

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

Before Sh. Amit Shukla, Judicial Member

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

ITA No. 4360/Del/2016 : Asstt. Year : 2010-11

ITA No. 4361/Del/2016 : Asstt. Year : 2011-12

ITA No. 4362/Del/2016 : Asstt. Year : 2012-13

ITA No. 6147/Del/2017 : Asstt. Year : 2013-14

ITA No. 6148/Del/2017 : Asstt. Year : 2014-15

DCIT, Circle-3(2), New Delhi-110002	Vs	M/s Avantha Realty Ltd., 124, Janpath, New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AAACJ8030A		

Assessee by : Sh. Upvan Gupta, Adv.

Revenue by : Sh. Sanjay Tripathi, Sr. DR

Date of Hearing: 21.10.2021

Date of Pronouncement: 25.10.2021

ORDER

Per Bench:

The present appeals have been filed by the Revenue against the orders of Id. CIT(A)-I, New Delhi dated 04.05.2016 and 24.05.2016 and the order of Id. CIT(A)-32, New Delhi dated 31.07.2017.

2. Since, the issues involved in all these appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No.6147/Del/2017, following grounds have been raised by the Revenue:

"1. Ld. CIT(A) erred on facts and in law in deleting disallowance of deduction claimed u/s 24(b) of the Income Tax Act, 1961 on account of interest amounting to Rs.6,40,00,000/- incurred on outstanding purchase consideration to acquire the properties of real estate division of M/s Ballarpur Industries Ltd on its demerger.

2. Ld. CIT(A) has failed to appreciate the facts brought on records by the AO that the value of impugned properties nowhere mentioned to be constructed or acquired out of borrowed fund and secondly no fund was borrowed by the assessee to acquire or construct the impugned properties, so interest incurred on outstanding purchase consideration is not eligible for deduction u/s 24(b) of the Income Tax Act, 1961.

3. The Ld. CIT(A) has erred in law and on facts in restricting the addition to Rs.6,72,266/- as against Rs.3,59,40,416/- made by the AO on account of disallowance u/s 14A r.w.r 8D of Income Tax Rules.

4. The Ld. CIT(A) has erred in law in holding that since the assessee has suo-motto disallowed expenditure to the extent of Rs.3,64,58,112/- relating to earning of exempt income, further disallowance of expenses u/s 14A cannot be imported into while computing the book profit u/s 115JB of the Income Tax Act, 1961 ignoring the provisions contained in Explanation 1(f) to the section 115JB which provides that amount of expenditure relatable to dividend income has to be increased for the purpose of book profit."

Deduction of interest u/s 24:

4. Facts relevant to the adjudication of the fact that the assessee has acquired property from Ballarpur Industries Ltd. (BIL) in pursuance to the demerger order for a consideration of Rs.140 crores. Owing to the acquisition from BIL, the assessee

has incurred debt of Rs.64,00,00,000/- which needs to be paid to BIL on account of the property. By way of an agreement between the BIL and the assessee, the assessee paid interest of Rs.6.4 Crores @ 10% to BIL on the outstanding amount of Rs. 64 Cr. The unpaid purchase price is treated as borrowed capital by the assessee and the interest paid thereon is claimed as deduction u/s 24 of the Act under the head "income from house property". The Assessing Officer disallowed the interest paid by the assessee to BIL on the grounds that the unpaid purchase amount has not been paid even after so many years of transactions in the amalgamation scheme never envisaged the non-payment of purchase price perpetually. The AO held that this is a convoluted scheme by the assessee to resort to the deduction u/s 24(b).

5. The Id. CIT(A) disagreed with the observation of the Assessing Officer and held that interest on unpaid amount to the seller is akin to interest on borrowed capital and since it is an interest on borrowed capital, the assessee is eligible for deduction u/s 24(b) of the Act. The Id. CIT(A) also held that the deduction was allowed by the Revenue in the earlier years.

6. Before us, the Id. DR argued that the principle of *res judicata* is not applicable to the decision of Income Tax Authorities and relied upon the judgments of Hon'ble Madhya Pradesh High Court in the case of Lachhiram Puranmal Vs. CIT (119 taxmman), judgment of Hon'ble Bombay High Court in the case of Baijnath Brijmohan & Sons (P.) Ltd. Vs. CIT (161 ITR 234), judgment of Hon'ble Delhi High Court in the case of Prominent Motors (India) Vs. CIT (8 taxmann 181), judgment of

Hon'ble Calcutta High Court in the Smt. Kamala Devi Jhawar Vs. CIT (115 ITR 401) and the order of Co-ordinate bench of ITAT, Agra in the case of Meeraj Estate & Developers Vs DCIT (44 taxmann 431) wherein it was held that the principle of *res judicata* is not applicable to the decision of Income Tax Authorities.

7. We agree with the argument of the Id. DR. We find that the Id. CIT(A) has not solely adjudicated based on the earlier assessments but has also so considered the various judgments of Hon'ble High Court of Calcutta in the case of CIT Vs. R.P Goenka (233 ITR 128) and the judgment of Hon'ble Punjab & Haryana in the case of CIT Vs. Sunil Kumar Sharma (254 ITR 103) wherein it was held that unpaid price is to be treated as borrowed capital within the meaning of Section 24(b). Hence, on independent examination of the facts and the provisions of law, we hold that the interest paid by the assessee to BIL is an allowable deduction as it amounts to interest on the capital borrowed.

Disallowance u/s 14A:

8. At the outset, the Id. AR argued that the disallowance cannot be more than the exempt income earned. Since, the proposition of law is clear by now that the disallowance cannot exceed the exempt income, the contention of the Id. AR is allowed.

9. With regard to consideration of disallowance of expenses u/s 14A for computing the book profit u/s 115JB, we hereby hold that in accordance with the clause (f) of Explanation to

Section 115JB, the disallowance under Section 14A of the Act is a notional disallowance and therefore, by taking recourse to Section 14A of the Act, the amount cannot be added back to book profit under clause (f) of Section 115JB of the Act. The AO is directed to re-compute the profits following the two directions given above.

10. In the result, all the appeals of the Revenue are dismissed.
Order Pronounced in the Open Court on 25/10/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 25/10/2021

Subodh Kumar, Sr. PS

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