

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 720/JP/2019
निर्धारण वर्ष/Assessment Year : 2011-12

The ACIT Circle-1 Kota	बनाम Vs.	M/s. Career Point Infra Ltd. 112-B, Shakti Nagar Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCC 2535N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Runi Paul, DCIT
निर्धारिती की ओर से / Assessee by: Shri Vijay Goyal, CA

सुनवाई की तारीख / Date of Hearing : 28/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 03 /08/2020

आदेश / ORDER

PER: R.C. Sharma, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A), Kota dated 08.03.2019 for the A.Y. 2011-2012, in the matter of order passed by the A.O. u/s 147 r.w.s.143(3) of the Income Tax Act, 1961 (in short, the Act).

2.1 In this appeal,, Revenue is aggrieved for disallowing the interest expenditure so claimed by the assessee.

2.2 Rival Contentions have been heard and records perused. The facts in brief are that the assessee is a company and during the year it was engaged in the business of renting of immovable property. The assessee has filed its original return of income on 29.09.2011 which was revised on 16.02.2012 wherein the total income of the assessee declared Rs. (-) 24,680/-. The assessment of the assessee company was completed u/s 143(3) of the Act vide order dated 24.02.2014 wherein the total income of the assessee was assessed at Rs. 12,59,504/-. Thereafter the assessment was reopened by issue of notice u/s 148 of the Act. The assessment of the assessee was completed u/s 147 r.w.s. 143(3) of the Income Tax Act, 1961 vide order dated 12.12.2017 assessing the total income of Rs. 2,44,71,470/- by making the following additions: -

- | | | |
|----|---|-------------------|
| a) | Disallowance on account of Interest income | Rs. 2,35,68,701/- |
| b) | Disallowance as per provisions of section 14A | Rs. 9,02,770/- |

2.3 Aggrieved from the assessment order, the assessee filed appeal before CIT(A). The Id. CIT (A) allowed the appeal of the assessee. Aggrieved from the order of Id. CIT (A), the revenue is in appeal before us wherein the Revenue challenged the deletion of addition of Rs. 2,35,68,701/- made by AO on account of interest income.

2.4 While deleting the addition on account of interest income, the precise observation of the Id. CIT(A) is as under:-

'I have gone through assessee's submission and AO's findings.

The issue raised in Ground of appeal no. 1 is related to disallowance of interest income of Rs. 23568701/- by not allowing proportional deduction of interest expenses. The appellant has referred to the order passed by myself in the original assessment proceedings made u/s 143(3) in appeal no. 571/ 13-14 dated 07.07.2017 wherein I had allowed the appellant's claim of expenses made in a revised computation filed in assessment proceedings where income from other sources had been re categorized as income from business & expenses held to be allowable. In the order it was held as under-

As the assessee has filed a revised computation in the course of the assessment proceedings itself, in my view, it holds good as except the change of head of income being from other sources to business income, all other supporting material remained the same including the audit report claiming expenses against such income. The expenses of Rs 12,84,124 /-are therefore held to be allowable against the said lease income from business as the primary object of the assessee as per the Memorandum is also to deal in immovable properties such as land and buildings and to acquisition, handle, manage, operate, sale, purchase, acquire, take or give on lease or in exchange or in any other lawful manner in India or abroad land including agricultural land, plot, buildings, structures, farm house etc.

This ground of appeal is treated as allowed.

The main objection of the AO in the assessment proceedings is that since no commercial activity had taken place, the expenses claimed against interest needed to be capitalized and the income earned an account of interest was to be separately assessed as income from other sources.

The appellant on the other hand has argued that

- (i) Since the business had already commenced, the expenses claimed were allowable and
- (ii) The net of interest expenses (after setting off the interest income) could only be capitalized.

It is seen as per the discussion made in course of appeal against the original assessment [made u/s 143(3) dated 24.02.2014] that against the rental income of Rs. 11 lakh the assessee's claim of expenses was found acceptable since as per the memorandum, the primary object of the assessee is to deal in immovable properties such as land, buildings and to handle, manage, operate, sale, purchase, acquire, take or give on lease or in exchange or in other lawful manner in India or abroad, land including agricultural land, plot, buildings, structures, form house etc.

Given the above background and my earlier order in the matter, I am of the view that in that sense it could be held that the business of the appellant had commenced and against the income, expenses would be allowed.

It is also observed that the share capital of the assessee had already been utilized in the purchase of assets in the earlier years as per the balance sheet of the earlier years (AY 2008-09). Thus subsequent borrowings could be only for either purchase of more assets or in the intervening period for advancing loans to other entities on which interest was earned.

Since the funds were already borrowed and could have been fully capitalized legally by the appellant as its business had 'commenced' per the discussion made above, the appellant had in fact reduced the expenses by earning income from the funds borrowed by advancing them to others. It is not also the AO's case that interest disallowance due to discussion of borrowed interest bearing funds was possible for advancing to related entities free of interest. He has also not bothered to detail even the head under which he has worked out the income

from interest earned. In fact he has allowed amortization of preliminary expenses which shows that the business activities are treated as commenced.

In fact even if the alternate argument taken by the A.O is hypothetically to be viewed, as per HIGH COURT OF MADRAS decision in Commissioner of Income-tax v. VGR Foundations²⁹⁸ ITR 132 (Madras) it has been opined that-

Section 57 of the Income-tax Act, 1961 - Income from other sources - Deductions Assessment years 1997-98 and 1998-99 - Interest on moneys borrowed for period prior to commencement of business was to be allowed as deduction from interest under section 57 while computing 'Income from other sources' in respect of interest received

In Bokaro Steel Ltd. 119991 236 ITR 315, it was a case of a Government company which during the period of construction of the plant had advanced monies to contractors on which it was earning interest, received rent from quarters let out to employees, received hire charges on plant let out to contractors and received royalty on stones removed from the assessee's lands. The Supreme Court considered all these activities to be intricately connected with the construction activity and accordingly held that interest received, rent received, hire charges and royalty, etc., would be reduced from the cost of the assets and it would not be treated as income. Similar view was expressed by the Supreme Court in the case Karnal Co-operative Sugar Mills Ltd. 12000] 243 ITR 2. Identical view was also taken by the Supreme Court in the cases of Bongaigaon Refinery and Petrochemicals Ltd. 12001] 251 ITR 329 and Karnataka Power Corporation 120011247 1TR 268.

HIGH COURT OF DELHI in Vodafone South Ltd v. Commissioner of Income-tax 61 taxmann.com 415 (Delhi) held-

Where assessee having availed of loan from HSBC, advanced said amount to its holding company, i.e., SCL, since there was a direct nexus between earning of interest on loan advanced by assessee to SCL and payment of interest to HSBC on loan drawn in terms of sanction letter, assessee's claim for netting off of interest in terms of section 57(iii) was to be allowed.

THE ITAT DELHI BENCH 'A' in Income-tax Officer v. Beam Estates (P.) Ltd. 15 taxnaann.com 386 (Delhi) held-

Section 57 of the Income-tax Act, 1961 - Income from other sources - Deductions - Whether where there is direct nexus between amount advanced and amount borrowed, interest earned on amount advanced is directly correlated to interest spent on amount borrowed, and interest so paid should be allowed as expenditure in earning interest-Held, yes

Thus, in view of the facts and legal precedents on the alternate view as well, in my opinion, the net of interest borrowed 86 earned being Rs. 1,59,96,193/- was rightly capitalized by the appellant company in the respective fixed assets under process of being set up. No addition of Rs. 2,35,68,701/- should thus have been made separately by the AO. The addition is therefore directed to be deleted."

2.5 However, the disallowance made u/s 14A was confirmed by the Id.CIT(A) against which the assessee is not in appeal before us.

2.6 It was argued by the Id.DR that the Id. CIT(A) has wrongly deleted the disallowance of interest expenditure in so far as the assessee had not shown any business income. Id. DR further relied on the order passed by the AO.

2.7 On the other hand, it was contended by the Id. AR of the assessee that interest expenditure was incurred for the purpose of business and the same was incurred after assessee commenced operation. Therefore, the same was to be allowed against interest income. As an alternate, the Id. AR of the assessee contended that even if the interest income is taxed

under the head 'Income From Other Sources', any expenditure incurred for earning such interest income is to be allowed while computing net income under the head 'Income From Other Sources'.

2.8 We have considered the rival contentions and carefully gone through the orders of the authorities below. From the record, we found that the assessee is a company registered with ROC Jaipur on dated 06/12/2007. Registrar of companies had issued certificate of commencement of business on 19/12/2007. The main object of the company is "to deal in immovable properties such as land and building and to acquisition, sale, purchase, given on lease of land, building develop the real estate projects and leasing the land, Building and Land & Building." The company has started development of real estate project in the F.Y. 2009-10 which can be easily verified in previous year figure stated in the Balance sheet of F.Y. 2010-11. The company received the lease rent from leasing out its land and during the year it received rental income of Rs. 11,00,000/- which is shown in Profit & loss account for the year 2010-11. The rental activity is part of main object of the assessee company and thus the same is chargeable as income from business & profession. Reliance is placed on

Supreme Court decision *Chennai Properties and Investments Ltd. v. Commissioner of Income Tax [2015] 373 ITR 673 (SC) AND M/s Rayala Corporation Pvt Ltd Vs ACIT [2016] 386 ITR 500 (SC)* Though in the computation of total income this income was inadvertently offered for taxation under the head "Income from Other Sources" instead of "Income from business & profession" but the same was corrected by filing the revised computation of total income during the course of original assessment proceedings by re-categorizing the rental income from income from other source to income from business. It is further relevant to mention here that during the course of appellate proceedings of appeal (filed against the assessment order passed u/s 143(3) of the Act), this receipt was accepted by Id CIT(A) as business income of the assessee. The Id CIT (A) accepted that the assessee company has commenced its business operations. Thus all these facts show that the assessee commenced its business activities and also earned income from business. From the record, we also found that the AO himself has allowed the amortization of preliminary expenses which is always allowed upon commencement of business activities. Thus the assessee was not in pre-commencement period and set-off of interest income of Rs.

2,35,68,701/- with interest expenses was claimed as allowable & balance amount of Rs. 1,59,96,193 has been capitalized in the respective fixed assets.

2.9 From the record, we also found that investment in interest earning advances were out of interest bearing funds borrowed by the assessee. In this regard, we observe that in AY 2008-09 in which the company was incorporated, the share capital was entirely utilized in investment of fixed assets and thereafter the subsequent borrowing were made either for purchase of more assets or in intervening period for advancing loans to other entities on which interest was earned. The assessee has also established nexus of interest paid with interest received i.e. utilisation of interest bearing borrowed funds into interest earning advances. Therefore, there is no justification for disallowing interest expenditure so incurred. Even if the interest received by the assessee is treated as taxable under the head "Income from Other Sources" then still the deduction on a/c of interest paid by the assessee to the parties from whom the assessee taken loan and utilized to advance the money to persons from whom interest received should be allowed to the assessee. For computing the income

taxed under the head "Income from Other Sources" u/s 56 of the Income tax Act the deduction of payment of interest made to earn such income should be allowed to the assessee as per provisions of section 57 (iii) of the Act. Findings of Id CIT(A) in this regard is at page 22-23 of his order. Therefore, even otherwise also if it is presumed that the assessee did not commence its business operation and was under pre-commencement period than still in view of following case law the interest expenses should be allowed against interest earned in pre-commencement period. For this purpose, reliance may be placed on the following decisions.

(i) Hon'ble HIGH COURT OF MADRAS in the case CIT v. VGR Foundations 298 ITR 132 (Madras). [Ld CIT has taken note of this case law at page No 22 of his order].

(ii) Hon'ble Supreme Court in the case of Bokaro Steel Ltd. [1999] 236 ITR 315, [Ld CIT has taken note of this case law at page No 22 of his order]

(iii) HIGH COURT OF DELHI in Vodafone South Ltd v. Commissioner of Income-tax 61 taxmann.com 415 (Delhi) 236 ITR 315. [Ld CIT has taken note of this case law at page No 22 of his order]

(iv) THE ITAT DELHI BENCH 'A' in Income-tax Officer v. Beam Estates (P.) Ltd. 15 taxmann.com 386 (Delhi) 236 ITR 315 [Ld CIT has taken note of this case law at page No 22 of his order]

2.10 In view of the above discussions, we confirm the detailed findings so recorded by the Id. CIT(A) which is as per materials placed on record, requiring no interference at our part.

3.0 In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 03/08/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी0 शर्मा)
(Ramesh. C. Sharma)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 03 /08/2020.
*Mishra.

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

1. अपीलार्थी / The Appellant- The ACIT, Circle-1, Kota
2. प्रत्यर्थी / The Respondent- M/s. Career Point Infra Ltd. , Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 720/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar