

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E ": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 210/Del/2018  
(Assessment Year: 2012-13)

ITO, Ward-16(4), New Delhi	Vs.	MNR Projects Pvt. Ltd, 208, Golf Links, New Delhi PAN: AAFCM2428L
(Appellant)		(Respondent)

Revenue by :	Ms. Rakhi Vimal, Sr. DR
Assessee by:	Shri Gautam Jain, Adv
Date of Hearing	10/02/2020
Date of pronouncement	15/05/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against the order of the Id CIT (A)-33, New Delhi dated 29.09.2017 for the Assessment Year 2012-13.
2. The assessee has raised the following grounds of appeal:-
  - “1. Whether on the facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting Rs. 1,54,33,735/- on account deduction of interest u/s 24(b) of the I.T Act, 1961 (the Act) by ignoring the fact that the interest was paid on loan which was meant for investment in shares/bonds and not for the purpose of purchasing property?
  2. Whether disallowance u/s 14 A of the Act has to be limited to the quantum of income not forming part of total income of the assessee even when clear, explicit and unambiguous provisions of the section 14 A read with Rule 8D of the I. T Rules, 1962 (the Rule) do not stipulate such restriction?
  3. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in not upholding the disallowance u/s 14A of the Act r.w. R 8D of the Rule without considering legal principal that allowability/disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon’ble Supreme Court in case of CIT Vs Rajendra Prasad Moody (1978) 115 ITR 519?
  4. Whether on the facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs, 98,27,363/- on account of various business expenses claimed by the assessee without considering the fact that the assessee had not carried out any business

*activity during the relevant period and also by ignoring the fact that the assessee failed to justify that expenses were incurred wholly and exclusively for the purpose of business?”*

3. Brief facts of the case shows that assessee is a company carrying on the business of builders, colonizers developers and to act owners. However, the AO found that company is dealing mainly in mutual funds and had purchased commercial property at Mumbai for earning rent. The assessee filed its return of income on 30 – 11 – 12 declaring nil income. The assessee has earned rental income of ₹ 1.24 crores, professional receipts of 79,000, dividend and interest income of ₹ 1.5 crores and gains on mutual funds of 5 lakhs. Thus out of total income of 2.80 crore assessee claimed Rs 1200249 as exempt dividend. The assessment under section 143 (3) of the act was passed on 9 March 2015 determining total income of the assessee at ₹ 5 613639/-. The assessing officer disallowed the deduction under section 24 (b) of the act while computing the income from the head of the house property. He further made disallowance of ₹ 1 5678235 under section 14 A of the income tax act. In the profit and loss account several expenditure were debited by the assessee who were also partly disallowed by the AO.
4. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A, who passed an order on 29/9/2017 allowing the appeal of the assessee. Therefore, the learned assessing officer aggrieved with that order has preferred this appeal before us.
5. The first ground of appeal is with respect to deleting the addition of ₹ 1 5433735/- on account of deduction of interest expenditure under section 24 (b) of the income tax act by ignoring the fact that interest was paid on loan which was meant for investment in shares and bonds and not for the purpose of purchasing the property. Therefore, grievance of the assessing officer is that that above interest expenditure cannot be granted as deduction from income from house property. During assessment proceedings the learned assessing officer found that assessee has paid interest of ₹ 1 5433735 to HSBC bank Ltd on loan borrowed against bonds. He noted that it clearly shows that no part of the loan was borrowed for acquisition of the property but was used for further investment in various bonds invested by the assessee company. Therefore, he held that, as

the assessee has not invested any fund for purchase and acquisition of the property but used loan for investment in the bonds, income from which has been claimed as exempt income. Therefore the above interest expenditure cannot be allowed as a deduction under section 24 (b) of the income tax act.

6. The learned CIT – A found that the above issue has already been decided by his predecessor in assessment year 2011 – 12 where the deduction of interest expenditure of ₹ 3 060462 was allowed against the rental income. Therefore, he directed the learned assessing officer to ascertain the interest on funds utilized for acquisition of the property on which rental income has been earned by it during the year and to allow the proportionate interest as deduction under section 24 (b) of the income tax act. Against this finding of the learned CIT – A the AO is aggrieved.
7. The learned and departmental representative vehemently supported the order of the learned assessing officer.
8. The learned authorised representative supported the order of the learned CIT – A and submitted that the issue is squarely covered in favour of the assessee by the order of his predecessor which has been followed.
9. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case the claim of the assessee is that it has paid interest of ₹ 1 5433735 against the rental income earned in profit and loss account during the year under consideration as the interest has been paid to HSBC bank for the purchase of Chemtax property in Mumbai. Assessee also substantiated the same with details of the interest expenditure as well as relied upon the finding of the learned CIT – A for assessment year 2011 – 12 wherein it has been held that the borrowed funds were utilized for the purchase of rented property. The learned CIT – A in the previous year has reached at a finding that until the amount has been utilized in the investment of bonds et cetera, no interest can be claimed by the assessee as deduction under the income from house property. However when such bonds have been redeemed and utilized for the purpose of purchase of the property, then the borrowed fund from HSBC bank amounts to utilization of same for the purpose of purchase of the property. Therefore, he held that since the amount was purchased from

the borrowed funds of the HSBC bank, interest paid by the assessee should be allowed as a deduction. The above facts are not disputed by the revenue. Even it was not shown to us that the order of the learned CIT – A for assessment year 2011 – 12 has not been accepted by the revenue and is agitated before the higher forum. In view of this, we do not find any infirmity in the order of the learned CIT – A in directing the learned assessing officer to ascertain the interest on funds utilized for acquisition of the property on which rental income has been earned by it during the year and to grant deduction of such interest under section 24 (b) of the act. Accordingly, ground number one of the appeal is dismissed.

10. Ground number two and three of the appeal relates to the disallowance under section 14 A of the income tax act. The learned assessing officer has disallowed the expenditure of ₹ 1 5678235 under section 14 A read with rule 8D. The AO found that assessee has invested substantial sum in various mutual fund. Therefore the entire interest expenditure of ₹ 1 5433735 and processing charges of loan of ₹ 1 37875 are in respect of moneys borrowed from banks for investment in mutual funds. Therefore he disallowed the interest of ₹ 15571610 and further 0.5% of the average value of the investment of ₹ 106624/- totaling to Rs. 1 5678235/-.
11. The learned CIT – A based on the order of his predecessor for assessment year 2011 – 12 directed the learned AO to restrict the disallowance to the extent of the exempt income earned in view of the decision of the honourable Delhi High Court in case of JOINT INVESTMENTS PRIVATE LIMITED VERSUS CIT (372 ITR 694). He further directed the learned assessing officer to recompute the disallowance to exclude the interest expenditure, which pertains to the income from house property and in respect of the interest expenditure related to the income from other sources. He was directed to consider the remaining interest expenditure for the purpose of computation of the disallowance. With respect to the disallowance of 0.5% of the average value of the investment, he directed the learned assessing officer to consider only those bonds, which yielded tax-free income. After hearing the parties on this issues, we do not find any infirmity in the order of the learned CIT – A in directing the AO so. Furthermore, the learned CIT – A has followed the order of his predecessor

and honourable Delhi High Court. The revenue has not challenged the order of the learned CIT – A for assessment year 2011 – 12, at least as no evidences produced before us. In view of this, we do not find any infirmity in the order of the learned CIT – A. Accordingly ground number two and three of the appeal of the AO is dismissed.

12. Ground number 4 is with respect to the deletion of disallowance of ₹ 98 2763/- made by the learned AO deleted by Id CIT A on account of various business expenses claimed by the assessee. The learned departmental representative as well as the learned authorised representative also considered that identical issue has been considered by the learned CIT – A for assessment year 2011 – 12 and deleted the above disallowance. Both parties submitted that there is no change in the facts and circumstances of the case. The learned authorised representative also submitted that none of the expenditure is found to be wanting for any evidences. On careful analysis of the order of the learned CIT – A, we found that he relied on the order of his predecessor for assessment year 2011 – 12 wherein all the facets of the allowability of those expenditure have been considered and disallowance has been deleted. We also do not find any infirmity in the order of the learned CIT – A in following the order of his predecessor, when revenue could not produce any evidence before us that the order of the CIT – A for assessment year 2011 – 12 has not been accepted by the revenue. In view of this ground number four of the appeal is dismissed.
13. In the result, appeal filed by the learned assessing officer is dismissed.  
Order pronounced in the open court on 15/05/2020.

-Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 15/05/2020  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

