

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.455/Ahd/2020
(Assessment Year: 2015-16)

M/s. Neptune Estate 14-B, Sahjanand Kutir & Laghu, Udhyog Vashahat, Opp. Mani Nagar, Old Padra, Road, Vadodara-490020	Vs.	DCIT Circle-1(2), Vadodara
[PAN No.AAJFN6716D]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Amrin Pathan, A.R.
Respondent by:	Shri Alpesh Parmar, Sr. D.R.

Date of Hearing	12.12.2022
Date of Pronouncement	21.12.2022

ORDER

The appeal filed by the assessee is against the order passed by the Ld. CIT(Appeals)-5, Vadodara on 21.07.2020 for A.Y. 2015-16.

2. The grounds of appeal raised by the assessee are as under:

“1. The learned Commissioner of Income Tax (Appeals)-5, Vadodara [“CIT(A)”] erred in fact and in law in confirming the action of the learned Deputy Commissioner of Income Tax, Circle-1(2), Vadodara [“the AO”] to the extent of making a disallowance of interest of Rs. 7,62,363.

2. The learned CIT(A) erred in fact and in law in confirming the disallowance without giving proper opportunity of being heard.

3. Without prejudice to Grounds No. 1 and 2, the learned CIT(A) erred in fact and in law in not considering the interest free funds available with the Appellant in the form of Rent while computing the disallowance of interest despite the fact that loan to Neptune Realty Pvt. Ltd. (“NRPL”) was also granted from interest free rent income amounting to Rs. 1,07,56,249 on which the Appellant has not borne any interest expense during the year.

4. Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal”

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3. The assessee is a partnership firm engaged in the business of real estate developers / leasing properties. The return of income declaring total income of Rs. 29,69,720/- was filed by the assessee on 05.10.2015. The case was selected for limited scrutiny related to large deduction claimed under Section 57, mismatch between income / receipt credited to profit and loss account considered under other heads of income from other than business and professions as well as for large squared up loans during the year (Form 3CD), higher turnover reported in service tax return compared to ITR and high ratio of refund to TDS. The Assessing Officer made addition of Rs. 8,69,062/- towards the interest income.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. A.R. submitted that assessee has advanced the loan received from Dena Bank to Neptune Reality Pvt. Ltd. ("NRPL") and the interest received from Neptune Reality Pvt. Ltd. was Rs. 1,60,34,333/- and not that of Rs. 99,32,134/-. The Ld. A.R., therefore, submitted that the difference between the interest charged by Dena Bank and interest received from Neptune Reality Pvt. Ltd. come to Rs. (-)52,33,137/- and not Rs. 8,69,062/- as computed by the Assessing Officer. Since the difference is in negative, it means that the assessee received more interest from Neptune Reality Pvt. Ltd. than the amount of interest charged by Dena Bank and hence there is no scope for any addition to be made in the case of the assessee. The addition is made on ah-hoc amount interest which is not permissible. The Ld. A.R. further submitted that without prejudice to the said contentions the assessee has charged the interest at the rate of 12% which is prevailing

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market rate and receive the interest amounting to Rs. 1,60,34,333/- and the same has been offered to tax in the return of income. The assessee has not earned any interest income over and above the interest from NRPL. Further NRPL is also not obligated to pay to the assessee any interest over and above interest of Rs. 1,60,34,333/-. The interest received from NRPL is in accordance with the prevailing market rate and more over much higher than the interest rate of Dena Bank. The Ld. A.R. submitted that the Assessing Officer has computed the hypothetical income of Rs. 8,69,062/-. The Ld. A.R. relied upon the decision of Hon'ble Supreme Court in case of CIT vs. Rajendra Prasad Moody 115 ITR 519 (SC) as well as CIT vs. Excel Industries Ltd. 358 ITR 295.

6. The Ld. D.R. submitted that the expenditure of interest claimed by the assessee is much more higher and in excess and the CIT(A) has rightly observed that the loan from Dena Bank as well as Bajaj Finserve was never utilized for any business activity of the assessee itself and the loan was obtained from financing the sister concern namely NRPL only. The assessee has given some part of loan out of its rental income as seen in the bank statement of State Bank of India for which its claim that the source is interest free. Thus, the Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is not disputed that assessee has advanced the loan received from Dena Bank to NRPL and charged 12% of rate of interest. But the amount of Rs. 99,32,134/- which has been taken into account by the Assessing Officer is not correctly taken as the difference between the

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interest paid the Dena Bank and interest received from NRPL come to Rs. (-)52,33,137/- when the records shows that the interest from NRPL is Rs. 1,60,34,333/- and not 99,32,134/-. Thus, the addition made by the Assessing Officer is erroneous. In fact, the expenditure would be deductible / debited irrespective of whether there is receipt of income or not. The Hon'ble Supreme Court in case of Rajendra Prasad Moody (Supra) has also taken the same view. Therefore, the observation of the CIT(A) is not correct and the appeal of the assessee is allowed.

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

This Order pronounced in Open Court on	21/12/2022
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 21/12/2022

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad