

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.4333/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Jai Danani 3, Union Park, Pali Hill Road Bandra (W), Mumbai – 400052	बनाम/ Vs.	ITO-22(1)(4) 3 rd Floor, R.No.308 Piramal Chamber, Lalbaug Mumbai -400 012.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AJFPD-8713-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ameet Patel-Ld. AR
Revenue by	:	Shri Sanjay J. Sethi-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	22/12/2020
घोषणा की तारीख / Date of Pronouncement	:	04/01/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 contests the order of learned Commissioner of Income Tax (Appeals)-34, Mumbai [CIT(A)], Appeal No.CIT(A)-34/ITO.22(1)(4)/IT-10423/16-17 dated 26/04/2019 which has confirmed interest disallowance of Rs.15.92 Lacs as made by Ld.AO while framing assessment u/s 143(3) on

22/12/2016. The assessee is stated to be engaged in buying & selling of paintings.

2. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 During assessment proceedings, it transpired that the assessee purchased a commercial property situated at Unit No. 1603, Lodha Supremus, Dr. E.Moses Road, Worli Naka, Mumbai from M/s Lodha Developers Private Limited. It transpired that the purchase consideration of Rs.642.32 Lacs was sourced out of unsecured loan taken by the assessee from his father as well as mortgage loan obtained from M/s Fullerton India Credit Co. Ltd.

3.2 Upon perusal of Balance Sheet, it was observed that no depreciation was claimed on the said premises but the assessee claimed interest of Rs.15.92 Lacs towards purchase of the premises. Accordingly, the assessee was directed to substantiate the fact that the property was actually used for business purposes. In defense, the assessee submitted copy of part possession letter dated 02/09/2013 along with copy of electricity bill dated 31/12/2013 showing electricity consumption during the month of October, 2013.

3.3 However, aforesaid submissions were found to be non tenable in the light of part-possession letter dated 02/09/2013. The builder, in response to notice u/s 133(6) filed the copy of the same letter but failed to throw any light on the fact whether the business was actually commenced by the assessee at the said premises or not. Further the possession letter was not complete possession but only pre-conditional

letter before possession of the property. The electricity bills were issued in the name of another entity namely *M/s Odean Theaters and Properties Pvt. Ltd* and not in the name of the assessee which led Ld. AO to disbelieve the assessee's submissions. In the said background, it was held that interest as claimed by the assessee would not be allowable u/s 36(1)(iii). The possession of the property was not obtained during the year and the same was not used for business purposes. Finally, the interest so claimed was disallowed and added back to the income of the assessee.

The disallowance, upon confirmation by Ld. CIT(A), is in further challenge before us.

4. Upon careful consideration of documents on record, we find that the assessee has been offered the possession of the cited premises vide builder's letter dated 02/09/2013. It is clearly mentioned in the opening paragraph that the unit was ready for occupation and the assessee was invited to inspect the premises before accepting the keys of the unit. The possession formalities were to become invalid in case the pay order and cheques issued towards the outstanding amount of the unit were dishonored for any reasons. The assessee's bank statement would show that the part payments made to builder were cleared from assessee's bank during the month of August, 2013 itself.

Proceeding further, the premises cooperative society, vide letter dated 09/07/2014, confirmed that the assessee was admitted as the member of the society w.e.f. 25/04/2014. It has also confirmed that the possession of the premises was taken by the assessee during the month of September, 2013 and assessee had commenced commercial activities immediately.

The electricity bill, though not in the name of the assessee, shows regular electricity consumption since October, 2013 onwards till March, 2014. The fact that the electricity meter stood in the name of *Odeon Theatres and Properties Private Limited* would lose significance in view of the fact that the assessee was offered the possession of the premises in September, 2013 itself which fact stood confirmed by the premises' cooperative society. Further, it is undisputed fact that the assessee was paying the electricity charges since September, 2013.

Another pertinent fact to be noted is that the assessee purchased certain aluminum partition material from M/s Gangar Aluminum vide invoice dated 23/10/2013 to make-ready the display unit at the said premises which would support the fact that the premises was put to use during the year. The addition in furniture & fixture so purchased has been capitalized during the year and depreciation has been claimed against the same. The same is not under dispute. The premises so purchased have also been reflected as fixed asset in the Balance Sheet, though no depreciation has been claimed against the same. But the said fact alone would not disentitle the assessee to claim legitimate business expenditure. In fact the assessee has raised Tax Invoice against its customer on account of sale of paintings from the said premises on 18/02/2014.

In view of the foregoing, we would hold that the assessee was entitled to claim the interest expenditure u/s 36(1)(iii). We order so. The Ld. AO is directed to recomputed assessee's income in terms of our above order.

5. The appeal stands allowed.

Order pronounced on 04th January, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/01/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.