

IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 7472 & 7473/Mum/2018
(Assessment Years: 2014-15 & 2015-16)

ACIT, Circle-3(1)(2) Room No. 607, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	V s.	M/s. Frontline Realty Pvt. Ltd. 16 th Floor, Lodha Supremus, Senapati Bapat Marg, Nariman Point, Mumbai-400 021
PAN/GIR No. AABCF 0695 A		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Atul T. Suraiya/Snehal Negandhi
Revenue by	:	Shri Vranda U Matkarni
Date of Hearing	:	10.01.2023
Date of Pronouncement	:	24.02.2023

ORDER

Per Kavitha Rajagopal, J M:

These appeals are filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals)-8, Mumbai ('Id.CIT(A) for short), passed u/s.143(3) of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2014-15 and 2015-16.

2. As the facts are identical in both these appeals, we hereby pass a consolidated order by taking ITA No. 7472/Mum/2018 as the lead case.

3. The Revenue has challenged the grounds of disallowance of an amount of Rs.5,52,50,000/- towards interest u/s.36(1)(iii) of the Act, pertaining to funds borrowed for purchase of land and shown as stock-in-trade in the balance sheet without considering the fact that the interest expenditure on borrowed funds incurred by the assessee for purchase of land at Pali has to be capitalized as 'work-in-progress' (WIP for short). The

Revenue has also challenged the deletion of the interest paid on borrowings of RS.2,15,30,797/- for investments in equity shares and assessed under the head 'short term capital gain' (STCG for short).

4. The brief facts are that the assessee company is engaged in the business of real estate and has filed its return of income for the impugned year dated 20.09.2014, declaring total loss of Rs.4,22,62,577/-. The assessee's case was selected for scrutiny and the assessment order u/s. 143(3) of the Act was passed on 30.11.2016, determining the total income at Rs.3,45,18,220/-, by making various additions/disallowances.

5. The assessee challenged the said order before the Id. CIT(A) who deleted the said disallowance on the ground that the issue was already dealt with by the tribunal in assessee's case for A.Y. 2013-14 in favour of the assessee and also by relying on the other decisions.

6. The Revenue is in appeal before us as against the order of the Id. CIT(A), deleting the impugned additions made by the Assessing Officer (A.O. for short).

7. Ground no.1 – This ground pertains to the disallowance of interest claimed by the assessee for purchase of land u/s. 36(1)(iii) of the Act. It is observed that the assessee has declared an amount of Rs.5,52,50,000/- in its profit and loss account, pertaining to the interest expenses on long term borrowings. The A.O. had stated that for A.Y. 2013-14, the Pr.CIT-3, Mumbai has disallowed the said interest expenses related to long term borrowings during the proceeding u/s.263 of the Act. The A.O. has stated that the assessee had purchased land at Pali for the purpose of its real estate business and held that the purchase of land for its business should be capitalized as 'work-in-progress', thereby

disallowing the claim of interest expenses on capital borrowed for purchase of land by relying on the proviso to section 36(1)(iii) of the Act. The A.O. also relied on the decision of the co-ordinate bench in the case of *M/s. Agritech Pvt. Ltd. vs. DCIT 21 Taxmann 174*, which held that the interest expenses towards purchase of land which was to be developed should be capitalized under 'WIP'. The A.O. thereby disallowed Rs.5,52,50,000/- u/s.36(1)(iii) of the Act. The A.O. recomputed the WIP of the project as below:

<i>WIP as per BS</i>	<i>356669998</i>
<i>Interest capitalized in AY 2013-14</i>	<i>7408219</i>
<i>Interest capitalized in AY 2014-15</i>	<i>55250000</i>
<i>WIP as on 31.03.2014</i>	<i>41,93,28,217</i>

8. The Id. CIT(A) in the appeal filed by the assessee controverted the same and held that the issue pertaining to disallowance of interest was decided by the tribunal in assessee's case for A.Y. 2013-14 in ITA No. 761/Mum/2017 vide order dated 17.05.2017, wherein it was held that the assessee was primarily into the business of real estate and infrastructure development and buying, selling, accruing any land was part of the assessee's business activity. The co-ordinate bench had thereby allowed the interest claimed by the assessee u/s. 36(1)(iii) of the Act. The Revenue is in appeal before us challenging the order of the Id. CIT(A).

9. Having heard the rival submissions and perused the materials on record. It is evident that the A.O. has disallowed the impugned interest amount u/s. 36(1)(iii) of the Act for the reason that the interest expenses related to purchase of land which are to be capitalized in work-in-progress. The A.O. computed the WIP as on 31.03.2017 to be Rs.41,93,28,217/- which included the interest capitalized in A.Y. 2013-14, amounting to

Rs.74,08,219/- and the interest capitalized for the impugned year, amounting to Rs.5,52,50,000/-. It is pertinent to point out that the Tribunal in A.Y. 2013-14 has allowed the interest claimed by the assessee, amounting to Rs.74,08,219/- on the ground that the order u/s. 263 of the Act passed by the Pr. CIT was itself quashed. The Tribunal has also held that the main objective of the assessee as per its MOA was that the assessee was engaged in the business of real estate and infrastructure development and buying and selling of land was exclusively for the purpose of the business activity of the assessee. The Tribunal has also not disputed the fact that the assessee's ledger account reflects that the assessee had made payment of interest to India Bull for the purpose of purchase of land and has also evidenced that the assessee had entered into an agreement for sale of the said land to Americorp for which it had received advances. It is also observed from the said decision that the assessee had taken loan from India Bulls to repay the agreement amount to Americorp pursuant to the termination of the sale agreement. The Tribunal thereby upheld the action of the A.O. in allowing the claim of interest expenditure u/s. 36(1)(iii) of the Act.

10. The learned Authorised Representative (Id. AR for short) for the assessee had also relied on the decision of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Lokhandwala Constructions Inds. Ltd.* [2003] 131 Taxman 810 (Bom). On identical facts as that of the assessee, the Hon'ble High Court has held that the claim of the interest on moneys borrowed u/s. 36(1)(iii) of the Act is to be allowed irrespective of the fact that whether the said loan was utilized by the assessee for accruing an asset and it is irrelevant whether the said expenditure pertains to acquisition of revenue asset or capital asset. The

said decision of the Hon'ble High Court has relied on the decision of *Calico Dyeing & Printing Works vs. CIT* [1958] 34 ITR 265 (Bom), wherein it was held that the assessee has to prove that the borrowed capital was utilized for the purpose of its business. The relevant extract of the said decision is cited hereunder for ease of reference:

FINDINGS :

4. *From the facts found by the Tribunal on record, it is clear that assessee undertook two-fold activities. It bought and sold flats. Secondly, the assessee was also engaged in the business of construction of buildings. The profits from the both the activities were assessed under Section 28 of the Income-tax Act. In this case, we are concerned with the second activity (hereinafter referred to, for the sake of brevity, as "Kandivali Project"). According to the Commissioner, loan was raised for securing land/development rights from the Mandal. That, the loan was utilised for purchasing the development rights, which, according to the Commissioner, constituted a capital asset. According to the Commissioner, since the loan was raised for securing capital asset, the interest incurred thereon constituted part of capital expenditure. This finding of the Commissioner was erroneous. In the case of India Cements Ltd. v. CIT, Madras, reported in 60 ITR Page 52, it was held by the Supreme Court that in cases where the act of borrowing was incidental to carrying on of business, the loan obtained was not an asset. That, for the purposes of deciding the claim of deduction under Section 10(2)(iii) of the Income-tax Act 1922 [section 36(1)(iii) of the present Income-tax Act], it was irrelevant to consider the purpose for which the loan was obtained. In the present case, the assessee was a builder. In the present case, the assessee had undertaken the Project of construction of flats under the Kandivali Project. Therefore, the loan was for obtaining stock-in-trade. That, the Kandivali Project constituted the stock-in-trade of the assessee. That, the Project did not constitute a fixed asset of the assessee. In this case, we are concerned with deduction under Section 36(1)(iii). Since the assessee had received loan for obtaining stock-in-trade (Kandivali Project), the assessee was entitled to deduction under Section 36(1)(iii) of the Act. That, while adjudicating the claim for deduction under Section 36(1)(iii) of the Act, the nature of the expense - whether the expense was on capital account or revenue account -was irrelevant as the Section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That, the utilization of the capital was irrelevant for the purposes of adjudicating the claim for deduction under Section 36(1)(iii) of the Act (See judgment of the Bombay High Court in the case of Calico Dyeing and Printing Works v. CIT, Bombay City-II, reported in 34 ITR 265). In that judgment, it has been laid down that where an assessee claims deduction of interest paid on capital borrowed, all that the assessee had to show was that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether the capital was borrowed in order to acquire a revenue asset or a capital asset. The said judgment of the Bombay High Court applies to the facts of this case.*

5. *For the reasons given hereinabove, we answer the above question in the affirmative i.e. in favour of the assessee and against the department. The Appeal is accordingly disposed of. No order as to costs.*

11. In the present case in hand, it is evident that the said capital was borrowed for the purpose of the business of the assessee by way of purchase of land at Pali for its real estate purchase.

12. The Id. AR has also relied on the decision of the Hon'ble High Court in the case of *Tetron Commercial Ltd. vs. CIT* [2003] 133 Taxman 781 (Cal), wherein the said proposition was reiterated by the fact that the borrowed capital utilized for the purchase of business of the assessee, whether or not the same is in the nature of capital expenditure or revenue expenditure, the interest payable for the said loan is to be allowed u/s. 36(1)(iii) of the Act.

13. From the above observation and by respectfully following the cited decision, we are of the view that the assessee's claim of expenditure u/s. 36(1)(iii) of the Act is to be allowed. We do not find any infirmity in the order of the Id. CIT(A) and, therefore, ground no.1 raised by the Revenue is dismissed.

14. Ground no.2 – This ground relates to the interest paid on borrowings, amounting to Rs.2,15,30,797/- for investments in equity shares and assessed as STCG. The A.O. has observed that the assessee had declared STCG, amounting to Rs.1,10,00,960/- on sale of shares of India Bulls Security Ltd., India Bulls Housing Finance Ltd. and India Bulls Real Estate Ltd. It is observed that the assessee had claimed interest expenses of Rs.2,15,30,797/- which was paid towards short term borrowings. The A.O. had disallowed the impugned amount for the reason that the interest expenses incurred for purchase of shares are not related to the transfer of asset. The A.O. held that the said claim u/s. 48(1) is not allowable, as it does not pertain to acquisition of the asset. The A.O. also held that the same cannot be allowed for the fact that the cost of acquisition of an asset is incurred at the time of acquiring the asset and the subsequent expenditure

incurred cannot be construed as cost of acquisition. The assessee's claim u/s.48(ii) was also not allowed by the A.O.

15. The Id. CIT(A), on the other hand, held that the assessee can capitalize the impugned interest as part of cost of acquisition u/s. 48 of the Act which is to be allowed as deduction against the STCG on transfer of shares. The Id. CIT(A) deleted the said disallowance of interest expenses by relying on the decision of the co-ordinate bench in the case of *DCIT vs. Shri Fritz D. Silva* in ITA No. 236/Mum/2010 vide order dated 08.05.2015 for A.Y. 2005-06 and the decision of Hon'ble Delhi High Court in the case of *CIT vs. Mithilesh Kumari* 92 ITR 09 (Del).

16. Having heard the rival submissions and perused the materials on record. It is observed that the A.O. has disallowed the claim of the assessee towards interest expenses paid for short term borrowings for the reason that the expenditure incurred subsequent to the purchase of assets cannot be considered as 'cost of acquisition'. The assessee has relied on the decision of the Hon'ble Madras High Court in the case of *CIT vs. Trishul Investments Ltd.* [2008] 305 ITR 434 (Mad), wherein it was held that the interest paid for acquisition of shares would amount to cost of shares and was to be capitalized with the cost of acquisition of shares. The assessee also relied on the decision of the co-ordinate bench in the case of *Neera Jain vs. ACIT, Circle-12(3), Mumbai* in ITA No. 1861/Mum/2009 vide order dated 23.03.2009, wherein it was held that the interest paid by the assessee was part of acquisition of shares and the same was to be allowed as deduction. It is pertinent to cite the relevant extract from the decision of the Hon'ble Madras High Court in the case of *Trishul Investments Ltd.* (supra) as below:

5. In respect of Question No.2, the interest liability on the borrowed funds was debited in the books of the assessee company. The Tribunal correctly held that the interest paid for acquisition of shares would partake character of cost of share and therefore the same was rightly capitalised along with the cost of acquisition of shares. There is no denial regarding the borrowed money for the acquisition of shares by the assessee. The Tribunal correctly held that the interest payable thereon should be added to the cost of acquisition of shares. The reasons given by the Tribunal are based on valid materials and evidence. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence no substantial question of law arises for consideration of this Court in respect of Question No.2.

17. By respectfully following the above cited decision, we are of the considered view that the assessee's claim of interest on borrowings against STCG is to be allowed. We find no infirmity in the order of the Id. CIT(A) and we hereby dismiss ground no.2 filed by the Revenue.

18. Ground nos. 3 & 4 are general in nature and does not require adjudication.

19. In the result, the appeal filed by the Revenue in ITA No. 7472/Mum/2018 is dismissed.

ITA No. 7473/Mum/2018

20. This appeal filed by the assessee for A.Y. 2015-1 is also on identical facts except for the quantum and the observations held in ITA No. 7472 holds good and apply *mutatis mutandis* to this appeal also.

21. In the result, the appeal filed by the Revenue in ITA No. 7473/Mum/2018 is also dismissed.

Order pronounced in the open court on 24.02.2023

Sd/-

Sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 24.02.2023
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai