

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Shri Laliet Kumar, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.41/Hyd/2022		
Assessment Year: 2012-13		
Munnuswamy Rajesh Chintakunta, Hyderabad. PAN : ABTPC8391G.	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 3(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri T. Sunil Goutam.	
Date of hearing:	27.04.2022	
Date of pronouncement:	28.04.2022	

ORDER

Per Laliet Kumar, J.M.

This appeal is filed by the assessee feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 12, Hyderabad dt.12.01.2022 for the assessment year 2012-13 on the following grounds :

- " 1. The ld. CIT (A) erred in dismissing the appeal of the assessee.
2. The ld. CIT(A) ought to have appreciated the fact that the order of the AO passed u/ s 143(3) r.w.s 263 of the Act erroneous both on facts and in laws to the extent the order is prejudice to the interest of the assessee.

3. *The ld. CIT(A) ought to have appreciated the fact that the ld. AO erred in making an addition of Rs.69,49,751/ - to the income of the appellant towards income from capital gains in respect of the property at Jubilee Hills, without appreciating the facts of the case and without taking into account the information already submitted before the AO in support of the computation during the course of original assessment which was also on record before him.*

4. *The ld. CIT(A) ought to have appreciated the fact that the loan obtained from India Bulls Finance Services Ltd. is directly attributable to the acquisition of property.*

5. *The ld. CIT(A) ought to have appreciated the fact that the AO erred in arriving at an amount of Rs.85,78,937/ - towards capital gains by not considering the expenditure of Rs.51,52,554/- incidental to the acquisition of property shall be eligible for being capitalized and to be taken into account for cost of acquisition of the property.*

6. *The ld. CIT(A) ought to have appreciated the fact that the AO while computing capital gains, erred in not considering the incidental expenditure of Rs.51,52,554/- incidental to the acquisition of property shall be eligible for being capitalized and to be taken into account for cost of acquisition of the property.*

7. *The ld. CIT (A) ought to have appreciated the fact that the AO erred while computing capital gains, erred in not considering the incidental expenditure of Rs.51,52,554/- incurred towards insurance, interest, processing and loan from India Bulls Finance Services Ltd, as the same is in relation to the acquisition of property.*

8. *The ld.CIT(A) ought to have appreciated the fact the sale consideration on account of sale of property has been directly utilized for repayment of loan taken from India Bulls Finance Services Ltd, which establishes the nexus between loan obtained and property acquired.”*

3. The grounds of the assessee can be summarized, whether the disallowance of interest paid by the assessee to M/s. India Bulls Financial Service Limited for the purposes of calculating the cost of acquisition of the property as done by the Assessing Officer / ld.CIT(A) was correct or not ?

4. The brief facts as mentioned by the Assessing Officer in the assessment order are as under :

Assessee is an individual stated to be deriving income from salary, interest income and capital gains. Assessee electronically filed his return of income for A.Y. 2012-13 on 14.08.2013 declaring total income at Rs. 87,35,010/-. Subsequently, assessment was completed u/s 143(3) on 26.03.2015, accepting the returned income. Thereafter, order u/s 263 was issued on 07.07.2017 by PCIT-3, Hyderabad on the issue of claim of income from capital gains. Accordingly, notice u/s 143(2) / 142(1) dt.29.05.2017 was issued asking to explain why the claim of Rs.51,52,554/- towards interest and insurance etc., may not be reduced from the index cost of the land at Jubilee hills. Finally, the assessment was completed by the Assessing Officer u/s 143(3) r.w.s. 263 of the Act on 27.09.2017, determining the total income at Rs. 1,56,85,663/- after making disallowance of amount of Rs.85,78,937/- towards capital gains brought to tax. In Paras 11 and 12 learned Assessing Officer mentioned as under :

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11. The assessee has relied on the certificate dated 18.09.2008 of Indiabulls Finance Services Ltd. However, a perusal of this certificate shows that the loan was given against the mortgage of the property. Nowhere does it say that the loan amount of Rs.9.70 crore was given for acquiring the said property. Thus, there is no evidence, direct or circumstantial, to even suggest that the loan from Indiabulls Finance Services Ltd. was directly attributable to purchasing the property at Road No. 36, Jubilee Hills. Further the contention of the assessee that the sale proceeds received in 2011 (on sale of this property) were paid directly by the purchaser M/s. Karam Chand Thapar & Bros. (Coal Sales) Ltd, Kolkata, to Indiabulls Finance Services Ltd, only show that the said loan amount was squared off. This payment, nowhere can be construed as evidence to claim that the loan from Indiabulls Finance Services Ltd. was utilized for purchasing of the property at Road No. 36, Jubilee Hills.

12. Assessee was required, vide order sheet dated 25.07.2017, to specifically furnish the evidences to establish that the loans from Indiabulls Finance Services Ltd were directly related to the cost of acquisition of the property. The assessee furnished release of title deeds dated 26.05.2011 and the letter dated 01.06.2011 of Indiabulls Finance Services Ltd. and title deed dated 11.09.2008, which does not in any way establish that the loan was utilized for purchasing this property. However, no specific evidence was submitted to establish that the loans were indeed directly related to the acquisition of the property at Road No. 36, Jubilee Hills. This fact was informed to assessee vide order sheet dated 11.09.2017.

Thereafter, the ld. Assessing Officer had disallowed the expenses of Rs.51,52,554/-.

Aggrieved by the order of AO, assessee carried the matter before the Ld. CIT(A) who confirmed the order of AO vide order dated 12.01.2022. The ld.CIT(A) in Para 5.3.2 had held as under :

5.3.2 The above contention of both the AO and the AR were perused. It is a fact that the assessee has purchased the impugned property at Road No.36, Jubilee Hills by

way of registered sale deed dated 22-05-2008. After purchase of the property, the assessee has mortgaged the property with M/s.India Bulls Financial Services Ltd and obtained a loan of Rs.9.70 crores vide loan A/c.No.HLAPHYD00043212 dated 18-09-2008. In other words, these are two separate transactions which took place sequentially and the property was mortgaged a few months after its purchase. The mortgage related expenses viz., insurance, processing and upfront fee and interest are related to the raising of loan during the mortgaging process and are not linked to the cost of acquisition of the property. The AR's argument that there was an existing loan from EDCO India Pvt Ltd which was repaid through a subsequent loan raised by way of mortgaging the property can only be a loan swap for a better loan terms but that does not make the mortgage expenses a part of acquisition cost of the property. The AR's argument that the buyer of property M/s.Karam Chand Thapar & Bros. Ltd, Kolkata has paid an amount of Rs.9.21 crores directly to the mortgagee viz., M/s.India Bulls Financial Services Limited which includes loan component and interest and therefore there is a nexus between the cost of loan and the cost of acquisition is not acceptable. The buyer of the property had to clear the loan of all its dues along with interest in order to get a clear title from the mortgagee. He is only discharging the obligation of the assessee on his behalf. This has nothing to do with the mortgage expenses. This also cannot be stretched to mean that the capital gains arising on sale of the property should be calculated after deducting the mortgage expenses. Mortgage expenses have no link or relation to the cost of acquisition of the property and cannot form part of its acquisition cost. This issue is directly covered by the decision of the Hon'ble Supreme Court which is discussed below:

In CIT vs Attili Narayana Rao [233 ITR 10] AP [1998] the Hon'ble Andhra Pradesh High Court held that when the property was mortgaged to the government and was later sold by public auction the value of the property could be reduced to the extent of

interest that was created in favour of the government by mortgage. Therefore, it was held that the capital gains are to be computed deducting the mortgage related expenses. This was subsequently overruled by the **Hon'ble Supreme Court in CIT vs. Attili Narayana Rao 252 ITR 880 (SC) [2001]**. The Hon'ble Apex court held that the dues to the mortgagee towards interest and other charges cannot be reduced from the capital gain that arose from the sale of the property. The relevant extract of the ratio of the Hon'ble Supreme Court is reproduced below:

"5. We are of the view that the Tribunal and the High Court were in error. What was sold by the State at the auction was the immovable property that belonged to the assessee. The price that was realised therefore belonged to the assessee. From out of that price, the State deducted its dues towards "kist" and interest due from the assessee and paid over the balance to him. The capital gain that the assessee made was on the immovable property that belonged to him. Therefore, it is on the full price realised (less admitted deductions) that the capital gain and the tax thereon has to be computed".

Since the above issue is directly covered by the decision of the Hon'ble Supreme Court (cited supra), it is held that the assessee cannot reduce the mortgage related expenses while computing his capital gains. Hence, all the grounds of the appellant are **DISMISSED**.

Aggrieved by the aforesaid order of Id.CIT(A), assessee is now in appeal before us.

5. During the course of assessment proceedings, AO noticed that the expenses incurred in the process of mortgaging the property to M/s. India Bulls Financial Services Ltd. are not related to the acquisition of the property and hence, he disallowed the claim of expenses at Rs.51,52,554/- towards cost of acquisition with indexation benefit while computing the capital gains.

6. At the time of hearing, the learned counsel for the assessee, at the outset, submitted that the assessee had purchased the impugned property at Road No.36, Jubilee Hills along with his brother by way of registered sale deed on 22.05.2008. Before purchasing the property, assessee has taken loan from a financial institution namely, EDCO and that as the interest rate of the said financial institution is high, he had approached M/s. India Bulls for granting loan. Accordingly, M/s. India Bulls has taken up loan and had repaid the entire loan along with interest to EDCO and in consideration thereof, the property was mortgaged with it. After a period of two years, the property was sold by the assessee and the loan was directly paid by the purchaser to M/s. India Bulls. The assessee has claimed that the interest paid by him to M/s. India Bulls is required to be taken into consideration while calculating the cost of acquisition

7. Ld.DR opposed on the premise that the interest for which the assessee has claimed was a loan taken on the property and not was a loan taken to purchase the property and supported the order of lower authorities.

8. We have heard the rival contentions of both the parties and perused the material available on record. The ld.AR had argued that the buyer of the property had paid the amount directly to M/s. India Bulls which includes loan amount and interest thereon and therefore, there is a link between the cost of loan and the cost of acquisition. On the other hand, ld.DR had argued that the interest for which the assessee has claimed was a loan taken on the property and was not a loan taken to purchase the property.

8.1 The mode of computation provided under the Income Tax Act for the purposes of income chargeable under the head Capital Gain is deducting the full value of consideration received or accruing as a result of the transfer of capital asset from A) expenditure incurred wholly and exclusively in connection with such transfer, B) cost of acquisition of the asset and cost of improvement thereto.

8.2 The Assessing Officer and the Id.CIT(A) have neither disputed the expenditure incurred in connection with transfer of the capital asset nor they have disputed the cost of improvement thereof.

8.3 Both the lower authorities have disputed that the interest paid by the assessee would not be taken into account as cost of acquisition. Undisputedly, the assessee had purchased the property for a consideration of Rs.6,31,47,000/-. The said sum was paid in three installments of Rs.3.00 crores, Rs. 2,90,73,000/- and Rs.40,74,000/-. Besides that Rs.60 lakhs were paid towards registrations charges. Before purchasing the property, the assessee had taken the loan from EDCO India Pvt. Ltd., to meet the consideration in respect of the property purchased on 22.05.2008 and thereafter, the property was purchased by the assessee. It is undisputed that the balance payable to EDCO as on 01.04.2008 was Rs.8,28,59,000/-.

8.4 Thereafter, the assessee had taken loan of Rs.9.7 crore from M/s. India Bulls Financial Services Ltd., by loan agreement dt.18.09.2008 after creating encumbrances on the property "mortgage". The loan taken by the assessee was utilized by it for repayment of the loan taken by the assessee to EDCO. Thereafter, only the EDCO has

release the title document and had given it to M/s. India Bulls Financial Services Ltd. The assessee, thereafter, along with his brother sold the property for a total sale consideration of Rs.20.37 crore and that transaction was subject to clearance of the debt on the property from M/s. India Bulls. In fact, the new purchaser had directly paid the amount to M/s. India Bulls. The documents on record filed by the assessee shows that the NOC was given by M/s. India Bulls. In the said NIC, it was mentioned that all the dues against the loan on the property were cleared and the original sale deed was returned back.

9. In our view, there are no changes in the situation merely because earlier loan amount taken from EDCO was subsequently substituted by the loan from M/s. India Bulls. The amount was utilized for the purposes of purchasing the house and the interest thereof whether paid to EDCO or India Bulls, would constitute the cost of acquisition of the property and therefore, it will be wrong on the part of the Revenue to deny the interest paid by the assessee after the loan was taken over by M/s. India Bulls. It is nobody's case that the loan which was subsequently taken by the assessee from M/s. India Bulls was used for any other purposes, rather it is consisting case that it had merely substituted the earlier housing loan with the fresh loan and in any case, the nomenclature of the loan constitutes would not make any difference as long as it was used for purchasing the property or substituting the earlier loan taken for purchasing the property. In light of the above, we are of the opinion that the interest paid by the assessee to M/s. India Bulls on pro rata amount for purchasing the property is required to be deducted while computing the capital gain and accordingly, we are of the opinion that the case of the Revenue is

not at all maintainable and the assessee is entitled for the relief prayed for. In fact, in the matter of ACIT Vs. K.S. Gupta 119 ITR 372, Hon'ble Andhra Pradesh High Court held as under :

"4. Against the decision of the AAC, the revenue took the matter in appeal before the Income-tax Appellate Tribunal and the assessee filed cross-objections supporting the order of the AAC. Before the Tribunal, the department's representative conceded that the interest of Rs. 11,344 paid by the assessee on borrowed funds from January 1, 1957, to August 11, 1966, was neither claimed by the assessee nor allowed by the department year after year. The Tribunal held that the amount of interest was included in the total cost of acquisition along with the original price of Rs. 9,138, and the Tribunal upheld the order of the AAC, dismissing the departmental appeal. Thereafter, at the instance of the revenue, the question herein-above set out has been referred to us for our opinion.

5. [In Challapalli Sugars Ltd. v. CIT, Khanna J.](#), speaking for the Supreme Court, observed as follows (headnote) :

"As the expression 'actual cost' has not been defined, it should be construed in the sense which no commercial man would misunderstand. For this purpose it would be necessary to ascertain the connotation of the expression in accordance with the normal rules of accountancy prevailing in commerce and industry. The accepted accountancy rule for determining cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed assets created as a result of such expenditure."

6. In the instant case, from the concession made by the department's representative before the Tribunal, it is clear that the interest of Rs. 11,344 paid by the assessee from January 1, 1957, to August 11, 1966, was neither claimed by the assessee nor allowed by the department year after year. Under these circumstances, in order to find out what was the cost of acquisition to the assessee in respect of these plots one has to take into account not only the original price paid by the assessee for these two plots of land at Adarshnagar, but also to include in that cost of acquisition the capitalised interest paid by him on the borrowings by him for paying the purchase price of Rs. 9,138 when he originally purchased the two plots in 1957.

10. From the perusal of the above said judgment, it is abundantly clear that the interest paid on the loan amount used for acquiring the property is required to be considered while computing the capital gain. Hence, the appeal of the assessee is required to be allowed.

11. With respect to the judgment relied upon by the Id.CIT(A) in his order, we found that the facts of the said case are different to the facts of the present case. The facts in the case relied upon by the Id.CIT(A) are as under :

“2. The assessee is an individual. The assessment year is 1982-83. The assessee carried on Abkari business during the financial years 1970-71 and 1971-72. He mortgaged his immovable property to the State Excise Department as security for the amounts of kist due to the Government. The property so mortgaged was a house site of 5346 sq. yards situated near Waltair. The Government under section 69(1)(b) of the Transfer of Property Act sold the property in public auction without intervention of the Court and realised a sum of Rs. 5,62,980. Out of the said amount the Government has deducted a sum of Rs. 1,29,020 due to it towards arrears and interest and paid the balance to the assessee. The value of the house site as on 1-1-1964 was taken at Rs. 35 per square yard and the total value of the said site came to Rs. 1,87,010 and an amount of Rs. 5,000 was deducted from out of the total sale price while arriving at the gross total sale price. According to the revenue, capital gains should be computed at Rs. 3,70,970 (Rs. 5,57,980 — Rs. 1,87,010) while the assessee contended that the amount of Rs. 1,29,020 due to the State Excise Department is also to be deducted from Rs. 5,57,980 before computing the capital gains besides allowing deductions.”

12. From the bare perusal of the facts, it is clear that the interest has to be paid by the assessee to the Excise Department out of the sale consideration received by him after auctioning the property. In this case, the assessee has claimed the deduction of the interest paid to the Excise Department as deduction however, the same was denied by the Hon'ble Supreme Court. In the said case, there was no direct

nexus of the interest paid to the Excise Department with the cost of acquisition of the property. The Hon'ble Supreme Court opined that the cost at which the property sold was not the actual amount received by the assessee. However, in the present case, the facts are different. The interest paid by the assessee on the loan amount used by the assessee for substituting the housing loan was having the direct nexus with the acquisition of the property and therefore, the same is allowable deduction in terms of section 48 of the Act as it is required to be reduced from the sale consideration received by the assessee, being one of the components of the cost of acquisition. In view of the above said reasoning, the appeal of the assessee is allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 28th April, 2022.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 28th April, 2022.

TYNM/sps

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