

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**  
**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 318/Mum/2020

(निर्धारण वर्ष / Assessment Year:2012-13)

M/s. Neptune Resorts & Development Pvt. Ltd. B-145/146 Mittal Towers, Opp. New Council Hall, Nariman Point, Mumbai- 400021.	<b>बनाम/</b> Vs.	DCIT, Circle-3(2)(2) Aayakar Bhavan, Maharishi Karve Marg, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AABCN1375M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sanjay Parikh	
Revenue by:	Shri Tharian Oommen (DR)	

सुनवाई की तारीख / Date of Hearing: 28/06/2021

घोषणा की तारीख /Date of Pronouncement: 07/07/2021

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 28.06.2021 passed by the Commissioner of Income Tax (Appeals) -09, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2012-13.

2. The assessee has raised the following grounds: -

“(A) Disallowance of interest u/s. 24

(i) The learned Commissioner of income Tax (Appeals) - 9. Mumbai CIT(A) erred on facts and in law in confirming the order passed by the Deputy Commissioner of Income Tax, Circle 3(2)(2). Mumbai (AO) disallowing the appellant's claim of interest u/s. 24 amounting to Rs.13,10,462/-.



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2) *The learned CIT(A) erred in holding that the factum of borrowing and payment of interest on such borrowing has to be discernible and it cannot be allowed on estimate basis without being sure about the quantum of borrowing and the specific linkage of the funds.*

3) *The learned CIT(A) erred in holding that the appellant has considered the sale value of the flats while converting those into investments.*

4) *The appellant prays that the interest claimed by the appellant u/s 24 of Rs. 13,10,462/- and disallowed by the AC) and confirmed by the CIT(A) may be deleted.*

B) *General*

5) *The above Grounds of Appeal are without prejudice to one another and the appellant craves leave to add. alter. amend. delete or modify any of the above Grounds of Appeal.”*

3. The brief facts of the case are that the assessee filed its return of income on 25.09.2012 declaring total income to the tune of Rs.37,81,117/-. The return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company is a domestic company engaged in the business of property development. During the year, the assessee has earned income by sale of flats. During the year under assessment, the assessee claimed Rs.13,10,462/- as interest expenditure against the house property income of the assessee. Notice was issued and after the reply of the assessee, the interest to the tune of Rs.13,10,462/- was disallowed and added to the income of the assessee u/s 24(b) of the Act. The total income of the assessee was assessed to the tune of Rs.50,91,580/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.



**ISSUE NO. A ( 1 to 5)**

4. Under these issues the assessee has challenged the disallowance of interest claimed by the assessee in view of the provisions u/s 24(b) of the Act to the tune of Rs.13,10,462/-. The assessee is in the business of property development and has earned the income by sale of flats. The assessee developed the property by own fund as well as by taking the loans. The assessee claimed the interest on loan as income under the head “income from business”. Some flats remained unsold and the assessee treated the same as investment. The assessee claimed the pro rata interest on the value of flats in view of the provisions u/s 24(b) of the Act. There is nothing on record to which it can be assumed that the assessee has taken the loan from any other purposes. The appellant own share capital was of Rs.5,00,000/- and the remaining amount was for the construction of project. The loan was also utilized by assessee for the purpose of loan to M/s. Apte Amalgamation Ltd. and M/s. Techno Insurance Pvt. Ltd. The interest received from these companies was shown as income and offered to tax. The remain interest upon the loan to the tune of Rs.13,10,462/- was claimed against the income from house property. The purposes for taking the loan has clearly established on record. The balance-sheet reveals that the share capital and reserved was to the tune of Rs.1,35,86,503/- whereas the appellants invested in the balance-sheet to the tune of Rs.2,86,81,317/-. The borrowed fund was to the tune of Rs.1,50,94,814/-. In the bifurcation of interest is on record, therefore, after treating the investment which has been let out, the assessee has rightly claimed the interest which is not liable to be declined in any manner. Accordingly, we set aside the finding of the CIT(A) on record and allowed the claim of the assessee.



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5. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 07/07/2021

Sd/-  
(PRAMOD KUMAR)  
उपाध्यक्ष / VICE PRESIDENT  
मुंबई Mumbai; दिनांक Dated : 07/07/2021  
Vijay Pal Singh/Sr. P.S.

Sd/-  
(AMARJIT SINGH)  
न्यायिक सदस्य/JUDICIAL MEMBER

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai