

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “B” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1231/AHD/2017
(Assessment Year: 2012-13)**

Hemant Umedbhai Patel 2, Purshottam Bungalows, New C.G. Road, Chandkheda, Ahmedabad	V/S	The A.C.I.T., Circle-2(2), Ahmedabad
(Appellant)		(Respondent)

PAN: AIZPP8146K

**Appellant by: Shri A.C.Shah & Bhadresha Gandhakwala, AR
Respondent by : Shri Vidhyut Trivedi, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 10 -01-2020

Date of Pronouncement : 19 -02-2020

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal has been filed by the Assessee is directed against the order of the Ld. CIT(A)-10, Ahmedabad dated 22.03.2017 pertaining to A.Y. 2012-13 and following grounds have been taken:

(1) That on facts and in law, the learned CIT (A) has grievously erred in not allowing the claim of the appellant of interest expense of Rs.77,58,664/- made u/s 36(i) (iii) of the Act.

(2) That on facts and in law, the learned CIT (A) ought to have allowed the said claim as business expenditure as prayed for.

(3) That, alternatively, and without prejudice, on facts and in law, the learned CIT(A) has grievously erred in not allowing the claim of the appellant of interest expense of Rs.77,58,664/- u/s 48 of the Act.

4) That on facts, and in law the learned CIT (A) has grievously erred in confirming the addition of Rs.4,65,755/- made u/s 50C of the Act.

5) That on facts, and in law the learned CIT (A) has grievously erred in confirming the charging of interest u/s 234A, 234B, 234C and 234D of the Act.

2. The assessee has not pressed ground no. 4. Now solitary ground remain for adjudication is disallowance of interest expenses of Rs. 77,58,664/- made u/s. 36(1)(iii).
3. Facts of the case are that assessee is a partner in multiple Partnership firm and assessee is also doing business of multiple purchase and sale of commercial land being immovable properties and enter huge transaction of banking business.
4. On perusal of the computation of income for AY 2012-13, it was observed that the assessee has claimed interest expenses of Rs 77,58,664/- as deduction under the head "Income from Capital Gains." The relevant part from computation of income under the head capital gains is reproduced hereunder:

Particular	Sales Price/Year	Purchase Cost/Year	Transfer-Expenses	Cost of Improvement	Exempt	Capital Gain
Land Chandkheda 257/2	2633850.00	2410.731.00	0.00	0.00	0.00	223119.00

<i>Land Tragad 329/2</i>	<i>1450000.00</i>	<i>1298438.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>151562.00</i>
<i>Land Zundal 408/2</i>	<i>2422000.00</i>	<i>779860.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>1642140.00</i>
<i>Land Chandkheda 258/259</i>	<i>6870000.00</i>	<i>6711000.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>159000.00</i>
<i>Land Zundal 4 16/1</i>	<i>2850000.00</i>	<i>1410000.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>1440000.00</i>
<i>Land Tragad - 280/1 , -</i>	<i>418750.00</i>	<i>376500.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>42250.00</i>
<i>Land Zundal 38 1/1</i>	<i>10963885.00</i>	<i>2074265.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>8889620.00</i>
<i>Land Chandkheda 6 1 0/6</i>	<i>3880000.00</i>	<i>4168379.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>-288379.00</i>
<i>Land Zundal 4 11/3</i>	<i>2125000.00</i>	<i>1992500.00</i>	<i>0.00</i>	<i>0.00</i>	<i>0.00</i>	<i>132500.00</i>
<i>Commission Exp.</i>	<i>0.00</i>	<i>0.00</i>	<i>675000.00</i>	<i>0.00</i>	<i>0.00</i>	<i>-675000.00</i>
<i>Interest Exp.</i>	<i>0.00</i>	<i>0.00</i>	<i>7758664.00</i>	<i>0.00</i>	<i>0.00</i>	<i>-775864.00</i>
<i>Security Exp.</i>	<i>0.00</i>	<i>0.00</i>	<i>45000.00</i>	<i>0.00</i>	<i>0.00</i>	<i>-45000.00</i>
<i>Total</i>	<i>33613485.00</i>	<i>21221673.00</i>	<i>847664.00</i>	<i>0.00</i>	<i>0.00</i>	<i>3913148.00</i>

5. The Id. A.O. was of the opinion that Income Tax Act does not allow interest expenses as permissible deduction while computing income under head capital gains. Thereafter a show cause notice was issued to the assessee as to why interest expenses of Rs. 77,58,664/- should not be disallowed.
6. In reply to the said notice, assessee stated that as per the Bombay High Court judgment in the case of Habib Hussein vs. CIT (supra) it is held that the word

“cost” has not been defined in the Income Tax Act. Hence the dictionary meaning of the work “cost”. The dictionary meaning of the word “cost” is “what is laid out of suffered to obtain anything”. Therefore, interest expenses incurred by the assessee would fall within the expression of the word “ cost” and is hence forth deductible within the mode prescribed in the computation section 48.

7. And assessee also submitted that cost of acquisition means cost of acquiring the property and it includes expenses relating to the purchase price of the properties, stamp duty, registration charges etc.
8. But ld. A.O. did not agree with the submission of the assessee and held that assessee has failed to prove any direct nexus between sources of borrowed funds and interest paid thereupon and their utilization vis a vis purchase of the properties transferred.
9. Thereafter assessee preferred first statutory appeal before the ld. CIT(A) but to no avail and ld. CIT(A) just confirmed the action of the AO.
10. We have gone through the relevant record and impugned order and heard both the parties. The appellant is engaged in the business of purchase and sale of plot and land during the year under consideration. The assessee entered into 7 transaction worth of Rs. 1.60 crore. The assessees borrowed money for these properties as non genuine. But lower authorities have doubted the genuineness of the loan and interest paid thereon.

11. Section 48 says that in order to calculate the capital gain, cost of acquisition and cost of improvement should be reduced from the sale consideration. As assessee is engaged in the business of sale and purchase of the land. Hence, he will be entitled for interest expenses. In order to verify the genuineness of expenses, we set aside this matter back to the file of the assessing officer to verify the details pertaining to cost of acquisition and cost of improvement and will also ensure that expenditure incurred wholly and exclusively in connection with the acquisition or transfer of the lands relating to business of the assessee and thereafter will decide the matter as per provisions of law.

12. In the result, appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in Open Court on	19- 02- 2020
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Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 19 /02/2020

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad