

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए" अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 902/Ahd/2018
Assessment Year : 2013-14

Shri Ramesh Trikamlal Padhiyar, 19, Tulsivan Co-op. Society, Jivan Park, Vejalpur Road, Ahmedabad-380051 [PAN : ACKPP 6965 H]	Vs	The Dy. Commissioner of Income-tax, Circle - 3 (3), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri P.F. Jain, AR
Revenue by :		Shri Dileep Kumar, Sr DR

सुनवाई की तारीख/Date of Hearing : 17/03/2020
घोषणा की तारीख /Date of Pronouncement: 19/03/2020

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :-

The assessee is in appeal before the Tribunal against the order of the learned CIT(A)-3, Ahmedabad dated 12th February 2018 passed for Assessment Year 2013-14.

2. In the first ground of appeal the assessee has pleaded that the learned CIT(A) has erred in upholding the addition of Rs.54,366/- which was added by the Assessing Officer with the aid of Section 14A of the Income-tax Act. The learned Counsel for the assessee, at the time of hearing, did not press this ground of appeal; hence, it is rejected.

3. Ground Nos. 3 & 4 are general grounds of appeal and they do not call for recording of any specific findings; hence, they are rejected.

4. In ground no.2, the assessee has pleaded that learned CIT(A) has erred in upholding the disallowance of interest expenses of Rs.14,09,635/- while computing income from Long Term Capital Gain without properly appreciating the facts of the assessee's case.

5. The brief facts of the case are that the assessee has filed his return of income electronically on 30.09.2013 declaring total income of Rs.13,38,20,298/-. Case of the assessee was selected for scrutiny assessment and notice under Section 143(2) of the Act was issued and served upon the assessee. The case of the assessee is that he has been making investments in the purchase of land out of borrowed funds. Interest expenditure incurred on such funds is being capitalized in the investments. On sale of those lands, while computing the capital gain, the assessee used to claim cost of interest expenditure. This claim of the assessee has been disallowed by the Assessing Officer, mainly relying upon the findings of the learned Assessing Officer recorded in Assessment Year 2010-11. The following observations of the learned Assessing Officer in this regard are worth to note:-

"In view of all the above facts and on the basis of the disallowance made on the identical issue in AY 2010-11 in the case of the assessee himself as well as in view of the Ld. CIT(A)'s findings in its appeal order confirming the said disallowance for AY 2010-11, it is evident that the assessee has failed to establish any nexus between loan taken for purchase of land and its utilization for purchase of land. Hence, the claim of interest expense of Rs.14,61,324/- is disallowed and added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the I.T. Act 1961 are also separately initiated for furnishing inaccurate particulars thereby leading to concealment of income."

6. On appeal, learned CIT(A) concurred with the findings of the learned Assessing Officer and followed the order of his predecessor in AY 2010-11.

The findings recorded by the learned CIT(A) in paragraph 4.2 of the impugned order read as under:-

“4.2 Decision : I have considered the facts mentioned in the assessment order and the submissions of the appellant carefully. The appellant has supported his claim by saying that he has not claimed this interest expenditure against any of his other income. It was also claimed that the amount has been used for acquisition of land which is subject matter of capital gain. The AO on the other hand gave detailed findings at page no.4-7 of assessment order. It is stated that unsecured loans are bifurcated among the land investment and partnership firms at the end of the year. The AO has mentioned that no nexus has been proved for the loan arrival and investment in the properties. The AO has noted that for instance for Gota land no loan has been utilized and for Shohli land no information was submitted. Further it has been noted that the benefit of indexation of cost has been taken for Gota land. It is seen that similar addition was made in AY 2010-11 and the same has been confirmed by CIT(A). the appellant has not distinguished his case from the facts of assessment year 2010-11. The capital gains do have concessional taxation rate in addition to the benefit of indexation to partly offset tax liability. The appellant cannot be allowed to get best of both the worlds at the cost of revenue. The interest expenditure can only be allowed if any only if,

- (i) Perfect nexus of utilization of borrowed fund is proved by the assessee, failing which the onus to prove remains on assessee itself.*
- (ii) The assessee is having income from business and profession dealing in plots of land or developing the same before selling.*

It is seen that both the above conditions are not fulfilled, therefore, the disallowance of interest has been done correctly by the AO.”

7. Learned Counsel for the assessee, at the very outset, submitted that in AY 2010-11 the Tribunal has allowed the appeal of the assessee and set aside the findings of the Revenue Authorities. He placed reliance on the order of the Tribunal dated 30.04.2019 in ITA No. 322/Ahd/2015. Learned Departmental Representative, on the other hand, was unable to controvert this contention of the learned Counsel for the assessee.

8. We have duly considered the rival contentions and gone through the record carefully. The Tribunal, in Assessment Year 2010-11, has made following discussions on this issue:-

"8. We have duly considered rival contentions and gone through the record carefully. There are two angles of the controversy required to be adjudicated by us. In the first fold, the dispute is whether interest expenditure incurred by an assessee for acquiring the capital assets deserves to be capitalized and on its sale, required to be considered as cost of acquisition for the purpose of computation of capital gain. As far this legal issue is concerned, we find that it has been considered by the ITAT, Mumbai Bench in the case of Global Assets Holding Corporation (supra) and the following observations deserves to be noted:

"5. We have perused the records and considered the rival contentions carefully. The dispute is regarding capitalization of interest paid on borrowings for acquisition of shares while computing capital gain from sale of shares. There is no dispute that the shares had been acquired from borrowed funds. The dispute is whether interest on borrowings can be added to the cost of acquisition of shares. We find that similar situation had been considered by the Hon'ble Delhi High Court in the case of CIT vs. Mithilesh Kumari (92 ITR 9) in which the Hon'ble High Court held that interest paid on borrowings used for purchase of land had to be taken as part of actual cost of purchase of land. The Hon'ble High Court had followed the judgment of Hon'ble Calcutta High Court in the case of CIT vs. Fort Gloster Industries (P.) Ltd. (1971) 79 ITR 48(Cal.) in which it was held that the interest paid on the borrowings had to be taken as part of the actual cost of plant and machinery. In holding so, the Hon'ble High Court of Calcutta had followed the judgment of Hon'ble High Court of Bombay in the case of Habib Hussein vs. CIT (1963) (48 ITR 859) in which it was held as under :-

"The dictionary meaning of the word 'cost' is 'what is laid out or suffered to obtain anything'..... In our opinion, therefore, the meaning of the expression 'actual cost to the assessee' as used in sub-section(5) of section 10 of the Act would be what the assessee has, in fact, expended or laid out for the purpose of acquiring the depreciable assets."

5.1 It is clear from the judgment of the Hon'ble Jurisdictional High Court in the case of Habib Husein (supra), that actual cost is nothing but the expenditure incurred for acquiring the asset, and

therefore, the argument of the ld. DR that cost of acquisition was different from actual cost cannot be accepted. The cost of acquisition as to what the assessee incurred for acquiring an asset. In case, in addition to the consideration paid for acquiring the amount, the assessee has also incurred, interest expenditure on borrowings from which the consideration was paid, the interest expenditure would definitely be part of cost of acquisition. We also find that the case of the assessee is covered by the decision of Pune Bench of the Tribunal in the case of S. Balan alias Shanmugam (129 ITD 869), which is directly on the point as in that case also the issue was regarding allowability of interest as part of cost of acquisition of shares. In that case, the CIT(A) had held that since intention of investment in shares was for earning of dividend and as the said dividend income was exempt from tax, the interest expenditure could not be taken into account in view of the provisions of section 14A. The view taken by the CIT(A) was not accepted by the Tribunal. It was held that since the assessee had borrowed funds for acquisition of shares and interest had been capitalized, interest could not be separated from amount of investment. Thus, it was held that interest liability has to be taken into account towards cost of capital asset for the purpose of computation of capital gain. The case of the assessee is identical. We therefore, respectfully following the decision of the Pune Bench of the Tribunal (supra), see no infirmity in the order of the CIT(A) in allowing capitalization of interest to the cost of acquisition of shares. The order of the CIT(A) is accordingly up held."

9. Similarly, the Hon'ble Delhi High Court in the case of Mithleshkumar (supra) has also considered this aspect. The question framed by Hon'ble Delhi High Court reads as under:

"Whether on the facts and in the circumstances of the case, the interest amount of Rs.16,878/- and the ground rent of Rs.3,793 constituted part of the actual cost of the plot to the assessee for the purpose of determining the capital gain ?"

10. This question with regard to the first part i.e. interest amount has been replied in favour of the assessee. This order has been relied upon by the ITAT Mumbai in the case of Global Assets Holding Corporation (supra). The decision of Madras High Court in the case of K. Rajgopal Rao (supra) and the decision of ITAT, Ahmedabad Bench in the case of Pushpaben Wadhwani (supra) are also to same effect. In principle, in all these decisions, Hon'ble High Court and Tribunal concurred with the proposition that if a capital

asset is being purchased by way of borrowed funds, the interest expenditure are to be capitalized and on transfer of the capital assets, it is to be treated as part of cost of acquisition. A perusal of the order of the ld.CIT(A) would indicate that the ld.CIT(A) also did not dispute with regard to this proposition and has not rejected the claim of the assessee on legal aspect rather confirmed the disallowance on the ground that the assessee failed to establish nexus between borrowed funds vis-à-vis investment. This second fold of issue involved in this appeal, which we take for adjudication. The ld.CIT(A) has made discussion on facts under three sub-heads; (a), (b) and (c) in para 5.1. According to the ld.CIT(A) a perusal of the bank statements and balance sheet would reveal that a sum of Rs.5.00 lakhs was borrowed from Shri Mukesh Kumar T. Padhiyar on 4.10.2006; Rs.2.00 lakhs was borrowed from Shri Mahesh T. Padiyar HUF. He thereafter made reference to the balance sheet as on 31.3.2008 and observed that no loans are reflected from Shri Mukesh Kumar T. Padhiyar and Shri Mahesh Kumar T. Padhiyar. By making reference in half-way, the ld.CIT(A) has demonstrated that the assessee failed establish nexus between borrowed funds vis-a-vis investments.

11. With the assistance of the ld. representatives, we have perused profit & loss account and balance sheet. The assessee has submitted fund flow statement in a summarized manner which has been extracted in the assessment order and noticed by us. A perusal of the balance sheet as on 31.3.2005 loan of Rs.1,99,000/- against name of Shri Maheshkumar T. Padhiyar is outstanding. Similarly substantial loan liability has been shown at the end of each accounting year i.e. on 31st March, which is reflected in the table reproduced in the assessment order. How the Revenue authorities have appreciated this aspect. It is the dispute between the parties. For example, unsecured loan of Rs.1,07,69,000/- were taken in the F.Y.2005-06. The outstanding unsecured loans were Rs.71,69,000/-. The assessee has made investment of Rs.76,48,447/-. The expectation of the ld.CIT(A) is to demonstrate that loans taken from "A" remains invested in the capital asset. If assessee has taken loan in subsequent year from "B" and repaid the loan of "A", then it will not be construed that borrowed funds were used for the purchase of the assets. It can be explained by way an example viz. the assessee took loan of Rs.100/- from "A". Made investment in land at Rs.150/-. He took loan in the next year from "B" and repaid Rs.50/- to "A" out of loan of Rs.100/-. Then according to the understanding of the ld.CIT(A) Rs.100/- was not used for the purchase of the assets till it is sold. On the other hand, the stand of the assessee is, at the end of every year, there is outstanding unsecured loan which has been subsumed in the investment. Thus, on analysis of the details, we are satisfied that the ld. Revenue authorities have failed to appreciate the facts and circumstances in right

perspective while holding that nexus has not been proved. The assessee has demonstrated that interest free funds were used for acquiring assets and interest expenditures were capitalized. Unsecured loans were remained outstanding at the end of every accounting year. In such situation, it cannot be construed that nexus has not been demonstrated. We have noticed the order of the AO, which is absolutely silent on any of the aspects though the ld.CIT(A) has made reference to the details in order to demonstrate that the assessee failed to prove the nexus, but on re-appreciation of these very details we are of the view that the ld.CIT(A) has not appreciated the facts in right perspective, and considered them half-heartedly. Therefore, we allow the appeal of the assessee and delete the disallowance."

9. In Assessment Year 2010-11, the Assessing Officer has reproduced the summary of fund flow of the assessee from FYs 2005-06 to 2009-10. The Tribunal has taken cognizance of fund flow statement in its order. The same fund flow statement has been noticed by the Assessing Officer from FYs 2005-06 to 2009-10 on page no. 4 of the present assessment order for AY 2013-14. Before learned CIT(A) the assessee has produced summary of fund flow of the assessee from FYs 2005-06 to 2012-13. We have perused the same and, after analysis, we find that there is no disparity on facts between AYs 2010-11 to this assessment year. The assessee has demonstrated that the borrowed funds have been used by him in making investments. Therefore, he is entitled for the claim of interest expenditure while computing the Long Term Capital Gains/Short Term Capital Gains on sale of investments.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 19th March 2020 at Ahmedabad.

Sd/-

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad, Dated 19/03/2020

(RAJPAL YADAV)
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
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