

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

BEFORE: HON'BLE JUSTICE P.P. BHATT, PRESIDENT

&

SHRI M.BALAGANESH, AM

**ITA No.756/Mum/2019
(Assessment Year :2015-16)**

Shri Ravi Bhushan Trivedi 32, Maker Arcade, Cuffe Parade Colaba, Mumbai – 400 005	Vs.	DCIT-CC-6(4) 19 th Floor, Air India Building, Nariman Point Mumbai
PAN/GIR No.ABZPT1396E		
(Appellant)	..	(Respondent)

Assessee by	Shri Shailesh Bandi
Revenue by	Shri Sanjay Sethi
Date of Hearing	09/02/2021
Date of Pronouncement	24/03/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.756/Mum/2019 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal No.CIT(A)-54/IT-10357/DCCC-6(4)/2017-18 dated 27/11/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/11/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle - 6(4), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the disallowance of interest of Rs 12,15,500/- made by the Id AO which was sought to be claimed as deduction from Short Term Capital Gains in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee is an individual and had filed his return of income for the Asst Year 2015-16 on 30.9.2015 declaring total income of Rs 1,01,16,030/-. The assessee is having business income, income from house property , income from short term and long term capital gains and income from other sources. We find that the assessee had sought to reduce the taxable short term capital gains with the claim of deduction towards interest and other charges amounting to Rs 12,15,500/- which was objected by the Id AO and accordingly the Id AO disallowed the said interest as not allowable u/s 48 of the Act and completed the assessment. We find that the assessee had contended before the Id CITA that the case was selected under CASS under the category of 'limited scrutiny'. The items sought to be verified under this 'Limited Scrutiny' are as under:-

- a) Sales Turnover Mismatch
- b) Sundry Creditors
- c) Derivative (Futures) Transactions
- d) Purchase of Property
- e) Securities Transactions

3.1. Based on the aforesaid list, the assessee had objected before the Id CITA that the Id AO had travelled beyond the scope as was mandated in 'Limited Scrutiny' as according to him, the verification of allowability of

interest of Rs 12,15,500/- was not mandated in the 'Limited Scrutiny' verification and accordingly argued that the entire assessment need to be declared null and void. We find that the Id CITA had dismissed this plea of the assessee by holding that the assessee had sought to set off the interest claim of Rs 12,15,500/- with short term capital gains which arose from transfer of securities and that one of the item mandated for verification in the 'Limited Scrutiny' was Securities Transactions. Hence he held that there was no bar on the part of the Id AO to look into the allowability of interest in the sum of Rs 12,15,500/- and its set off with short term capital gains.

3.2. We find that the Id AR pleaded that this interest of Rs 12,15,500/- was incurred for the purpose of acquisition of shares of Indiabulls Hsg Fin Ltd. Infact this interest was debited by the share broker itself as funds were admittedly borrowed from the broker for purchasing shares of Indiabulls Hsg Fin Ltd. Accordingly the assessee pleaded that this interest cost is part of the cost of acquisition as one to one nexus between borrowed funds with the investment in shares thereon are proved beyond doubt. The assessee submitted the copies of the bill and ledger of the broker before the Id AO to support this contention vide letter dated 15.12.2017.

3.3. It is not in dispute that the assessee had claimed deduction towards interest in the sum of Rs 12,15,500/- under the head short term capital gains. Admittedly the short term capital gains falls under the ambit of 'Securities Transactions' and hence would fall within the scope of 'Limited Scrutiny' . Accordingly, the Ground No. 1 raised by the assessee is hereby dismissed.

3.4. It is not in dispute that the borrowed funds were indeed utilized for purchasing the shares of Indiabulls Hsg Fin Ltd. It is not in dispute that the said borrowings had suffered interest and that the said interest was debited by the share broker himself in the ledger account of the assessee. Hence one to one nexus of borrowed funds being utilized for making investment in shares which had yielded short term capital gains to the assessee, has been proved beyond doubt. Admittedly, the assessee had not claimed the interest cost of Rs 12,15,500/- as revenue expenditure under the head 'Income from Business' as he had rightly bifurcated the brokerage income which is offered under the head 'Income from Business' and share transactions under the head 'Capital Gains' being an investor in shares and securities. Since the interest cost of Rs 12,15,500/- has been capitalized by the assessee, it partakes the character of cost of acquisition and gets added to the same thereon and hence would be eligible for deduction u/s 48 of the Act while computing the capital gains. The genuineness of the borrowings utilized for purchase of shares and payment of interest thereon to the broker is not disputed by the revenue. We find that reliance in this regard has been rightly placed by the Id AR on the decision of co-ordinate bench of Pune Tribunal in the case of S Balan alias Shunmugam vs DCIT reported in 120 ITD 469 wherein it was held as under:-

“7. To deal with the first question, it is worth mentioning in the beginning itself that the admitted position is as per the statement made by the Id. A.R. that the burden of interest has never been claimed by the assessee as a revenue expenditure, but it was always being capitalized in the past. The revenue authorities have also mentioned that the investment in shares was out of the cash credit account showing a debit balance, naturally burdened with the interest amount. It has not been denied by the revenue authorities that the money was not borrowed for acquiring the capital assets i.e., the share scripts in question. Within this narrow compass of admitted facts, we have examined the relevant section i.e., 48 of Income-tax Act as discussed by the revenue authorities. This section says that the capital

gain is to be computed by deducting from the consideration the prescribed two amounts, first expenditure incurred wholly and exclusively in connection with such transfer and second, the cost of acquisition of the asset and the cost of any improvement thereto. The issue in hand falls under the second category. Once it is an established fact that the appellant had borrowed the funds for acquisition of those share scripts and the burden of interest had been capitalized, therefore, that interest burden cannot be segregated from the amount of investment. At this juncture, we may also like to mention an observation of ld. CIT(A) that, quote "Thus, the expenditure by way of interest is part of cost only on the date purchase of share is made and after that whatever is interest cost, is incurred by the appellant for retaining or maintaining the capital asset and therefore cannot be allowed as deduction" unquote. This observation makes it clear that he was agreeable that in case interest is part of the cost, then falls within clause (ii) of section 48 of Income-tax Act. However, he was apprehensive, that if the burden of interest is for retaining or maintaining a capital asset then not to be allowed. On this proposition of ld. CIT(A), we are of the view that even if it is a situation that a capital asset is acquired out of the borrowed funds having liability of interest, and since it had been capitalized in the books of account treated as a part of cost of asset and never claimed as a revenue expenditure, then that too is towards enhancing the cost of such capital asset and cannot be segregated from the cost of acquisition. Nevertheless, this question has been answered by few decisions as relied upon by ld. A.R. namely Mithlesh Kumari's case (supra) wherein the Hon'ble Court has held that the interest paid by the assessee on money borrowed for the purchase of an open plot of land constituted part of actual cost of the assessee, for the purpose of determining the capital gain derived from the sale of the land. Facts were that the loan was raised from mother-in-law, for the purpose of purchasing the plot. As the interest was paid on this loan but since the genuineness of the transaction have not been disputed by the revenue, then the question was whether the interest paid by the assessee to her mother-in-law could be included in the actual cost of the land. In this regard, an important finding was given by the Hon'ble Court that it will not make any difference whether the interest was paid on the date of purchase or whether it is paid subsequently. At this stage again, we want to make ourself clear that the section itself prescribes that the cost of any improvement thereto is also admissible sub-clause (ii) of section 48. The Court has gone to the extent of making a very emphatical comment that to exclude the interest from the actual of the asset would lead to anomalous results. Resultantly, it was held that the Tribunal was right in adding the interest amount towards the actual cost of the land. Almost identical was the observation by Hon'ble Andhra Pradesh High Court in the case of K.S. Gupta (supra) because therein as well, the land was purchased with borrowed money and the Hon'ble Court has held that the expression "actual cost" has not been defined in the Act, so as such, the expression

should be construed in the sense which no commercial man would misunderstand. According to the Hon'ble Court, the accepted principle of Accountancy is that for determination of the cost, of a fixed asset, all the expenditure incurred for bringing into existence such asset must be included in the cost of acquisition. It was concluded that the capitalized interest must be included in actual cost. We have also examined another decision as cited by the appellant, decided by Hon'ble Karnataka High Court in the case of Maithreyi Pai (supra) and have found that the question was the deduction of interest on borrowings utilized for purchase of shares and whether such interest constituted part of cost of acquisition of shares for the purpose of computation of capital gain. The ITO has disallowed the claim on the ground that the interest had already been allowed as a deduction under section 57 while computing income from dividend, so the revenue has contended that such a deduction, if allowed, would amount to double deduction. Since there was no finding by the Tribunal whether the deduction would amount to double deduction, hence the matter was remanded back as the question referred could not be answered by the Hon'ble Court. However, this decision gives us certain guidelines on account of the fact that if the revenue has not contended that the interest had ever been claimed as a deduction and also the revenue has not contended that the interest was wrongly capitalized, then in the light of the said accepted position, the interest ought to be held as part of the cost of the asset in question. Thus, our view gets fortified by the legal proposition laid down by the Hon'ble Court. In the light of this discussion, we arrive at the conclusion that the appellant is entitled to take into account the interest liability towards cost of the capital asset for the purpose of computation of the capital gain as prescribed under section 48(ii) of Income-tax Act.

3.5. In view of our aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that the assessee is entitled for deduction of interest in the sum of Rs 12,15,500/- under the head 'short term capital gains'. Accordingly, the Ground No. 2 raised by the assessee is allowed.

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

Order pronounced on 24/03/2021 by way of proper mentioning in the notice board.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Mumbai; Dated 24/03/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai