

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA No.1910 & 2474/Bang/2019
Assessment Year: 2014-15

Sri Venkateswara Developers No.51, Le Parc Richmonde Richmond Road Bangalore 560 025 PAN NO : AAFFS1671N	Vs.	ACIT Circle 7(2)(1) & CIT(A)-7 Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, A.R.
Respondent by	:	Shri Narayana K.R., DR

Date of Hearing	:	16.06.2022
Date of Pronouncement	:	16.06.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

ITA No.1910/Bang/2019 emanated from the order of CIT(A) dated 5.7.2019 for AY 2014-15 with regard to quantum addition. ITA No.2474/Bang/2019 is directed against the order of CIT(A) for the assessment year 2014-15 with regard to confirming penalty levied u/s 271(1)(c) of the Income-tax Act,1961 [‘the Act’ for short]. The assessee raised following grounds of appeal in ITA No.1910/Bang/2019 as follows:-

“Ground 1:

The AO has erred in adding the sum Rs.2,03,06,884 to the returned income being the interest earned on term deposits made out of unutilised

borrowed funds netted from the interest payment of Rs.7,59,24,998 resulting in taxation of the same amount twice.

- *The Assessing authority has erred in ignoring the fact that the appellant had claimed u/s 24(b) only net interest of Rs. 5,56,18,114 after deducting Rs. 2,03,06,884, being interest on term deposits made out of unutilized borrowed funds, from the gross interest payment of Rs. 7,59,24,998 paid on borrowings from Citi Corp Finance India Limited and Canara Bank utilized for construction of software technology park Gold Hill Supreme Software **Park**.*
- *The AO has thereby subjected the sum of Rs.2,03,06,884 to tax twice without verifying that the only net interest amount of Rs.5,56,18,114 was claimed u/s 24(b) after reducing the interest income.*
- *The assessing authority having taxed the interest income of Rs.2,03,06,884, ought to have allowed the gross interest of Rs. 7,59,24,998.*

Ground 2:

The CIT(A)-7 is not justified in sustaining the addition of Rs.2,03,06,884 made by the AO and passing the order enhancing the income by Rs.7,98,35,033 disallowing the interest claimed u/s 24(b) and explanation to Sec 24(b) allowed by the Assessing officer in the original assessment order passed u/s 143(3)

- *The CIT(A) has erred in not considering the submission made by the appellant with evidencing the taxing of interest income of Rs.2,03,06,884 twice.*
- *The CIT(A) has grossly erred in passing the order enhancing the income by Rs.7,98,35,033 without any basis which interest was claimed under Section 24(b) and
Explanation to 24(b) against property income allowed by the Assessing authority in the
original assessment order passed u/s 143(3).*
- *The CIT(A) remarks that 'the appellant has not used the loan amount from Citi Bank in construction of the project' is without any basis and thereby concluding the appellate order by enhancing the appellant's income to the extent of interest claim of Rs.7,98,35,033 is not justified.*
- *The CIT(A) is not justified in not accepting the explanation and proof provided by the appellant expressing limitation in submitting utilization of borrowed funds since the books of accounts and relevant documents were impounded by the Income Tax Department following the survey conducted on 03 September 2014.*

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- *The CIT(A)-7's remarks that 'the appellant avoided filing details and evidence to substantiate its claim that the loan amount of Rs.54 Crore borrowed from Citibank on 0811-2010 has been utilized for the construction of its project Gold Hill Supreme Software Park at Electronic City, Phase II' is not justified since the books of account and relevant document were in the custody of the Income tax department.*
- *The CIT(A)-7 it not justified in rejecting the appellant's request vide letter dt.24 June 2019 to keep tlftr appeal proceedings in abeyance till the disposal of the appeal by Hon'ble ITAT for the AY 2012-13 and AY 2013-14 on the issue of claim of interest under explanation to Sec 24(b)*
- *The CIT(A) is not justified in passing the appeal order enhancing the income without providing an opportunity to the appellant as required u/s 251(2) of the Income Tax Act, 1961."*

2. The assessee raised following grounds of appeal in ITA No.2474/Bang/2019 as follows:-

Ground No.1

- *The Commissioner of Income tax (Appeals)-7 has erred in imposing penalty of Rs.300 lakhs u/s 271(1)(c) of the Income Tax Act,1961 alleging that the appellant has furnished inaccurate particulars of income to the extent of Rs. 7,98,35,033.*
- *The Commissioner of Income tax (Appeals)-7 is not justified in imposing penalty u/s 271(1)(C) for the reason that an income of Rs7,98,35,033/- is enhanced while adjudicating the appeal preferred by the appellant against order of the assessing authority.*
- *The Commissioner of Income Tax Appeals- 7 has misled himself in treating the income enhanced in the appeal order itself as furnishing of inaccurate particulars of income by the appellant.*
- *The Commissioner of Income Tax Appeals- 7 ought the have kept the penalty proceedings in abeyance as requested by appellant since the order of appeal passed by the CIT (A)-7 in enhancing the income of the appellant is disputed before the Hon'ble Income tax appellate tribunal is pending for adjudication.*
- *The Commissioner of Income Tax Appeals- 7 having failed to consider the finding of the Hon'ble Income tax appellate tribunal in appellant own ease for the AY 2012-13 and 13-14 on similar issue additions to the admitted income by the assessing authority ought not to have passed any order imposing penalty u/s 271(1)(c).*
- *The Commissioner of Income Tax Appeals- 7 has failed in considering the explanations on submission filed by the appellant in response to*

notice u/ s271(1)(c) alleging furnishing inaccurate particulars of income.

- *The Commissioner of Income Tax Appeals- 7 while imposing penalty has failed to honour the judicial pronouncements of hon'ble high courts and apex courts wherein it has been held that 'merely because the assessee has claimed the expenditure which claim was not accepted or was not acceptable to revenue that by itself would not attract the penalty u/s 271(1)(c). The Hon'ble High Courts have further said that it affects the contention of the revenue the in case of every return where claim made were not accepted by assessing officer for any reason the assess will invite the penalties."*

3. Ground No.1 in ITA No.1910/Bang/2019 is reproduced below:

"The AO has erred in adding the sum Rs.2,03,06,884 to the returned income being the interest earned on term deposits made out of unutilised borrowed funds netted from the interest payment of Rs.7,59,24,998 resulting in taxation of the same amount twice."

3. The facts involved in the case in brief are that the assessee Firm derives income from house property and other sources and the return for AY 2014-15 was selected for scrutiny under CASS. The AO sought explanation from the assessee as to why the interest of Rs 2,03,06,884/- received from fixed deposit with Canara Bank has not been considered while computing taxable income. The assessee explained that the source of FD in Canara Bank was the loan amount borrowed from Citi Corp Finance India Ltd for the project in progress. The interest earned on FD of Rs 2,03,06,884/- is reduced from the interest payment of Rs 2,88,45,581/- towards borrowing from Citi Bank and the net interest of Rs 85,38,697/- is debited to WIP account. The AO was of the view that as per section 57 (iii), in order to get deduction, the expenditure should be incurred wholly and exclusively for the purpose of making or earning the income from other sources and should not be in the nature of capital expenditure. The AO relied on the judicial decisions including the decision of Hon'ble Supreme Court in the case of Rajendra Prasad

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Moody 115 ITR 519 and held that the purpose of payment of interest by the assessee to the Bank was not for earning of interest income and thus disallowed the claim of the assessee and brought to tax interest income of Rs.2,03,06,884/- as income from other sources. The assessee has filed this appeal against this order of AO.

3.1 Ld. CIT(A) confirmed the order of the AO by following judgement of Hon'ble Supreme Court in the case of V.P. Gopinath (116 Taxman 489), wherein it was held that a term deposit with the bank and also taken loan on security of said fixed deposit, held that the assessee was to be assessed on gross amount of interest received by him on his fixed deposit, not on interest received by an amount of interest paid on loan taken on security of such deposit. Against this assessee is in appeal before us.

3.2 We have heard the rival submissions and perused the materials available on record. In our opinion, similar issue came up for consideration in earlier year in ITA No.1807/Bang/2016 & 774/Bang/2017 dated 28.6.2019 in assessee's own case for AY 2012-13 & 2013-14, wherein it was held as under:-

5. *"We have considered the rival submissions and we find that the issue on merit in the present two years was decided by the CIT (A) against the assessee by following the judgment of Hon'ble apex court rendered in the case of Tuticorin Alkali Chemical & Fertilisers Ltd. Vs. CIT as reported in 227 ITR 172 and in our considered opinion also, in the facts of the present case, this judgment is applicable and therefore, we confirm the order of CIT (A) in both the years on this issue."*

3.3 Being so, taking a consistent view on the issue, we decide this issue against the assessee.

4. Ground No.2 in ITA No.1910/Bang/2019 is as follows:-

"The CIT(A)-7 is not justified in sustaining the addition of Rs.2,03,06,884 made by the AO and passing the order enhancing the income by

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Rs.7,98,35,033 disallowing the interest claimed u/s 24(b) and explanation to Sec 24(b) allowed by the Assessing officer in the original assessment order passed u/s 143(3)”

4.1. Facts of the issue are that the appellant entered into JDA on 11-10-2010 with land owner Kamalalaya Hisoft Ltd, Hyderabad for construction of a commercial building namely Gold Hill Supreme Software Park at Electronic City, Bangalore. The assessee claims that the construction of the building has been completed during FY 2013-14 and the entire WIP of Rs 138,23,33,157/- as on 31-03-2014 has been capitalized. Thus, the assessee has claimed deduction of interest payment for the year at Rs 5,56,18,114/- u/s 24(b) and Rs 2,42,16,919/- (20% of net interest expenses) under explanation to Section 24(b). The assessee has shown receipt of rental income from this building at Rs 89,68,442/- for the year.

4.2 The assessee had borrowed an amount of Rs 54 crores from Citi Bank on 08-11-2010 for the construction of software technology park building namely Gold Hill Supreme Software Park at Electronic City, Bangalore under JDA dated 11-10-2010 with land owner Kamalalaya Hissoft Ltd., Hyderabad. It is submitted that the assessee spent a sum of Rs.17.01 crores during the year 2010-11 and had parked the remaining unspent borrowed funds in following investments to be utilized for the project construction later:

Term deposit with Canara Bank	Rs.25 crores
Term Deposit with Citi Bank	Rs.3.40 crores
Investment in Mutual Funds	Rs.15 crores.

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4.3 The above investments in FDs of the banks and Mutual Fund has been made in the FY 2010-11 itself as per submission of the assessee (WS dated 13-12-2017). The assessee has also submitted that it had availed Overdraft against fixed deposit with Canara Bank (WS dated 13-12-2017) which has been utilized for the construction of the project. Thus, it is amply clear that the loan amount of Rs.18.40 crores which has been invested in FD with Citi Bank and in Mutual Fund has no connection with the actual construction of the project whatsoever.

4.4 According to the Ld. CIT(A), the assessee not used the borrowed capital for the purpose of acquisition, construction, repairing or reconstruction and the assessee failed to establish that the loan amount has been used in the construction of the building. Therefore, the amount of interest claimed u/s 24(b) of the Act on the loan borrowed from Citi Bank cannot be allowed. According to the Ld. CIT(A), as per financial statements show that capital balance of the partners as on 31.3.2013 was Rs.57.08 crores and there was sundry creditors of Rs.43.33 crores and security deposit of Rs.12.97 crores from tenants, the fund position of the assessee can be considered to be at comfortable level to finance the construction of project Gold Hill Supreme Software Park. Similar is the position in the financial year ending on 31.3.2014. In view of the above, the claim of deduction of Rs.7,98,35,033/- as interest payable on borrowed capital was disallowed as there was no nexus between the loan borrowed bank with the construction of building. Accordingly, he directed the AO to recompute the income of assessee by enhancing income of Rs.7,98,35,033/- and also directed to levy penalty u/s 271(1)(c) of the Act by furnishing inaccurate particulars of income to the extent of Rs.7,98,35,033/-. Further, he observed that assessee claimed deduction of interest payment of Rs.5,56,18,114/- u/s 24(b) of the

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Act and Rs.2,42,16,919/- (20% of net interest expenses) under explanation to section 24(b) of the Act totalling of Rs.7,98,35,033/-. The assessee shown receipt of interest income from this building at Rs.89,68,442/- for the year. It is found that as per the details filed by the assessee, the total floor area of the building Gold Hill Supreme Software Park at Electronic City, Bangalore is 8,40,000 sft consisting of ground plus 11 floors being floor area of each floor 70,000 sft. The assessee is the owner of eight floors (5,60,000 sft), Land owner Kamalalaya Hisoft owns 1,70,000 sft in three different floors and 1,10,000 sft is sold out to three different parties. The assessee claims that only 70,000 sft (out of 5,60,000 sft) was let out during the year with effect from 1st January 2014 to Tech Mahindra Ltd. after completing the interior works at the 6th Floor and has declared rent receipt of Rs.89,68,442 for the year against which deductions u/s 24 for payment of property tax, 30% standard deduction and interest of Rs.7,98,35,033 has been claimed. Thus, the assessee claims that remaining 7 floors of the building remained vacant.

4.5 The assessee has claimed that the construction of the building has been completed during FY 2013-14. On being asked, the assessee filed copy of Occupancy Certificate from KIADB dated 04-02-2013 which certifies that 'the building is complete in all respect and ready for occupation'. This s/pws that the construction of the building was completed in FY 2012-13 itself and the building was ready for occupation. In view of this, the contention of the assessee that the building was not fit for occupation (except 6th floor) even in subsequent FY 2013-14 does not hold water and is not acceptable.

4.6 In view of above, it is clear that the ALV for the property of the assessee in Gold Hill Supreme software Park building need

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to be determined in accordance with the provisions of section 23(1) of the Act. As the AO has not dealt with this aspect of the case in the assessment order, s/he may take suitable action as per law to bring to tax the correct house property income of the assessee.

4.7. Against this assessee is in appeal before us by way of ground No.2.

4.8. The Ld. A.R. submitted that assessee raised the borrowed funds for the purpose of construction of the Gold Hill Supreme Software Park, Electronic City, Phase-2 and the Ld. CIT(A) not holding that assessee own funds in the form of own capital sundry creditors and security deposit is enough to meet the cost of project is perverse and assessee has used borrowed funds for the purpose of the business. The interest incurred by the assessee to be allowed as deduction.

4.9. On the other hand, Ld. D.R. submitted that assessee has not demonstrated the fact that the borrowed funds was used for the purpose of business so as to allow deduction u/s 36(1)(iii) of the Act.

5. We have heard the rival submissions and perused the materials available on record. The assessee filed cash/fund flow statement to demonstrate that assessee has invested the borrowed funds in the construction of Gold Hill Supreme Software Park and as such the interest incurred by the assessee has to be allowed as a deduction u/s 36(1)(iii) of the Act. In our opinion, the assessee has to demonstrate the usage of the borrowed funds for the purpose of business as laid out in section 36(1)(iii) of the Act. Accordingly, the issue in dispute is remitted to the file of Ld. CIT(A) to reconsider the

issue in the light of final statements as well as cash/fund flow statement filed by the assessee. Further, the CIT(A) shall take note of findings of the Tribunal in ITA No.1807/Bang/2016 & ITA No.774/Bng/2017 dated 28.6.2019, wherein it was held as under:-

“6. Having confirmed the order of CIT(A) in both the years, we now examine the relevance of the “Supplementary Written Submissions” as reproduced above. In our considered opinion, there is merit in the alternate claim of the assessee because if the interest income is brought to tax in these two years then for computing the deduction allowable as per Explanation to section 24 (b) in later years, the amount of interest expenditure should be considered without reducing this amount of interest income taxed in these two years and if the claim in those succeeding years is made by the assessee in the return of income of those years after reducing this amount of interest income taxed in these two years because the same was not offered to tax by the assessee in these two years, such claim in those succeeding years has to be rectified. Hence, we direct the AO that in succeeding years, if any deduction is claimed and allowed under Explanation to section 24 (b) then the quantum of such deduction should be determined without reducing this amount of interest income taxed in these two years because this interest income is being taxed in these two years and reduction of the same income from the amount of allowable deduction, if any, in later years will result into double taxation of this interest income. This issue should be decided by the AO in later years as per this discussion after providing adequate opportunity of being heard to the assessee. We want to make it clear that the burden is on the assessee to make request to the AO in the relevant year where recomputation of deduction u/s 24 (b) is required and, the assessee has to establish that the deduction originally claimed by the assessee u/s 24 (b) is in fact after reducing this interest income.”

Accordingly, the appeal of the assessee is partly allowed for statistical purposes.

ITA No.2474/Bang/2019

6. This appeal by the assessee for the AY 2014-15 is with regard to levy of penalty u/s 271(1)(c) of the Act. Since we have remitted the issue relating to quantum addition in ITA No.1910/Bang/2019 in this assessment year 2014-15, levy of penalty at this stage is pre-

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matured. Accordingly, the issue is remitted to the file of Ld. CIT(A) to reconsider the same after taking a decision on quantum additions.

7. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 16th June, 2022

Sd/-
(George George K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th June, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.