

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 329/JP/2022
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Ranwa Land Developers (P) Ltd. 4-D, Villa, Station Road Jaipur	बनाम Vs.	The ITO Ward 3(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR 8315 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 27/09/2022
उदघोषणा की तारीख / Date of Pronouncement: 21 /12/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the ld. CIT(A) dated 07-07-2012, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 raising therein following grounds of appeal.

“1. The ld. CIT(A) has erred on facts and in law in deciding the appeal ex-parte without providing adequate opportunity of hearing to the assessee and the impact of COVID-19 when the case was fixed for hearing.

2. The ld. CIT(A) has erred on facts and in law in confirming the disallowance of interest expenses to the extent of Rs.9,42,600/- by ignoring the borrowed funds invested in shares are wholly and exclusively for the purpose of business.”

2.1 At the outset of the hearing, the ld. AR has not pressed the Ground No. 1.

Hence, the same is dismissed being not pressed.

3.1 In Ground No. 2, the assessee is aggrieved that ld. CIT(A) has erred on facts and in law in confirming the disallowance of interest expenses to the extent of Rs.9,42,600/- by ignoring the borrowed funds invested in shares are wholly and exclusively for the purpose of business. Brief facts of the case are that the return of income was filed by the assessee on 28-09-2014 declaring total income at Nil which was processed u/s 143(1) of the Act. The case of the assessee was selected for scrutiny and notice u/s 143(2) was issued on 3-09-2015 by ACIT, Central-3, Jaipur and duly served upon the assessee. Because of change of incumbents, fresh notice u/s 142(1) alongwith query letter were issued on 2-06-2016 and in response to notices written reply was filed by the ld. AR of the Assessee shri Jitendra Agarwal, CA. In this case, the AO noted that the assessee is engaged in the area of developing and construction of land & building. During the course of assessment proceedings the AO observed that the assessee had made investment of Rs.37,50,000/- in shares of M/s. Fankdan Build Estate Pvt. Ltd. and Rs.3,67,08,030/- in shares of M/s. Radha Mohan Builders Pvt. Ltd.. These

investments were out of unsecured loan received from various persons to whom interest has been paid. Accordingly by working out the interest expenses of Rs.9,42,600/- on the loans which was used for investment in shares as reproduced at page 3 & 4 of the assessment order, the AO issued show cause to the assessee as to why the same should not be disallowed. In response to the same, the assessee submitted that it is having rental income from leasing theatre/cinema, restaurant and also engaged in real estate development activity. It invested in the shares of group company M/s.Radha Mohan Builders Pvt. Ltd who is also engaged in running of hotel and restaurant business to expand its activities and thus investment was made in commercial expediency. The AO, however, held that assessee company has reduced its income and resultant tax liability by way of diverting the funds accepted as unsecured loan to investment in shares of other companies which may or may not bring any income in future. Reduction in present taxable income in anticipation of future earnings is not at all allowable under the Income Tax Act. Further interest expenditure attributable to investment in shares of M/s. Fandam Build Estate Pvt. Ltd. and M/s. Radha Mohan Builders Pvt. Ltd. has not been laid out or expended wholly and exclusively for the purpose of assessee-company's own existing business or profession carried on during the year under consideration. Accordingly, the AO made disallowance of interest expenditure of Rs.9,42,600/-.

3.2 In first appeal, the Id. CIT(A) has confirmed the disallowance of Rs.9,42,600/- made by the AO by observing as under:-

“6. Decision:- I have gone through and duly considered the facts emanating from grounds of appeal and statement of facts and other facts of the case available on the record. From the documents available on record, it is found that the appellant has not furnished satisfactory documentary evidences in respect of interest expenditure claimed by the appellant during the A.Y. 2014-15.

During the appellate proceedings, the appellant has not complied for even once nor filed any written submission. In absence of the written submission and evidence, it remained to the unexplained as to how the AO's order is erroneous. If the appellant claims that the assessment order was objectionable, he should have provided supporting arguments of evidences. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. Therefore, it is assumed that the appellant is not interest in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

In the case of Anil Goel vs CIT [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:-

“4. It is thus obvious on the plain language of Section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice alongwith notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by applying in person or through authorized representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgement of this Court in the case of Poddar Engineering Co. vs ITAT (2001) 248 ITR 577 has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisonal authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/ revisonal authority.”

Accordingly, I agree with the reasons given by the AO and confirm the disallowance of Rs.9,42,600/- on account of interest expenditure. The grounds of appeal are hereby dismissed.”

3.3 During the course of hearing, the ld. AR of the assessee prayed that ld. CIT(A) had erred on facts and in law in deciding the appeal ex-parte without providing adequate opportunity of hearing to the assessee and also the case has not been adjudicated upon on merit of the case. To this effect, the ld. AR of the assessee has filed the following written submission.

“Submission

1. At the outset it is submitted that all these notices except the last notice were issued when the country was grappled with Covid-19. The Ld. CIT(A) has dismissed the appeal solely on the ground that assessee is not interested in pursuing the appeal instead of deciding the appeal on merit on the basis of material available on record. Reliance in this connection is placed on the decision of Hon’ble Bombay High Court in case of CIT vs.

Premkumar Arjundas Luthra (HUF) (2016) 240 Taxman 133. The relevant Para 8 of the order reads as under:-

8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in s. 250(4) of the Act. Further s. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that AO could do. Therefore just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to s. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non prosecution as is evident from the provisions of the Act.

2. On merits it is submitted that assessee is having rental income from leasing theatre/ cinema, restaurants and also engaged in real estate development activity. During the year it invested only in the shares of M/s Radha Mohan Builders Pvt. Ltd. who is also engaged in running of hotel and restaurant business. This investment was made in commercial expediency to expand its activities. No investment was made during the year in shares of M/s Fandan Build Estate Pvt. Ltd. The investment was made in earlier year. This company is also a group company engaged in real estate business. Thus the only

investment made by the assessee during the year is in the shares of M/s Radha Mohan Builders Pvt. Ltd. which is due to commercial expediency.

3. The assessee's claim of interest is allowable u/s 36(1)(iii) which reads as under:-

“the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession.”

From the above provision it can be noted that the only requirement for allowing the interest is that the borrowed funds is used for the purpose of business or profession. The proviso to this section only clarifies that interest paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession shall not be allowed as deduction till the date on which such asset was first put to use. The AO wrongly interpreted that if the interest paid on capital borrowed is only for extension of existing business it would be allowed whereas there is no requirement in law that borrowed funds should be used only for the purpose of "existing business or profession". Hence AO has wrongly held that interest expenditure u/s 36(1)(iii) is allowable if it is incurred for purpose of existing business or profession.

4. Reliance on the issue of allowability of interest expenditure u/s 36(1)(iii) is placed on the following cases:-

S.A. Builders Ltd. Vs. CIT(A) & Anr. 288 ITR 1 (SC)
The head note of the decision reads as under:-

Business expenditure—Interest on borrowings—Providing of interest free loan to subsidiary company—High Court and other authorities should have enquired as to whether the interest-free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed—High Court and the other authorities should have examined the purpose for which the assessee advanced the money to its sister-concern, and what the sister-concern did with this money, in order to decide whether it was for commercial expediency, but that has not been done—It is not that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister-concern—It all depends on the facts and circumstances of the respective case—However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, ordinarily be entitled to deduction of interest on its borrowed loans

PCIT Vs. Reebok India Company (2018) 409 ITR 587 (Delhi) (HC) The relevant Para 7 of the order reads as under:-

7. *The Supreme Court in S.A. Builders Ltd. vs. CIT(A) (2006) 206 CTR (SC) 631: (2007) 1 SCC 781, had interpreted s. 36(1)(iii) of the Act to observe that interest paid on capital borrowed for the purpose of business is to be allowed as a deduction in computing taxable income. The expression 'for purposes of business or profession' occurring in s. 36(1)(ii) of the Act is wider in scope than the expression 'for the purpose of earning income, profits or gains'. Accordingly, expenditure voluntarily incurred and meeting the "commercial expediency" test is to be allowed as a deduction. It is immaterial if a third party also benefits by the said expenditure. The expression "commercial expediency" is again of wide import and is satisfied once it is established that there was a connection and nexus between the interest paid claimed as expenditure and the business of the assessee. Purpose of business need not be the business of the assessee, for deduction under s. 36(1)(iii) of the Act to be allowed. Further, Revenue cannot assume the role and occupy armchair of a businessman to decide whether expenditure was reasonable. The Revenue cannot look at the matter from its own standpoint, but opinion and decision of a businessman on "business expediency" matters. Money borrowed even when advanced to a subsidiary for some business purpose would qualify, for deduction of interest. However, if the money borrowed is utilized by the assessee for personal benefit and not for business purpose, interest paid on that money would not satisfy, the test of "commercial expediency". In the context of the present case the unsecured loans were not used for personal purpose. Merely because non-interest-bearing advances were given to third parties, would not justify a finding that the test of "commercial expediency" was not satisfied. Interest free advances were preferred to the parties connected with the business of the respondent/assessee. Money taken on loan was not diverted for non business purpose. The findings of the Tribunal are in accordance with the law.*

5. We may further point out that from the assessment order it can be noted that the borrowed funds in respect of which interest has been disallowed were raised in earlier years and not in the year under consideration in as much as all these borrowings relates to AY 2009-10 to 2013-14. There is no nexus, even as per AO that any borrowed funds raised during the year has been used in making investment in shares of group companies. Otherwise also, assessee is having interest free funds of Rs.4,88,34,209/- as on 31.03.2014 as per the following details (copy of Balance Sheet and P&L A/c is enclosed) which is sufficient to cover the investment made in the shares of group companies:-

Share Capital	Rs. 73,71,000/-
Reserve and Surplus	Rs.3,64,42,209/-
Share application	<u>Rs. 31,11,000/-</u>
	Rs.4,69,24,209/-
Interest free unsecured loans	<u>Rs. 19,10,000/-</u>
	Rs.4,88,34,209

Hon'ble Supreme Court in case of CIT Vs. Reliance Industries Ltd. (2019) 410 ITR 466 has held that where Tribunal having found that the interest free funds available to the assessee were sufficient to meet its investment, it could be presumed that funds were given to subsidiaries out of interest free funds and therefore, interest referable to funds given to subsidiaries is allowable as deduction under sec. 36(1)(iii).

In view of above, disallowance of interest Rs. 9,42,600/- confirmed by Ld. CIT(A) be directed to be deleted.”

3.4 On the contrary, the ld. DR relied upon the order passed by the lower authorities.

3.5 After hearing both the parties and perusing the materials available on record, the Bench noticed that sufficient opportunity was provided to the assessee as mentioned at para 4 of ld. CIT(A)'s order. However, there was no response or submission from the side of the assessee. Therefore, considering these facts, the Bench is not in agreement with the arguments of the ld. AR of the assessee that sufficient opportunity was not provided to the assessee. However, considering the interest of equity and justice the Bench feels that since the matter in question was decided ex-parte on the ground that the assessee had neither responded nor filed any submission but taking a lenient view one more opportunity is granted to the assessee and matter is restored back to the file of the AO to decide it afresh taking into consideration the written submissions filed before the Bench, by providing adequate opportunity of hearing to the assessee. Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the A.O. shall in no

way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by A.O. independently in accordance with law.

4.0 In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 21 /12/2022

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 21 /12/2022

*Mishra

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

1. The Appellant- M/s. Ranwa Land Developers (P) Ltd.
2. प्रत्यर्थी / The Respondent- ITO, Ward 3 (2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 329 /JP/2022)

आदेशानुसार / By order,

Asstt. Registrar