

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “D”, MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.655 & 656 /Mum/2022
(Assessment years : 2012-13 & 2014-15)**

Distinctive Realty Private Limited Unit No.117, 1 st Floor, Rehab Building No.4, Akruiti Annexe, Road No.7, Marol MIDC, Andheri (West), Mumbai-400 093 PAN : AADCD1410B	vs	Dy. Commissioner of Income Tax Circle-3(1)(1), Mumbai Room No.607, Aayakar Bhawan, M.K. Road, Mumbai 400 020
APPELLANT		RESPONDENT

Assessee represented by	Shri Madhur Agarwal, Adv., Hiten chande
Department represented by	Smt. Riddhi Mishra (CIT DR)

Date of hearing	31-05-2023
Date of pronouncement	02 -06-2023

ORDER

PER : MS PADMAVATHY S. (AM)

These two appeals are arising out of the order of the Commissioner of Income-tax (National Faceless Appeal Centre, Delhi), [in short, ‘the Ld.CIT(A)] dated 15/03/2022 for assessment years 2012-13 & 2014-15.

2. The only issue contended in both these appeals through various grounds is against the lower authorities holding that the interest cost should not be capitalized for the purpose of cost of acquisition of investments made in the subsidiary in form of Share Capital. The assessee is a builder engaged in the business of real estate. The assessee filed the return of income for A.Y. 2012-13 on 30/09/2012 declaring a loss of Rs.9,95,03,032/- and for A.Y. 2014-15, the return was filed on 30/09/2014 declaring a total income at Nil. The case was selected for scrutiny and the statutory notices were duly served on the assessee. During the course of hearing, the Assessing Officer noticed that the assessee had capitalized the interest on borrowings by adding the same to the investment made in the subsidiary. The Assessing Officer was of the view that the interest amount should not be capitalized with the cost of investment in shares. The Assessing Officer, for the purpose of computing the disallowance under section 14A considered the amount of interest capitalised and arrived at disallowance of Rs.7,00,68,550/- for A.Y. 2012-13 and Rs.3,37,79,182/- for A.Y. 2014-15.

3. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) deleted the disallowance made under section 14A on the ground that the assessee has not earned any tax free income during the year. With regard to the contentions raised by the assessee with regard to the Assessing Officer not allowing capitalization of interest expenses, the CIT(A) held that the interest cannot be treated as part of cost of acquisition. Aggrieved, the assessee is in appeal before the Tribunal.

4. Before us, the Ld.AR submitted that the assessee has borrowed funds and has used the same for making investment in sister concerns in the form of share

capital. The assessee during the years under consideration had capitalized the interest paid on the funds borrowed and added the same to the amount invested in the sister concern. In this regard, the Ld.AR drew our attention to the financial statement (page 27 – 36 of paper book). The Ld.AR further submitted that the assessee had not claimed the impugned amount as an expenditure and has capitalized the same as per the normal accounting practice. The Ld.AR also submitted that for the purpose of income tax in the computation of income also the assessee has not claimed this as an allowable expenditure. Therefore, the Ld.AR argued that the lower authorities holding that the interest should not be capitalized is not warranted since there has not been any taxable event concerning the cost of acquisition that has happened in the years under consideration for the Revenue to hold so.

5. The Ld.DR, on the other hand, vehemently argued that the interest on money borrowed for investment in share capital cannot be capitalized and be part of cost of acquisition. Ld.DR also drew our attention to the fact that the assessee for the earlier years have not capitalized the interest and has done only during the years under consideration. It is accordingly submitted that the lower authorities are right in treating the interest expenditure not to be part of cost of acquisition.

6. We heard the parties and perused the materials on record. The limited issue for our consideration in this appeal is whether the lower authorities are correct in holding that the interest cost should not be part of cost of acquisition during the years under consideration. In this regard we notice that the assessee has neither claimed the impugned amount as expenditure in the statement of income nor there has been any sale of shares where the said cost of acquisition has been claimed as a

deduction. Therefore we see merit in the argument of the Id AR that the lower authorities holding against the capitalization of interest for the years under consideration is not warranted. It is also worth noting here that as per the Accounting Standard 16, the borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalised as part of the cost of that asset. It is accordingly submitted by the Id AR that the assessee has followed the Accounting Standard while preparing the financial statements and the same cannot be questioned without rejecting the books of accounts. Given the facts of the case in our considered view for the years under appeal here, the lower authorities have no reason to hold against the assessee following certain accounting standard, unless there is an impact to the amount offered to tax by the assessee during the years under consideration. In other words, when in the years under consideration there is no taxable event that is adversely affected by the capitalization of interest by the assessee in the books of accounts, the CIT(A) / AO cannot hold that the interest capitalized cannot be part of the cost of acquisition. The impugned capitalization is merely an accounting treatment and does not have any impact on the income offered to tax during the years under consideration.

7. We also notice that the assessee is not aggrieved by the treatment as held by the lower authorities since there is no addition / disallowance arising out of the order of the CIT(A). Therefore, we will limit our adjudication only to the extent of holding that it is not warranted on the part of the lower authorities to decide against the capitalization of interest to be part of cost of acquisition since there is no taxable event happened during the years under consideration that is adversely impacted by such treatment. We, accordingly, allow the appeal leaving open the

right of the Revenue to examine the issue of whether the interest paid to be part of cost of acquisition or not, in the year in which a taxable event occurs involving the cost of acquisition, i.e. the year in which the assessee sells the investment and the capital gain is computed.

8. The assessee had also raised an additional ground with a plea to allow the entire interest as an expenditure, if the same is not allowed to be capitalized. However, during the course of hearing, no argument was presented in this regard. Hence, the same is dismissed as not pressed.

9. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 02/06/2023.

Sd/-

sd/-

(ABY T VARKEY)	(PADMAVATHY S)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 02nd June , 2023

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
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BY ORDER,

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Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai