

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"E" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

ITA NO. 1497/MUM/2020 (A.Y: 2015-16)

Shree Balaji Umber Properties Pvt. Ltd., Unit No. 201, A Wing Fulcrum Sahar Road Next to Hyaat Regency, Andheri (E) Mumbai -400099 PAN: AAACU9207C (Appellant)	v.	DCIT – 13(2)(2) Mumbai - 400020 (Respondent)
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Assessee by	:	Shri Nishit Gandhi Ms. Akshita Bhandari
Department by	:	Shri B.K. Bagchi
Date of Hearing	:	12.10.2021
Date of Pronouncement	:	30.11.2021

ORDER

PER S. RIFAUH RAHMAN, AM

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–21, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 20.09.2019 for the A.Y. 2015-16.

2. Brief facts of the case are that, assessee filed its return of income on 21.09.2015 declaring loss of ₹.1,16,76,870/-. The same was processed u/s. 143(1) of the Income-tax Act, 1961 (in short "Act"). The case was

selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response, Authorized Representative of the assessee attended and filed the details as called for. The Assessing Officer observed from the record that assessee has not carrying on any business activity for the last three years. He observed that assessee has debited an amount of ₹.1,13,66,930/- as interest expenses and the assessee was called upon to file the details. It is submitted that interest expenses was towards payment of interest to Axis Bank against the mortgaged loan. Assessing Officer observed from the details that assessee has taken a loan of ₹.10 Crores in Financial Year 2013-14 against the property named Vivaria at Sane Guruji Marg, Jacob Circle, Mumbai. Assessing Officer rejected the contentions of the assessee and observed that assessee has taken loan from the Axis Bank, and rejected that it has taken for business purpose. However, assessee has not furnished any details of utilization of loan nor it has shown any other activity during the year. In the absence of any business activity, the Assessing Officer disallowed the interest expenditure claimed by the assessee. Assessing Officer observed from the Profit and Loss Account that assessee has debited ₹.3,09,940/- under the head "Other expenses". Since assessee was not engaged in any business activity during the year, Assessing Officer observed that only statutory expenses are allowed.

Accordingly, he allowed the audit fees, ROC filing fees and other legal and professional fees. Other expenses claimed by the assessee like miscellaneous expenses, bank charges, repairs and maintenance charges and professional fees were disallowed. Aggrieved with the above order assessee preferred appeal before the Ld.CIT(A) and before us assessee filed the detailed submissions as filed before the Ld.CIT(A).

"1. GROUNDS 1.1 TO 1.3: DISALLOWANCE OF INTEREST OF RS.1,13,66,930/"

1. *In the present case, while framing the present assessment the Learned Deputy Commissioner of Income Tax -13(2)(2) [the Ld. AO" for Short] has disallowed an interest of Rs.1,13,66,930/on the ground that no business has been carried on by the Appellant during the relevant assessment year. The AO has also disallowed certain other expenses as incurred by the Appellant on that very ground.*

2. *At the outset, the Appellant submits that the AO has grossly erred in stating that no business was carried out by the Appellant during the year and the same has ceased, simply on the ground that no business income was earned during the year. In this regard, the Appellant submits that such an observation could not be the basis of determining whether the business is still being carried on by the Appellant or not. In any case, such an observation is incorrect and could not be the basis of disallowance of interest.*

3. *The Appellant further submits that the AO has held that the interest on loan is not allowable since it is not for the purpose of business. However, while making the said observation some pertinent facts have been totally missed out by the AO. In this regard, the Appellant firstly submits that, the main object for which the Appellant company is incorporated is in order to deal, acquire, invest and even rent immovable properties (Ref. Object Clause at pg. _ to _ of PB). For such an acquisition, the Appellant Company is even empowered to borrow funds. The Appellant had during the earlier year i.e. FY 2013-14 taken a business loan in order to acquire certain property. The said loan was in the nature of a mortgage and was utilized for the acquisition of a property (Ref. Registered Indenture of mortgage along with the loan sanction letter and other related documents at pg._ to __ of PB). The said property is owned by the Appellant company and reflected in the balance sheet as its*

business asset and the loan is reflected as a liability. (Ref. Balance Sheet and relevant annexures at pg. _ to _ of PB). Further, the fact that the loan was utilized for the purchase of property was also intimated to the AO (Ref. Letter filed with the AO at pg- _ of PB). As such, so far as the facts are concerned there is no dispute that the loan was utilized for the purpose of purchase of property which is the main object of the Assessee's business.

4. *In view of the above, the Appellant respectfully submits that once loan is obtained for the purpose of purchase of assets in line with its objects and the business carried on by it the interest on such loans is a deductible expenditure. In this regard, the Hon'ble Jurisdictional High Court in the case of CIT v/s Srishti Securities Pvt. Ltd. - (2010) 321 ITR 498 (Bom) has held that the main object of the Assessee company was to purchase, acquire, hold, sell, invest, dispose and otherwise deal in shares, stocks, etc. and the Assessee had borrowed loans and utilized them for purchasing shares which were held as investments, the interest on such loans was allowable as deduction u/s 36(1)(iii) of the Act. Likewise, in CIT v/s Shah Theaters (P.) Ltd. — (1988) 169 ITR 499/36 Taxman 335 (Raj.) the High Court has held that where the assessee having business of exhibition of motion picture started construction of a cinema theater and for that purpose borrowed money, interest paid on such borrowings was held as allowable. Further, in the case of CIT v/s Triveni Engg. Works Ltd. — (1990) 183 ITR 437 it has been held that where for the purpose of carrying on its business the assessee had constructed certain buildings and for the purpose of meeting the expenditure incurred for constructing such buildings the assessee borrowed monies and on such borrowings paid interest, the interest paid was deductible as revenue expenditure irrespective of the fact that the buildings had not been actually put to use for carrying on the business during the relevant accounting year of the assessee. It has been held that under section 36(1)(iii), it is not necessary that the assessee must have used the acquired asset for doing business in the relevant accounting year itself. Mere acquisition for the purpose of the business in the relevant accounting year is sufficient to claim deduction for the amount of interest paid [Ref. C.T. Desai v/s CIT - (1979) 120 ITR 240 (Kar.)]. In fact, in the case of Rajmalla Lakhichand Jewellers Pvt. Ltd. v/s JCIT - ITA No. 891 / Pune / 2013 the Hon'ble Tribunal has even held that where interest was paid on loans borrowed by the Company for the purpose of property in the name of the directors which was used by the directors for their residence was allowable as a business deduction u/s 36(1)(iii). The facts of the Appellant's case are far more stronger than the said case and therefore no disallowance is called for in the present case u/s 36(1)(iii).*

5. *The Appellant further submits that, while making the impugned disallowance, the AO has completely lost sight of another important fact. The AO has observed that the Appellant has not provided the utilization of the said loan. However, such an assertion is completely contrary to the facts on record. In this regard, the Appellant submits that the utilization of all the loans was furnished to the AO (Ref. Letter filed with the AO during Assessment Proceedings at pg. _ to _ of PB). in fact, the said loan was taken in FY 2013-14 (AY 2014-15) and the same was utilized in that very year. In the year of utilization no disallowance has been made by the AO. As such, it is grossly unfair on the part of the AO to deny deduction of interest in the present assessment year on the ground that the utilization was not for the purpose of business. The Appellant submits that for the purpose of claiming deduction u/s 36(1)(iii) the only requirement is that the interest is paid on loan utilised for the purpose of business. In the context of the above facts, when it is evident that the loan has been utilised for the purpose of business, the deduction u/s 36(1)(iii) in respect of the said loan could not be denied. A useful reference could be made on the Judgements in the case of CIT v/s Changdeo - 143 ITR 469 (Bombay) & CIT v/s Tingri - 79 ITR 294 (Calcutta). Further in the case of CIT v/s Sridev Enterprises — (1991) 192 ITR 165 (Karnataka) it has been held that if interest is allowed as being for the purpose of business in earlier years, a different stand cannot be taken by the Department in the subsequent year in the same loan. Further even in the subsequent years the said claim of interest u/s 36(1)(iii) has been accepted by the Department. As such, in view of the above, no disallowance could have been made by the AO.*

6. *The Appellant further submits that, another ground on which the AO has disallowed interest is that no business was Carried out by the Assessee during the past 3-4 years as well as during the relevant assessment year. However, in the humble submission of the Appellant, the same was on account of a mere temporary lull in the business. Further, the allowance of interest u/s 36(1)(iii) of the Act is not dependent on the existence of the business for which the loan was taken. This proposition has been upheld by the Hon'ble Supreme Court in the case of Veenadevi Singhania and Veecumsees v/s CIT — (1996) 220 ITR 185 (SC). It is not even the case of the AO that the business of the Assessee has been completely shut down. As such, in the humble submission of the Appellant, the disallowance made by the AO is contrary to the judgement of the Hon'ble Supreme Court and hence not warranted.”*

3. After considering the detailed submissions of the assessee, Ld.CIT(A) upheld the order of the Assessing Officer with the following observations: -

"6.4. Thus when the details are correlated and compared between the two years, it becomes clear that assessee had already received interest bearing funds of Rs.7,36,49,370/- from Axis Bank were received in earlier A.Y. 2014-15 and appear to have been utilized during the AY 2014-15 for purchasing the property in Byculla, Mumbai and the outstanding in that account as on 31/3/2014 was Rs.4,90,38,810/ as on 31/3/2014 which increased to Rs.5,25,41,310/- as on 31/3/2015 and on which interest payment of Rs.1,13,66,960/- was made. The residential flat at Byculla Mumbai was not put to business use during the year since major repairs and maintenance works were carried out and this is confirmed by the fact that depreciation under the Companies Act 2013 was not provided and depreciation u/s. 32 of the I.T. Act, 1961 was not claimed u/s.32 of the I.T. Act, 1961. Thus in light of these facts of the case it becomes crystal clear that irrespective of the user of the residential flat for the business use by the assessee, it was still under repairs and maintenance during the year as vouched for by the expenditure of Rs.2,35,59,000/- incurred on repairs during the year and hence the entire expenditure of Rs.1,13,66,930/- on interest paid/payable to the Axis Bank and any other party was not allowable as a revenue deduction since the asset had not been put to use during the AY 2015-16 itself. Hence the claim for deduction of interest of Rs.1,13,66,930/ for interest is not allowable u/s. 36(1)(iii) of the I.T. Act, 1961 and hence the same is disallowed and the action of the AO in this regard is confirmed."

4. Similarly, sustained the disallowance made by the Assessing Officer relating to other expenditures claimed by the assessee. Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

"1.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) — 21, Mumbai [“the CIT(A)”] erred in affirming the order of the Id. Deputy Commissioner of Income Tax — 13 (2) (2), Mumbai [“the A.O.”] passed u/s 143(3) of the Income Tax Act, 1961 [“the Act”] without appreciating the various submissions filed by the Appellant and in violation of principles of natural justice.

2.1 *In the facts and circumstances of the case and in law, the Id. CIT(A), erred in confirming the disallowance made by the AO of interest of Rs.1,13,66,930/ incurred on loans borrowed for the purpose of business claimed u/s 36(1)(iii) of the Act by the Appellant.*

2.2 *While doing so the Ld. CIT(A) failed to appreciate that;*

(i) Admittedly the loans were borrowed in the earlier year and the utilization thereof for the purpose of business is already accepted by the Department and accepted by even the CIT(A) himself and no such disallowance has ever been made in the past in the case of the Appellant in respect of the Said interest; (ii) | The amount spent on repairs is only Rs.2,35,590/(Two lakhs Thirty Five thousand Five Hundred and Ninety) and not Rs.2,35,59,000/(Two Crores Thirty Five lakhs Fifty Nine Thousand) as assumed by the CIT(A);

(iii)It is erroneously assumed by him that the Asset purchased out of borrowed funds was not put to use during the year due to the said repair work and also since no depreciation was claimed thereon;

(iv)The only requirement of section 36(1)(iii) that the loans / borrowed funds must be used for the purpose of business; and;

(v) In any case, the disallowance has been made taking into account erroneous and irrelevant considerations while ignoring the relevant material and considerations and is in fact contrary to the judicial precedents cited before him.

2.3 *The Appellant therefore submits that the disallowance made by the AO be deleted.*

3.1 *In the facts and circumstances of the case and in law, the Id. CIT(A), erred in disallowing the expenditure amounting to Rs.2,86,690/ incurred for the purpose of business on the ground that the business had not commenced at all during the relevant previous year.*

3.2 *While doing so the Ld. AO failed to appreciate that;*

(i) The business had already commenced and there was a mere temporary lull during the relevant year in the business of the Assessee which is in real estate sector;

(ii) The said expenditure was incurred as a matter of necessity in order to sustain the corporate establishment of the Appellant; and,

(iii) The expenditure amounting to Rs. 2,35,590/ was incurred general repairs and maintenance of the various business assets of the Appellant while professional fees of Rs.16,000/ were paid in respect of the regular and essential expenses for the purpose of business of the Appellant;

3.3 The Appellant therefore submits that the disallowance so made by the AO be deleted.

4. The Appellant craves leave to add, amend, alter, delete or modify all or any the above grounds at the time of hearing."

5. Before us, Ld. AR made similar submissions as made before the Ld.CIT(A) and he brought to our notice the written submissions what was filed before the Ld.CIT(A). Ld. AR brought to our notice Page No. 63 of the Paper Book to highlight the main objects of the assessee company and submitted that the assessee has operated the funds and made investment in fixed assets which was duly recorded in the financial records of the assessee and these transactions are within the main objects of the company. He brought to our notice findings of the Ld.CIT(A) and submitted that Ld.CIT(A) has not dealt with the issue and submitted that the assessee has borrowed funds and made investment in the property which is used by the assessee in its business and assessee is eligible to claim the interest expenditure which expenses incurred for the purpose of the business. He submitted that it is not relevant whether there exist any business activity and it is important when the assessee invested the funds borrowed in the objects of the company and the relevant expenditure is

to be allowed as revenue expenditure. With regard to other regular expenditures he relied on the written submissions and the decision in the case of CIT *v.* Ganga properties Ltd., [(1993) 199 ITR 94 (Cal)], Nakodar Bus Service (P.) Ltd., *v.* CIT [(1989) 179 ITR 506 (P&H)] and ITO *v.* Mokul Finance P. Ltd., [(2008) 110 TTJ 445 (Del.)] where the revenue expenditure incurred by the assessee should be allowed as long as it is incurred for the purpose of business.

6. On the other hand, Ld. DR submitted that the where funds were utilized by the assessee is not clear and from the facts available on record it clearly shows that funds were utilized by the Directors for their personal use and he vehemently relied on the orders of the lower authorities and with regard to other expenditures he submitted that Assessing Officer has already allowed the statutory expenses, which is necessary for the running of the business.

7. Considered the rival submissions and material placed on record, we noticed that assessee has borrowed funds from Axis Bank and invested the same in purchase of property. We observe that both borrowing and investment in property are recorded in the Balance Sheet of the company. It is fact on record that assessee had borrowed the funds, mortgaged the

property which was purchased by utilizing the borrowed funds. It is also fact on record that there is no business activities during this year and assessee also not claimed any depreciation of the property. The Ld.CIT(A) observed in his order that the assessee has incurred huge repair expenditure which shows that the property is still under construction and not utilized in the business. On the other hand, Ld. AR brought to our notice that the repairs expenditure observed by Ld.CIT(A) of ₹.2,35,59,000/- is factually incorrect and assessee has actually incurred ₹.2,35,590/- with the above observation Ld.CIT(A) reached a wrong conclusion. In our considered view there is no doubt that the funds borrowed by the assessee were utilized to purchase the property and as per the records this property was utilized by the Directors for their use. We cannot separate the property purchased by the assessee and the loan borrowed for purchase of the above said property, when the property is registered in the name of the assessee and it is the property of the assessee only. Any related expenditure has to be borne by the assessee and it is an allowable expenditure to the assessee. It is a fact on record that assessee has not claimed any depreciation. However, it is submitted that this property is under utilization of the Directors. The revenue cannot deny the expenses of the above said expenditure which assessee has to pay to Axis bank and if the revenue authorities prove that the assets under

consideration is not put to use and still under construction the above said interest expenditure can be capitalised or if it is already put to use then the above said expenditure has to be allowed as revenue expenditure. In the given case except assessee has not claimed depreciation but it is submitted that the assets were put to use and it is under utilization of the Directors. The Directors are the Employees of the company therefore even though there is no business activities, any revenue expenditure which is incurred to acquire the property is allowable expenditure and any property which is used for the residential use of the employees are allowed as for the purpose of business. Therefore, we are inclined to direct the Assessing Officer to allow the interest expenditure incurred by the assessee for purchase of the assets as revenue expenditure.

8. With regard to other expenditures incurred by the assessee we observed that all these expenditures are small and petty expenditure incurred for the purpose of business activities except repair expenses incurred for the fixed assets, which are used by the Directors. The Assets was under utilization of the employees of the Company, it is allowable expenditure. These expenditures can be classified under other administration expenses which can be allowed as Business expenditure incurred for the purpose of business. Since there is no business activity

these expenditures can only be allowed to carryforward to the next assessment year as carry forward business losses. There is no doubt that these expenditures were incurred only for the purpose of business, it is not the case of the revenue that these expenses can be classified under personal or capital expenditure. Therefore, the ground raised by the assessee is accordingly allowed.

9. In the net result, appeal filed by the assessee is allowed.

In Order pronounced on 30.11.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Mumbai / Dated 30.11.2021
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
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, Mum