

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

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, HON'BLE JUDICIAL MEMBER**

**ITA NO. 907/MUM/2020 (A.Y: 2013-14)**

M/s. Ashish Land & Property Developers Pvt. Ltd., 10 <sup>th</sup> Floor, 215, Atrium Andheri Kurla Road, Andheri (E) Mumbai - 400059  <b>PAN: AAGCA2673J</b>	v.	Income Tax Officer – 9(1)(4) Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Anuj Kisnadwala</b>
<b>Department by</b>	<b>:</b>	<b>Shri Mehul Jain</b>
<b>Date of Hearing</b>	<b>:</b>	<b>13.01.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>06.04.2022</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

**1.** This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals) – 16, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.12.2019 for the A.Y.2013-14.

2. Brief facts of the case are, assessee is a Builder / Developer. During the year, assessee had filed his return of Income on 27.08.2013 declaring total loss at ₹.28,27,401/-. The notice u/s 143(2) was issued on 01.09.2014, thereafter notice u/s 142(1) along with questionnaire were issue on 24.04.2015, 24.07.2015 & 24.09.2015 respectively which was duly served upon the assessee. In response to the same, AR of the assessee had filed details as called for. During the year, assessee had claimed interest expenses of ₹.1,90,82,553/- against rent income of ₹.2,22,46,798/- under the head Income from House property". During the course of assessment proceedings, assessee was asked to furnished statement and utilization details of borrowed capital on which interest expenses were claimed against house property income. In response to the same, assessee vide letter dated 08.02.2016 submitted an explanation on allowability of interest expenses u/s 24 against rental income. Assessee had also put an alternate claim which is as under:-

*"Without prejudice to above & without admitting, we have to state as under :*

*Assessee is in the business of Real estate Development. During the course of business, assessee had made advance of Rs. 8,20,99,000/ to Periwinkle Construction Pvt. Ltd against property. If whole of the interest paid of Rs. 1,90,82,553/claimed u/s 24 is not allowed than proportionate interest on above advances made against property should be allowed u/s 36(1) (iii) as the same is paid in respect of capital borrowed for the purpose of business."*

**3.** The learned assessing officer has disallowed Interest u/s 24 (b) by stating that:-

*"It is an admitted fact that amount borrowed from M/s. Kanakia spaces Pvt. Ltd were not utilized for the purpose of acquisition / construction of house property. Section 24(b) of the Act provides for allowability of interest expenses while computing of House property income where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital. The assessee accordingly, during the course of assessment proceedings, was requested to explain as to why interest expenses pertaining to loan from M/s. Kanakia Spaces Pvt. Ltd should not be disallowed.*

**4.** The assessee in response furnished ledger account & utilization details of new loan received from M/s. Kanakia Spaces Pvt Ltd. The assessee also furnished interest calculation working and claim interest expenses of ₹.16,82,051/- paid to M/s. Kanankia Spaces Pvt. Ltd are pertaining to loan utilized for repayment of loan taken from M/s Yes Bank and Shri Rasesh Kanakia. The Assessing Officer considered the working of the assessee carefully. It was observed from the said working that interest amount of ₹.73,973/- pertains to loan amount of ₹.9,00,000/- repaid to M/s.Kanankia Spaces Pvt Ltd and interest of ₹.2,301/- pertains to loan repayment of ₹.28,00,000/- to Shri Rasesh kanakia. It was submitted before the Assessing Officer that the loan outstanding in the name of Shri Rasesh Kanakia is interest free for the year. Accordingly, interest amount of ₹. 76,274/ -(i.e.. ₹.73,274/+ ₹.2.301/-) is excluded from working of

interest corresponding to loan amount utilized for repayment of loan to yes bank. Therefore, the proportionate interest expenses of ₹.81,63.625/- (i.e. ₹. 97,69,402 - 16,82,051 + 76,274) on loan taken from M/s. Kanakia Spaces Pvt Ltd is found to be not allowable against House Property Income. Accordingly an addition of ₹. 81,63,625/- is made to the total income of the assessee under the head of income from "House Property".

**5.** Assessing Officer also not allowed alternate claim of allowability of proportionate interest expenses u/s 36 (1) (iii) by stating that: -

*"As regards assessee's alternate claim of allowability of the said proportionate interest expenses u/s 36(1)(iii), the same is also found to be not acceptable in view of the facts of the case and specific provisions of the Act. the assessee in its submission has stated that part of the loan amount was given for property advances. On perusal of confirmation letters filed by the assessee from the respective parties, it is seen that the said transactions were not finalized and advances were made for acquisition of development rights. Thus, as provided in section 36(1)(iii) and proviso thereto, interest on money borrowed for acquiring a capital assets till the date on which the assets was brought to use even if it is for extension of existing business, is not allowable as revenue deduction. This is view is gets supported by number of case laws on the subjects matter. Therefore, the alternate claim of assessee to allow proportionate interest expenses as business expenses is denied."*

**6.** Being aggrieved against the said order, assessee preferred an appeal before the Ld.CIT(A). During the course of appellate proceedings, the assessee's submission is as under:-

*"4.1) Appellant's main source of income is from rent that it receives from two parties. Further its main object clause as per the memorandum of association reads as under:-*

*"To manage, acquire, takeover, undertake, carry on and engaged in the business of Real Estate Development, landed development, area estate and site development and to carry on the business as planners, builders and real estate developers, architects and civil engineers, Contractor, real estate brokers, agents brick makers and to build / construct own, operate, maintain, manage, control and administer, earthworks, farmhouses, parks, gardens, row-houses, duplex apartments, commercial, residential or industrial building complexes, retail stores, shopping centers, malls, Slum, market yards and in manage and carry on all types of businesses and profession related to the land dealings, buildings, farms, estates, Properties, arrears and sites and to act and undertake and carry on business as stockiest, manufacturers, representatives, suppliers, dealers, agents, distributors, marketers, importers and exporters of all types of building and building and construction machines, equipments, materials, to give land, buildings. apartments, buildings, shops, mails license, lease or assignment basis."*

4.2) *Thus the appellant is in real estate development. During the course of business, assessee had made advances of Rs. 13,21,17,771/- to Periwinkle Construction Pvt. Ltd & Rs. 51,66.923/- to R & H Real Estate & Land Developer Pvt Lid. aggregating to Rs. 13,72,84,694/ against the properties. As stated in earlier para, the appellant is in the business of real estate development Even in the assessment order at item 10, under the head "Nature of Business" the learned AO has stated as "Property Developers". Advances made to those parties here in the course of the development business only.*

4.3) *Interest paid and received during the year as compared to the earlier year are as under*

<i>interest expenses — this year</i>	<i>1,90,82,553/-</i>
<i>Last year interest paid</i>	<i>2,02,23,916/-</i>
	<i>-----</i>
<i>Difference in this year</i>	<i>(-)11,41,363/-</i>
<i>interest earned during the year</i>	<i><u>5,81,250/-</u></i>
<i>Lesser interest paid in this year</i>	<i><u>17,22,613/-</u></i>

4.4) *Learned AO has erred in stating that the payment is forwards extension of existing business and is towards the capital assets.*

*Relying on the proviso to section 36(1)(iii) is erroneous and is bad in law.*

*4.6) On the basis of the facts and legal decisions, the expenditure, although for the purpose of acquiring an asset or advantage, is for running of the business or for working out that asset with a view to produce profit, it would be revenue expenditure. If the outgoing is so related to the carrying on or the conduct of the business that it may be regarded as an integral part of the profit earning process or operation, and not for the acquisition of an asset of a permanent character, then it would be expenditure of revenue nature.*

*4.7) The Hon'ble Mumbai ITAT in assessee's own case for A.Y.2012-13 on similar facts allowed the appeal of the assessee and directed the AO to allow the proportionate deduction of interest u/s.36(i)(iii) of the 1 T Act, 1961 on advances made for purchase of property.*

*Hence the claim of deduction of interest of the appellant may kindly be allowed."*

**7.** The Ld.CIT(A) dismissed the appeal filed by the assessee by stating that -

*"Ground No.1:*

*4.1.1. Vide this ground appellant has agitated against disallowance of interest expenses u/S 24(b) of the IT Act amounting to Rs. 81,63,625/-. In the assessment order the Ld. AO has mentioned that the amount borrowed from M/s Kanakia Spaces Pvt. Ltd. were not utilized for the purpose of acquisition/construction of House Property. Further, Ld. AO has stated that the assessee's has made alternate claim of allowability of said interest expenses u/s 36(1)(iii) of the Act, the same is not acceptable. the reason being that the interest on money borrowed for acquiring development rights and till date such asset was not brought to use.*

*4.1.2 During the appellant proceedings a written submission was filed which find place in para 3 of this order in which it was submitted that the appellant has taken loan for acquiring/construction of House Property from where rent is received.*

4.1.3 *The submission made by the appellant as well as the contention raised by the id. AO has been considered. As per section 24(b) of the IT Act is reproduced hereunder:*

*"24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely: —*

*(a) a sum equal to thirty per cent of the annual value;*

*(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:*

4.1.4 *Therefore, it is very clear from as per the provisions of sections 23 & 24 of the Act, income chargeable under the head 'income from house property' shall be computed after making the deductions of municipal taxes paid by the owner, a sum equal to thirty per cent of annual value and the amount of interest payable on borrowed capital where the property has been constructed, repaired, renewed or reconstructed with borrowed capital. However, in this case the loan borrowed from M/s Kanakia Spaces Pvt. Ltd. is not utilized for any purpose specifies in section 24(b) or in relation to its house property 'R B Kanakia School Building'. Part of the loan were used for making advances to vanes parties for acquiring development rights.*

4.1.5 *in view of the above scenario, the borrowed capital was not utilized for acquiring/ constructing the property from which rental income was received instead funds were routed for making advances to acquired development right. Therefore, the contention of the appellant is not acceptable as per sec 24(2) of the Act and found justification in the AO decision.*

4.1.6 *Further, appellant has placed an alternate claim, appellant has stated that appellant company is in the business of Real Estate Development. During \_ the relevant year, appellant had made advances for acquiring development rights. Therefore, the interest amount should be allowed u/s 36(1)(iii) as the same is paid in respect of capital borrowed for the purpose of business.*

*The submission made by the appellant on the alternate claim and as well as the contention raised by the Ld. AO in the assessment order has been considered. It is noted that the accounting of the Real*

*estate developer is different as the Accounting Standards. There are specific methods i.e. percentage completion method and Project Completion method, according to that method, appellant allowed to book the income and respective expenses. In that method it is specify that up to the project is not reach at the mark/percent all the cost would be included under Work in Progress and neither routed through the Profit and loss account and nor appellant can claim such expenses without offering the income in respect to the project."*

**8.** Aggrieved assessee preferred appeal before us raising following grounds: -

*1) The learned Commissioner 'of Income Tax, Appeal' -16, Mumbai erred in law & facts in confirming order of Assessing officer of disallowing alternate claim of appellant in respect of allowance. of proportionate interest u/s 36(1) (iii) of the I.T. Act on advances made for purchases of property amounting to Rs.8,20,99,000/- (read as Rs. 13,72,84,094/-). The advances are made in the course of business of the appellant being builders & developers and not for acquiring any capital assets nor for extension of existing business. The same is for the main business as builder & developers. The same should be allowed as business expenditure.*

*2. The learned Commissioner of Income Tax, Appeal -16, Mumbai erred in law in not following The Hon'ble ITAT decision in appellants own case on similar facts in A.Y 2012-13 allowing appellants' alternative claim of proportionate interest u/s 36(1)(iii) of the I.T. Act, 1961 on advance made against purchases of property for the purpose of business. The same should be allowed as business expenditure.*

*3) Appellant caves to leave, to add, to amend all or any of the grounds of appeal.*

**9.** At the time of hearing, Ld. AR brought to our notice facts of the case and submitted that similar issue was decided by the Coordinate Bench in assessee's own case for the Assessment Year 2012-13 in ITA.No.

7605/Mum/2016 dated 31.07.2018 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee. Copy of the order is placed on record.

**10.** Ld. DR fairly agreed that the issue is covered in favour of the assessee.

**11.** Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2012-13 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

*"8. We have considered the rival submission of the parties and have gone through the orders of the authorities below. There is no dispute that the assessee has given advance for acquisition of developments rights of certain properties. The assessee is engaged in the business of property development. The Hon'ble Delhi High Court in case of CIT vs. Dhoomketu Builders & Developers (supra) held that setting up of business is enough for claiming deduction under section 36(1)(iii). It was further held that commencement of the real estate business starts with the acquisition of land or immovable property. Further, single bench of Jaipur Tribunal in Aditya Propcon P. Ltd. (supra) held that purchase and holding of inventory is a business activity. The proviso has been inserted to disentitle claim of interest on funds borrowed for acquisition of capital asset for the period upto the asset is put to use. The term 'put to use' here applies to capital asset only because a capital asset is held to facilitate the business activity and some time it need to be prepared after acquisition for being used to facilitate the business activity. Therefore, the interest on funds borrowed to purchase land*

*which is a part of inventory of assessee-company is an allowable deduction.*

**12.** Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2012-13, we allow the appeal filed by the assessee. Ground raised by the assessee is allowed.

**13.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 06.04.2022.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 06.04.2022  
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**