Links, Y.M.C.A. Road, Calicut-673 001. [PAN: AADFM 7732N]	Vs.	The Assistant Commissioner of Income-tax, Circle-1(1), Kozhikode.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	None (written submission)
<b>Revenue by</b>	Shri Mritunjaya Sharma, Sr. DR

<b>Date of hearing</b>	05/02/2020
<b>Date of pronouncement</b>	06 <sup>th</sup> /02/2020

### **ORDER**

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the CIT(A), Kozhikode dated 30.09.2019. The relevant assessment year is 2009-10.

2. The solitary issue that is raised is whether the CIT(A) is justified in upholding the addition of Rs. 12 lakhs made by the Assessing Officer on account of disallowance of interest expenses, for the reason that the interest bearing funds were diverted for purchase of a land.

3. Briefly stated, the facts of the case are that the assessee is a firm. For the assessment year 2009-10, the return of income was filed on 24.09.2009, declaring income of Rs.15,62,579/-. The scrutiny assessment u/s. 143(3) of the I.T. Act was completed, determining total income of Rs.31,21,840/-, disallowing a sum of Rs.15,59,264/- and adding back the same to the total income. One of the additions made in the scrutiny assessment was with regard to proportionate disallowance of interest expenses claimed by the assessee. The Assessing Officer noticed that the assessee had purchased land for a sum of Rs. 1 crore out of the OD account of the assessee. The Assessing Officer issued a show cause notice to the assessee proposing to disallow proportionate interest on the amount of Rs.1 crore used for the purchase of land. The assessee filed its objections vide letter dated 03/12/2010 wherein it was stated that the amounts were advanced for purchase of land which is intended to be assessee's asset. It was submitted that purchase of a property in the firm's name, utilizing the firm's funds cannot be considered as diversion of funds. It was further submitted that the profit that is to be earned on investment of the property is going to be the firm's income on which the assessee is going to be liable for income tax. However, the Assessing Officer rejected the contentions of the assessee and held that the advance given for acquiring the land from the enhanced CC limit is nothing but diversion of funds and the same cannot be treated as wholly and exclusively for the purpose of business. It was concluded by the Assessing

Officer that the proportionate interest expenditure for Rs. one crore which is utilized for purchase of land is to be disallowed and added back to the total income.

4. Aggrieved by the order of the Assessing Officer, the assessee raised this issue before the first appellate authority. Before the CIT(A), it was contended that the advance given for the purchase of the property has been registered in the name of the firm subsequently. It was submitted that being the assessee firm's asset, the same will be utilised for its business and the interest expenses incurred cannot be disallowed. The CIT(A) however rejected the contentions raised by the assessee. The CIT(A) noticed that for AY 2008-09, an identical issue was considered by him in assessee's own case. The CIT(A) after reproducing his finding for AY 2008-09 in assessee's own case, rejected the appeal for AY 2009-10. The relevant finding of the CIT(A) reads as follows:

*"5.1 The issue has been dealt by the undersigned in AY 2008-09 also where an identical amount of Rs.12 lakhs was disallowed by the Assessing Officer on the same ground. During the assessment proceedings and also in the course of appellate proceedings for AY 2008-09, the appellant has stated that the advance given for the property was made by the firm and the property has been registered in th name of firm. Subsequently the property will be used for the business of the firm. It is relevant to reproduce the decision on this issue given by the undersigned for AY 2008-09. The relevant extract from the order of the undersigned dated 10.07.2017 in ITA-39/RI/cIT/CLT/2010-11 is reproduced as under:*

*"7.2 I have considered the submissions of the Appellant. The Appellant has not been able to prove with any evidence that the advance given for the asset or property purchase is for the purpose of running or augmenting the business of the firm. There is a direct nexus between the loan and the purchase of an asset which is not a business asset till today. After expiry of 10 years, the asset has not put to use but is standing as a dead investment in the name of the firm. Hon'ble Punjab & Haryana High Court in 286 ITR 1 came to a finding that any fund which was advanced without carrying any interest and without any business purpose the interest to the extent the advance had been made without carrying any interest is to be disallowed u/s.36(1)(iii). Such borrowings to the extent cannot be possibly to be held for the purpose of business but for supplementing the cash diverted without deriving any benefit out of it. As stated, the Appellant did not derive any benefit out of an advance of Rs.1 crore even after a lapse of 10 years and any plea taken by the Appellant that it is business asset and shall be used for purchase of business asset appears to be only an afterthought to avoid tax. Therefore, in the circumstances, I uphold the addition made by the Assessing Officer for Rs.12,00,000/- and the ground is dismissed."*

*5.2 For the same reasons as stated in the order for AY 2008-09, I uphold the addition made by the Assessing Officer for Rs.12 lakhs and ground No. 1 is therefore, dismissed"*

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal, raising the following grounds:

1. The Learned CIT(Appeals) erred in upholding the addition of Rs.12,00,000/- made by the AO. The addition was made on the ground that the sum of Rs.1 crore invested in land (by availing of a limit from the bank) is not for business purpose.

2. The sum of Rs.1 crore availed from bank was utilized by the Appellant for investing in a land which is now an asset of the firm. The income to be derived from the said asset is going to be declared as the firm's income and as such, the amount invested cannot be considered as diversion of funds for non business purposes.

3. The intention of the partners of the Appellant firm is to earn income by exploiting the land. The funds have not been totally taken out from the firm's business, but have been used to invest in a land, which is now the firm's property.

4. As and when the investment yields income, such income will be the firm's income and therefore, the funds cannot be considered as having been diverted.

5. The case law cited in para 7.2 of the order of the CIT(Appeals) .. High Court of Punjab and Haryana Commissioner of Income-tax-I, Ludhiana vs. Abhishek Industries Ltd. Reported in 286 ITR 1 .. cannot be directly applied to the Appellant's case for the following reasons:

- i) This case has been overruled in 2008 168 Taxman 43 (SC).
- ii) The case relates to a situation where funds were diverted (without charging interest) to a sister concern, which is not the case here.

6. A reference to section 36(1)(iii) is necessary to understand the wide scope of allowability of interest on funds borrowed for purpose of business.

7. There is the expression "for the purpose of business" in section 36(1)(iii) and also in section 37(1). A similar expression with different wording also occurs in section 57(iii) which reads as "for the purpose of making or earning income". The expression occurring in section 36(1)(iii) is wider in scope than the expression occurring in section 57(iii). This phrase, as held by many legal pronouncements, is the most important yardstick for the allowability of deduction under section 36(1)(iii) of Income Tax Act, 1961.

8. The Hon'ble Supreme Court in the case of S.A. Builders Ltd. Vs. CIT(A), Chandigarh reported in 288 ITR 1 has used the phrase "commercial expediency". By using this phrase, the Hon'ble Supreme Court has given a new dimension and clarified the concept of "for purpose of business" further. In the said judgment, the Hon'ble Supreme Court has defined commercial expediency as "an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under

any legal obligation, but yet it is allowable as a business expenditure, if it was incurred on grounds of "commercial expediency".

9. The High Court of Delhi, in the case of Punjab Stainless Steel Inds. vs. CIT 324 ITR 396, has further elaborated "commercial expediency" would include such purpose as is expected by the ass to advance its business interest and may include measures taken for preservation, protection or advancement of its business interests, which has to be distinguished from the personal interest of its directors or partners, as the case may be".

10. In view of the above, it cannot be said that the investment in land from out of borrowed funds is for non business purposes or that the funds have been diverted from the business. Such a view is too narrow and does not consider the intention of the partners with regard to future expansion. For, the land could be exploited for business of the firm.

For these and other grounds that may be urged at the time of hearing of the appeal, it is prayed that the disallowance of Rs.12,00,000/- may be deleted.

6. None appeared on behalf of the assessee. However, the Ld. AR has filed written submission stating that their appeal for assessment year 2008-09 was heard on 28/01/2020. It was submitted that the issue agitated in both the years are identical and therefore, the Ld. AR requested that the decision for 2008-09 may be applied for assessment year 2009-10 also.

6.1 The Ld. DR submitted that the issue in question is covered in favour of revenue by the order of the Tribunal in assessee's own case for AY 2008-09 (ITA No.575/Coch/2019 dated 03-02-2020).

7. I have heard the Ld. DR and perused the material on record. For the assessment year 2008-09, an identical issue was considered by the Tribunal in assessee's own case (supra) . The relevant findings of the Tribunal reads as follows:

*"7. I have heard the rival submissions and perused the material on record. As rightly pointed out by the Ld. DR, amendment to Finance Act, 2003 w.e.f. 01/04/2004 has inserted proviso to section 36(1)(iii) of the I.T. Act which clearly states that interest on borrowed funds in respect of capital borrowed for acquisition of an asset shall not be allowed as deduction till the date on which the said asset was put to use for the purpose of business. In the instant case, amounts borrowed have been diverted for purchase of an asset which belongs to the assessee's firm. Admittedly, the said asset was not put to use even as on date of hearing of this appeal. Therefore, going by the proviso to section 36(1)(iii) of the I.T. Act, interest expenses on capital borrowed for purchase of asset cannot be allowed as deduction. In other words, interest expenditure has to be necessarily capitalised. The judicial pronouncements relied on by the Ld. AR relates to the case laws prior to the introduction of proviso to section 36(1)(iii) of the I.T. Act. Admittedly, the proviso to section 36(1)(iii) of the Act is applicable during the relevant assessment year, namely 2009-10 and since the asset (land) has not been put to use by the assessee, the interest expenditure for acquiring the same cannot be allowed as a deduction. It is ordered accordingly. "*

7.1 Since the facts of this case being identical to the facts considered by Tribunal for AY 2008-09, interest expenditure for acquiring the land cannot be allowed as a deduction for the assessment year 2009-10 also. It is ordered accordingly.

8. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on 06<sup>th</sup> -02-2020.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 06<sup>th</sup> February, 2020

GJ

Copy to:

1. Mavoor Trade Links, Y.M.C.A. Road, Calicut-673 001.
2. The Assistant Commissioner of Income-tax, Circle-1(1), Kozhikode.
3. The Commissioner of Income-tax(Appeals), Kozhikode.
4. The Commissioner of Income-tax, Kozhikode.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin