

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.163/RJT/2016
Asstt.Year :2012-13**

DCIT, Cir.1(1) Rajkot.	Vs	M/s.Aryan Arcade P.Ltd. C/o. Milestone Property MG Basement Grant Central Mall Rajkot.
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(Applicant)	(Responent)
Assessee by :	Shri Fenil Mehta, AR
Revenue by :	Shri Shramdeep Sinha, Id.CIT(DR)

सुनवाई की तारीख/Date of Hearing : 11/01/2023
घोषणा की तारीख /Date of Pronouncement: 22/03/2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The present appeal has been filed by the Revenue against order passed by the Commissioner of Income Tax(A)-1, Rajkot (in short referred to as Id.CIT(A) under section 250(6)of the Income Tax Act, 1961 ("the Act" for short), dated 29.2.2016 pertaining to the Asst.Year 2012-13.

2. The solitary issue, it was pointed out, related to disallowance made by the Id.AO of interest expenses claimed by the assessee under section 24(b) of the Act amounting to Rs.7,28,00,166/-, against income earned from renting out its property shown under the head

“income from house property”, which the ld.CIT(A) held to be allowable to the assessee.

3. The facts of the case being that the assessee is a closely held company engaged in the business of letting out shops and Malls on lease. The assessee had returned income earned under the head Income from Other Sources. The assessee had claimed interest expenses of Rs.7,28,00,166/- against the same as being paid on borrowings for acquiring/constructing such properties u/s 24(b) of the Act. From the facts before him the AO noted that the funds on which interest was paid, being Optionally fully convertible debentures (OCD) of Rs.14.89 Crs, was utilized for repaying outstanding liability of a party M/s JPIPL. He derived from the same that interest had been paid on borrowings used for repayment of original borrowings for construction of property. The AO held that claim of interest on such indirect borrowings for construction was not tenable in law and accordingly disallowed the claim of assessee interest expenses u/s 24(b) amounting to Rs.7,28,00,166/-

4. The Ld.CIT(A) allowed the same noting that the borrowing had been utilized for repaying liability pertaining to construction of Mall and not for repaying loan taken for construction. He therefore held that the loan could be said to be utilized for constructing house property, and interest paid thereon, he held, was therefore allowable in terms of section 24(b) of the Act.

5. Aggrieved by the same the Revenue has filed the present appeal before us raising the following ground:

1. *The ld.CIT(A)-1 has erred in law and on facts of the case in deleting the addition made by the AO on account of interest expenses u/s.24(b) of Rs.7,28,00,166/-*

6. The Ld.DR argued that the assessee's claim to deduction of interest u/s 24(b) of the Act was untenable in law since the interest was paid not on borrowing utilized for constructing the house property rental income of which was taxed under section 23 of the Act, but on borrowing made for repaying the original borrowing so utilized. The Ld.DR drew our attention to the said facts as brought out at page no.3 of the assessment order as under:

- (i) *The assessee company was incorporated on 4th November 2004 and its entire share capital was owned by JP Infrastructure Private Ltd. (JPIPL). The entire cost of construction along with cost of land was born by JPIPL.*
- (ii) *IL&FS Milestone Fund-1 (a Venture Capital Fund) purchased entire shares from JPIPL on 29.03.2008 and trustees of the Fund became owner the assessee company.*
- (iii) *The assessee company has issued 25,54,783/- 18% Optionally Fully Convertible Debentures of 100 fully paid raising Rs.25,54,78,300/- The proceeds of debentures were utilized for funding additional cost construction of shopping mall.*
- (iv) *In FY 2009-10 (A.Y. 2010-11), assessee company again issued 14,89,67,078/- 18% Optionally Fully Convertible Debentures of 1 fully paid raising Rs. 14,89,67,078/- The proceeds of these debentures were utilized for repayment of outstanding liability of JPIPL.*
- (v) *Assessee company has paid Rs. 7,28,00,166/- as interest to the fund which has been claimed as expenditure from the income from house property.*

7. Referring to the above, the Ld.counsel for the assessee pointed out that interest paid and claimed as an expense under section 24(b) of the Act against income from house property, related to 18% Optionally Fully Convertible Debentures issued by the assessee amounting to Rs.14,89,67,078/- for the purpose of repaying of loan taken from JPIPL. He contended that as per provision of section 24(b) of the Act, the assessee was entitled to claim interest only on the loan directly utilized for the purpose of construction, repair and renovation of the property and not on loan borrowed to repay the

original loan taken for the said purpose. He contended that proviso to section 24(b) clearly provides that it was only with respect to interest claimed under section 24(b) of the Act on self-occupied property as stated under section 23(2) of the Act; that the interest paid on loan borrowed for repaying the loan utilized for constructing the said property was allowed. He drew our attention to the 3rd proviso and *Explanation* to section 24(b) in this regard. He contended that this benefit was exclusively given only to the properties as per section 23(2) and not to other house properties. Therefore, the assessee's claim had been rightly disallowed by the AO, he contended.

8. The ld.counsel for the assessee, on the other hand, countered by pointing out that this issue has already been dealt in a number of decisions by courts, wherein it has been categorically held that section 24(b) nowhere restricts or excludes the claim of interest paid on loans taken for repaying the original loan taken for construction, renovation and repair of house property; that in all these decisions, it has been categorically held that the second loan for all purpose is to be treated as taken for the purpose of construction, renovation, repair of the house property, and it cannot be read or deemed to be taken only for the purpose of repayment of original loan. He drew our attention to following decisions viz.

- i) Indraprastha Shelters P.Ltd. Vs. DCIT, 124 taxmann.com 569 (Bangalore-Trib)
- ii) ITO Vs. Dinesh Madhavlal Patel, 108 taxmann.com 211 (Ahd-Trib);

9. The ld.DR countered by stating that in the case of Indraprastha Shelters P.Ltd. (supra), the ITAT had not rightly

interpreted impact of the CBDT Circular No.28 dated 20.8.1969. He stated that this CBDT Circular which specifically allowed the interest paid on fresh loans to repay the original loan was with respect to old provision of section 24(1)(vi), which since then had been replaced with new section 24(b). The applicability of the said CBDT was to be restricted only to the old section and would not apply to the new section in view of insertion of third proviso therein to which our attention was pointed out.

10. The ld.counsel for the assessee, on the other hand, countered by saying that, ITAT in the said order dealt with all these contentions raised by the ld.DR. He further pointed out that the ld.DR has mis-appreciated the facts and circumstances of the case, and has misunderstood that claim of the assessee to interest. He pointed out that the interest did not pertain to a fresh loan taken for repayment of an original loan, but the loan taken was for repayment of liability incurred on construction of the house property only. He pointed out that all evidences to bring out this fact were placed before the ld.CIT(A) by way of pointing out that original shareholders of the company, JPIPL had undertaken the construction of a Mall and rental income of which had been returned as income from house property, and the liability of the assessee with respect to JPIPL construction undertaken was outstanding liability in its books of accounts, and to repay this liability the assessee had issued convertible debentures; that accordingly, the loan was taken for repayment of the liability and not for repayment of any loan. In this regard, he drew our attention to the submission made before the ld.CIT(A) reproduced at page no.6 of the CIT(A)'s order:

“c) The assessee was incorporated on 4th November, 2004. The entire share capital of the assessee company was owned by J.P. Infrastructure Pvt. Ltd. The assessee purchased land at Raikot and started construction of

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a building which is to be used as a commercial mall. The construction of the mall was shown as capital work in progress alongwith cost of land. The entire project was taken up for development by JPIPL and also charged fees for the same. They also paid all expenses to the supplier/vendor of the material/services. That expenses remain outstanding in the books of the company. The entire cost of land and construction was funded by JPIPL and the same was shown as current liabilities in the balance sheet.

A copy of the liability ledger account of J P Infra. P. Ltd., from 2004-2005 to 2009-2010 is attached for your kind consideration along with the debenture issue account, audit report to verify the application of the fund used for the purpose the construction of the mall building only is attached at page No. _____.

> IL&FS Milestone Fund-1 (a scheme of SEBI registered Venture Capital Fund - Milestone Real Estate Fund) ("IL&FS") has purchased entire shares capital of the assessee from JPIPL and its nominee shareholders to become the 100% shareholder by 29/03/2008. The construction of the mall was continued and the assessee had incurred further cost of construction. The additional cost of construction was funded by the assessee through issue of Optionally Fully Convertible Debentures (OFCDs) to its shareholder IL&FS.

> The assessee commenced its activity of renting of various units in the mall and earned rental income. During the financial year 2009-10, the assessee further issued OFCDs of Rs. 14,89,67,078/- to its shareholder to repay the outstanding liability of JPIPL. The assessee submits that the unsecured loans obtained during the year on issue of OFCDs were utilized for the purpose of repayment of outstanding existing liability which was obtained for the purpose of construction of the building by the JPIPL. The assessee submits that the interest paid on the borrowed money for the purpose of repayment of existing liability is allowable as deduction in computing income from house property as per provisions of section 24(b) of the Income-tax Act, 1961 (the Act),

d) Again reiterate the fact that, as discussed earlier in show cause and our contention, we submit that, there was introduction of capital in the form of OFCD to pay the OUTSTANDING LIABILITY OF THE CONSTRUCTION OF MALL BUILDING. To justify our claim we attached herewith the copy of the ledger account of J P Inf. P. Ltd. to whom all these payment made against liability incurred by the company for the construction of the mall building. To summaries the fact of application of OFCD fund we submit the brief facts of the case as under:

Source Fund	of	Date	Amount Rs.	Application of Fund	Date	Amount Rs.
IL & FS- M Fund- 1		19.11.2007	5,00,00,000	JPIPL (SC)	19.11.2007	1,46,00,000
				JPIPL (SC)	19.11.2007	3,54,00,000

IL & FS- M Fund- 1	07.12.2007	3,80,00,000	JPIPL (SC)	11.12.2007	3,75,00,000
IL & FS- M Fund- 1	10.12.2007	3,20,00,000	JPIPL (SC)	11.12.2007	3,25,00,000
IL & FS- M Fund- 1	11.12.2007	4,54,78,380	JPIPL (SC)	08.12.2007	3,75,00,000
			JPIPL (SC)	11.12.2007	80,00,000
IL & FS- M Fund- 1	06.10.2008	3,00,00,000	JPIPL (SC)	07.10.2008	2,30,00,000
			JPIPL (SC)	07.06.2008	25,00,000
			JPIPL (SC)	22.12.2008	14,00,000
			JPIPL (SC)	27.09.2008	3,50,000
			JPIPL (SC)	03.02.2009	10,00,000
			JPIPL (SC)	03.03.2009	8,00,000
			JPIPL (SC)	05.03.2009	4,00,000
			JPIPL (SC.)	27.04.2009	6,00,000
IL & FS, M Fund- 1	14.10.2008	1,00,00,000	JPIPL (SC)	14.10.2008	1,00,00,000
IL & FS- M Fund- 1	24.06.2008	5,00,00,000	JPIPL (SC)	24.06.2008	5,00,00,000
IL & FS-M Fund-1	20.08.2009	14,89,67,07.6 7	JPIPL (SC)	20.08.2009	14,89,67,077-67

11. He thereafter drew our attention to the findings of the Id.CIT(A) also at page no.10 of the order as under:

“6. I have duly considered the submission of the appellant and also gone through the discussion made in the assessment order. In all the grounds of appeal, only issue involved is whether interest paid on additional loan taken in the form of debenture is allowable or not u/s.24(b).

I am of the considered view that as the additional loan taken in the form of debentures issued has been utilized to pay the existing liabilities of construction company M/s. J.P. Infrastructure Pvt. Ltd.(JPIPL) which was taken over by the appellant ;company. The erstwhile JPIPL was constructing this Shopping Mall. Hence, the liabilities taken over by the appellant company is towards or related

to the construction of Shopping Mall only. And additional loan taken by the appellant to repay the balance liability of JPIPL cannot be said to be not utilized for construction of the Shopping Mall as the view taken by the AO who in turn has disallowed the interest on this loan. The view taken by the AO is completely wrong and contrary to the facts of the case. Hence, I am of the considered view that the interest of Rs.7,28,00,166/- paid on additional loan (in form of debentures issued & utilized for paying the liabilities) is very much allowable u/s.24(b). Hence, the addition/disallowance made by the AO is hereby deleted.

Ld.Counsel for the assessee pointed out that the ld.CIT(A) had categorically noted the fact that the loan taken by the assessee was to repay the outstanding liability of JPIPL and not any other loan taken for the construction of Mall, and therefore, the assessee was entitled to deduction of interest paid thereon as per section 24(b) of the Act alone.

12. We have heard rival contentions and gone through orders of the authorities below and have also taken note of all the decision cited before us.

The issue for adjudication before us pertains to allowability of claim of interest expenses u/s 24(b) of the Act amounting to Rs.7,28,00,166/- against income from house property . The case of the Revenue being that interest having been paid for loan taken to repay a loan/ borrowing made for constructing house property (mall in the present case), the same is not allowable since as per law only interest paid on borrowings directly utilised for construction are allowable.

13. The Ld.CIT(A) ,on the contrary has given a finding of fact that the loan on which interest was paid , was not utilized for repaying another loan, but was utilized for paying off a liability of the assessee company for construction of the house property. Noting

this fact he has held the loan as having been procured for constructing property and interest paid thereon therefore allowable in terms of section 24(b) of the Act as interpreted by the Revenue /AO in the present case.

14. We have noted from the assessment order that the finding of the AO is that the loan by way of Optionally fully convertible debentures (OCD) of Rs.14.89 Crs was issued to repay outstanding liability of JP Infrastructure Pvt. Ltd (JPIPL). This outstanding liability of JPIPL was found by the Ld.CIT(A) as pertaining to construction expenses incurred on Mall constructed by the assessee. The Ld.CIT(A) noted this fact from the evidences filed by the assessee by way of ledger account of JPIPL showing that the outstanding liability of JPIPL was on account of construction work undertaken by it for the assessee and also the fact of utilizing the OCD for repaying this liability. Copy of ledger account of JPIPL was also placed before us at P. B 33-82.

Considering the fact that even the AO noted the OCD being utilized for payment of outstanding liability of JPIPL which the assessee demonstrated as pertained to construction expenses, we find no infirmity in the findings of the Ld.CIT(A) that the loan was utilised not for repayment of an earlier loan but for a liability for construction of property. The ld.DR has been unable to controvert this fact before us. We therefore agree with the Ld.CIT(A) that the loan can be said to be utilized for construction of property and interest thereon accordingly is allowable u/s 24(b) of the Act.

15. In view of this uncontroverted finding of fact the basis for disallowing interest expenses by the AO does not survive. Therefore, for this reason alone, the allowance of claim of deduction under

section 24(b) of the Act of the interest paid by the assessee of Rs.7,28,00,166/- is held to be sustainable in law.

16. Having held so, we see no reason to deal with the arguments of the ld.DR which are in the context of different set of facts which are not present in the case before us. The entire arguments of the ld.DR are raised on the fact that the interest has been paid by the assessee on a fresh loan taken to repay the original loan. Since the facts in the present case are not so, dealing with the same is only an academic exercise, and we see no reasons therefore to deal with the same.

In view of the above, the ground of the appeal of the Revenue is rejected.

17. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 22nd March, 2023 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 22/03/2023

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