

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1712/Del/2017
Assessment Year: 2012-13

Mission Holdings Pvt. Ltd. 311, 3rd Floor, Vardhman Plaza, Pocket-7, Plot No.6, Sector-12, Dwarka, New Delhi-110070 PAN No.AAACF2095H	Vs	ITO Ward- 6 (4) New Delhi
(APPELLAN		(RESPONDENT)

Appellant	None
Respondent	Ms. Neha Tomar, SR. DR

Date of hearing:	27/07/2022
Date of Pronouncement:	27/07/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-33, New Delhi dated 28.12.2016 pertaining to A.Y.2012-13

2. The grievance of the assessee read as under :-

1. That the CIT (Appeals) erred on facts and in law in upholding the action of the assessing officer in treating interest expenditure of Rs.2,88,63,585/= incurred on borrowed funds after the date of acquisition of shares, which were held as investments/capital assets, as disallowable under section 14A read with Rule 8D of Income-Tax Rules, 1962 ("the Rules"), while computing income-tax under the normal provisions as well as book profits under section 115JB of the Income-tax Act, 1961 ("the Act").
- 1.2 That the CIT (Appeals) erred on facts and in law in holding that interest expenditure incurred on borrowed funds after the date of acquisition of shares could not be capitalized to the cost of shares held as investments/capital assets.
- 1.3 Without prejudice, that the CIT (Appeals) erred on facts and in law in not reversing the action of the assessing officer of considering the interest expenditure, capitalized to the cost of shares in the books, as revenue expenditure and adding back the same to book profits under section 115JB of the Act, being beyond the scope of said section.
- 1.4 Further without prejudice, the CIT(Appeals) erred on facts and in law in sustaining the disallowance made by the assessing officer under section 14A of the Act while computing book profit under section 115JB of the Act

The appellant craves leave to add to, alter, amend or vary the above grounds of appeal before or at the time of hearing.

3. None appeared on behalf of the assessee inspite of repetitive notices, therefore, we decided to proceed exparte. Having heard the Ld. DR we have carefully perused the orders of the authorities below.

4. We find that the solitary quarrel is in respect of interest expenditure of Rs.2,88,63,585/- which was capitalised by the assessee towards purchase of shares and such capitalisation dismissed by the AO / CIT(A) as being incurred after the

acquisition of the shares. When the assessment was challenged before the CIT(A) the CIT(A) found that identical quarrel was in A.Y.2011-12 wherein his predecessor in office has decided the issue against the assessee. The relevant findings of the CIT(A) read as under :-

62. The issue came up for assessment year 2011-12. My Ld. Predecessor vide order dated 27.01.2016 upheld the action of the A.O. by relying upon the following excerpts from the order of Hon'ble ITAT Bench in the case DCIT, New Delhi vs. M/s. Narain Garh Sugar Mills Ltd.

"We have heard both parties and gone through the material placed on record. There is no dispute that the assessee is following mercantile system of accounting, therefore, the liability incurred on account of interest payable on terms loan and working capital as well as other expenditure by way of directors foreign travel expenses are allowable as deductions in the year in which such liability is incurred. There is no concept of deferred revenue expenditure in Income Tax Act. The assessee had taken a decision to claim 1/5th of such expenditure in the year in which such expenditure is incurred and balance expenditure has been claimed in four subsequent years equally. The expenditure which had been claimed in subsequent years equally. The expenditure which had been claimed in subsequent years constitutes the part of previous year expenditure which is not allowable as deduction, it is not a case where the expenditure was incurred in relation to certain investments,

the effects of which would be spread over in more than one year. Therefore, the assessee can not be allowed deduction under section 37 of the Act in respect of expenses which was incurred in earlier years on the principal of Deferred Revenue Expenditure, as claimed by the assessee....'

We have heard both the parties and gone through the material on record. From the facts stated above one may note that the assessee had treated the interest incurred on term loan and working capital as part of revenue deferred expenditure, which we have not approved in earlier paras. Subsequently, the interest has been capitalized out of deferred revenue expenditure in proportionate to the cost of the assets. It is a settled law that the amounts incurred on acquisition of assets is capital expenditure and the interest paid/payable on loan taken for acquisition of such an asset is allowable revenue expenditure. The interest taken on loan borrowed for the purpose of acquisition of revenue expenditure and cannot be capitalized at the sweet will of the assessee to the assets acquired. It is immaterial whether the assessee claims a lower amount or higher amount, but in no case the expenditure incurred on account of interest payable on term loan or working capital can be capitalized in subsequent years and depreciation can be claimed on such capitalized assets.....

Accordingly, A.O's action is upheld and the appellant's grounds of appeal is dismissed."

6.3. After going through the reasoning of the A.O., submissions of the appellant and findings of my Ld. Predecessor I am inclined to follow my Ld. Predecessor.

6.4. During the appellant stage the counsel of the appellant relied upon the decision of Hon'ble Mumbai Tribunal in the case of M/s. J. M. Financial and Investment Consultation Pvt. Ltd. Vs. DCIT 32, Mumbai dated 11.05.2016 which was subsequent to the appellate order for A.Y. 2011-12 dated 27.01.2016 passed by my Ld. Predecessor. Ld. Counsel for the appellant has emphasized the operative portion of the said order which reads as under:-

"On the other hand, Id. DR relied on the order of lower authorities.

We have considered rival contentions, carefully gone through the orders of authorities below and also deliberated on the judicial pronouncements referred by Id. AR during the course of hearing before us. It is not in dispute that assessee has not claimed interest as revenue expenditure, the same has been capitalized. As per the judicial pronouncements referred hereinabove, interest expenditure is to be considered as cost of acquisition of shares/cost of improvement, therefore, allowable while computing capital gain u/s 48 of the I.T. Act. Accordingly, we direct the AO to allow assessee's claim of interest u/s 48 of I.T. Act."

6.5. However, I find that the assessee in the above referred appeal to Hon'ble ITAT , Mumbai did not receive any dividend during the relevant year and instead had sold the shares thereby generating short term capital gains. The facts of the cited case law are therefore distinct from the ones under present appeal.

6.6 After considering the totality of circumstances I uphold the A.O.'s action of not allowing capitalization of interest subsequent to purchase of shares.

5. The perusal of the assessment order also show that similar issue arose in earlier assessment years also and the AO has followed the findings given in earlier assessment years and the CIT(A) has also followed the order of the appellate authority for

A.Y.2011-12.

6 Considering the totality, we do not find any reason to interfere with the findings of the CIT(A). The appeal filed by the assessee is dismissed.

7. Decision announced in the open court on 27.07.2022.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:-27.07.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI