

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3259/Del/2013 : Asstt. Year : 2009-10

ITA No. 4986/Del/2014 : Asstt. Year : 2010-11

DCIT, Circle-11(1), New Delhi	Vs	M/s Interarch Building Products (P) Ltd., Farm No. 8, Khasra No. 56/2, Dera Mandi Road, Mandi Village, Mehrauli, New Delhi-110047
(APPELLANT)		(RESPONDENT)
PAN No. AAACI0106J		

Assessee by : Sh. M. P. Rastogi, Adv.

Revenue by : Ms. Vanita R. Sharma, CIT DR

Date of Hearing: 16.03.2021

Date of Pronouncement: 26.04.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the revenue against the orders of the Id. CIT(A)-XV, New Delhi dated 18.03.2013 and 19.06.2014.

2. The grounds in ITA Nos. 3259/Del/2013 & 4986/Del/2014 deals with the issue of design charges. The amount of tax involved in the appeal of the revenue is less than the prescribed limit of the CBDT, the appeal of the revenue for the assessment year 2010-11 is hereby dismissed.

ITA Nos. 3259/Del/2013:

3. During the year, the assessee paid Rs.10.02 Cr. on account of design charges for T3 Airport construction. The AO treated the amount as capital in nature whereas the assessee claimed it under the revenue expenditure. The amount has been paid by the assessee to an entity namely, M/s Corus Building System Ltd. for availing the services of structural design & drawings.

4. The Id. CIT (A) deleted the addition holding that the expenditure on account of drawings do not give any enduring benefit to the assessee.

5. Before us, the counsels relied on the respective supportive orders.

6. From the records, we find that the amount has been paid by the assessee to M/s Corus to prepare a detail lay out, drawing of the ceiling for which the assessee was the executor. The payment was made for designing and detailing services for roofing system in respect of T3 terminal at IGAI, Delhi for which DIAL is the concessionaire. The amount has been paid for obtaining technical support, drawings & designs. The designs are specific to the Airport and cannot be replicated for any other structure or industrial establishment other than the RGAI. The assessee has not obtained any capital asset by the way of payment made to M/s Corus for designs.

7. The tests for determination:

(a) The test of enduring benefit as laid down in British Insulated and Helsby Cables Ltd. v. Atherton, 10 Tax Cases 155. Even this test must yield where there are special circumstances leading to a contrary decision. There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none-the-less, be on revenue account and the test one during benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense. That it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched. The expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is therefore not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. CIT vs. Nchanga Consolidated Copper Mines Ltd. 58 ITR 241.

(b) The test based on distinction between fixed and circulating capital as applied in John Smith and Sons vs. Moore, 12 Tax Cases, 266. So long as the expenditure in question can be

clearly referred to the acquisition of an asset which falls within one or the other of these two categories such a test would be a critical one. But this test also sometimes breaks down because there are many forms of expenditure which do not fall easily within these two categories and not infrequently, the line of demarcation is difficult to draw and leads to subtle distinctions between profit that is made "out of" assets and profit that is made "upon" assets or "with" assets.

Moreover, there may be cases where expenditure though referable to or in connection with fixed capital is nevertheless allowable as revenue expenditure e.g. expenditure incurred in preserving or maintaining capital assets. This test is therefore clearly not one of universal application. It is true that if disbursement is made for acquisition of a source of profit or income, it would ordinarily be in the nature of capital expenditure. The source of profit or income was the profit making apparatus and this remained untouched and unaltered. There was no enlargement of the permanent structure of which the income would be the produce or fruit. When dealing with cases where the question is whether expenditure incurred by an assessee is capital or revenue expenditure, the question must be viewed in the larger context of business necessity or expediency. If the outgoing expenditure is so related to the carrying on or the conduct of the business that it may be regarded as an internal part of the profit-earning process and not for acquisition of an asset or a right of a permanent character. The possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure."

8. Relying on the above propositions considered by the Hon'ble Supreme Court in the case of M/s Empire Jute Company Ltd. 124 ITR 1, we hold that the Id. CIT (A) has rightly allowed the deduction.

Long Term Capital Gains:

9. In the instant case, the AO doubted the sale value of the flat sold by the assessee and referred the matter to the DVO to determine the share market value. The DVO determined the value of Rs.2,06,46,000/- against the sale value shown by the assessee of Rs.1,05,00,000/-.

10. Before the Id. CIT (A), it was submitted that the value as per the stamp duty on the date of sale was Rs.73,00,000/- while the assessee has sold the property for Rs.1,05,00,000/-. The Id. CIT (A) deleted the addition.

11. We have perused the provisions of Section 50C which is a special provision for full value of consideration in certain cases. The said Section reads as under:

"[Special provision for full value of consideration in certain cases.

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the

consideration received or accruing as a result of such transfer :

*[**Provided** that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:*

***Provided further** that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer:]*

*[**Provided also** that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and [five] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.]*

(2) Without prejudice to the provisions of sub-section (1), where—

- (a) the assessee claims before any Assessing Officer that the value adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*
- (b) the value so adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any*

other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

[Explanation 1].—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

[Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed [or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed [or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.]"

12. On going through the provision, we hereby hold that the value determined by the stamp duty authorities or consideration so received or accruing as a result of the transfer to the assessee whichever is more, shall be the value of the property. Hence, the authorities are hereby directed to compute the

capital gains taken into consideration, the sale value of Rs.1,05,00,000/-. The AO may re-verify the value of the property from the registration authorities to confirm the value as submitted by the assessee of Rs.73,00,000/- and take action only if found contra.

13. The appeal of the assessee on this ground is allowed.

Deduction u/s 40A(2)(b):

14. We have gone through the order of the Assessing Officer and that of the Id. CIT (A) with regard to the disallowance u/s 40A(2)(b). The relevant part of the order of the Id. CIT (A) on this issue pertaining to payments made to Mr. Arvind Nanda, with regard to the vehicle purchase, payment made to M/s Intertec on account of job work and the rental payments has been examined. For the sake of ready reference, the relevant part of the order is reproduced as under:

"6.4 Regarding Ground No.3 of the appeal relating to disallowance under section 40 A(2)(b), I find that the Ld. AO has identified certain payments aggregating to Rs.2.29 crores in respect of certain 'related persons' and out of which had disallowed certain payments aggregating to Rs.13.86 lakhs. Regarding the disallowance in respect of purchase price for vehicle of Rs.1,66,673/-, to Mr. Arvind Nanda the Ld. AO has observed that 'it appears that both the vehicles would not have been in good condition which prompted Mr. Nanda to transfer those vehicles to the assessee company at the same cost and in the same year thereby shifting the loss if any, is to be arisen on account of bad condition of the vehicle'. The submissions of the appellant was that in view of the restriction on registration of 6 seater vehicles in the name of a company other than the one engaged in transport business, due to the provisions of the

Motor Vehicle Act, the appellant was compelled to purchase the vehicles in the name of the Director, which was sold to the appellant on the second day by him. I find that the observations of the Ld. AO are vague and presumptuous in the absence of any evidence in support of his argument. Both Mr. Arvind Nanda and appellant company are chargeable to tax at the maximum marginal rate. Hence, there was no question of any tax avoidance in this regard. Thus, it is held that the payment made was neither unreasonable nor excessive, calling for disallowance under section 40A(2)(b).

6.4.2 Regarding disallowance out of purchase price paid to M/s Intertec, a related Firm, the appellant had furnished detailed submissions which shows that such payments were at arm's length. There was no evidence furnished by the Ld. AO as to why such purchase price was higher than the prevailing market price and no examples of comparative prices were cited. In view of the same, the addition based on disallowance made by the Ld. AO is liable to be deleted.

6.4.3 Regarding the disallowance in respect of rent paid to M/s Intertec (Firm), the LD. AO has disallowed an amount of Rs.80,000/- on the ground that the appellant had not submitted comparative rates in the same location, where the premises are situated. The detailed submission of the appellant show that the appellant had to hire the factory premises to reduce its cost of manufacturing and to cater to the workload. The factory owned by M/s Intertec (firm) was adjoining the factory premise of the appellant and therefore, hiring of such premises was in the administrative and functional prudence of the appellant company. Moreover, M/s Intertec (Firm) and the appellant company both are entitled for deduction under section 80IC and therefore, there is no tax avoidance angle. The appellant has also explained about the job work payment to M/s Intertec (Firm). The Ld. AO could not furnish any evidence as to how such charges were higher compared to the fair market value or whether any undue benefit was passed on to the related person for such payment.

6.4.4 Regarding the disallowance of rental payment for providing accommodation to the two directors, it was informed that the value of the rent free accommodation has been offered as perquisite for taxation by the two directors. Further, the amounts of Rs.3.60 lakhs and Rs.3.00 lakhs per annum respectively, keeping in view the high level of remuneration paid to the Directors cannot be held as excessive or unreasonable. In view of this, the addition made on this ground is also deleted."

15. On going through the entire factum of the case, we find that the disallowances are purely hypothetical without bringing any tangible material to prove that the payments are over and above the market rates. Hence, we hereby decline to interfere with the order of the Id. CIT (A).

16. As a result, both the appeals of the revenue are dismissed. Order Pronounced in the Open Court on 26/04/2021.

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 26/04/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR