

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 110/JP/2018
निर्धारण वर्ष/Assessment Years : 2014-15

M/s Shri Siddheshwar Organic Foods Private Limited, J-6, Himmat Nagar, Tonk Road, Jaipur	बनाम Vs.	ACIT Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCD 3162 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Sh. A. S. Nehara (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 16/05/2023
उदघोषणा की तारीख / Date of Pronouncement: 26/06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeal-1), Jaipur [Here in after referred as Ld. CIT(A)] for the assessment year 2014-15 dated 07.11.2017 which in turn arises from the order passed by the ACIT, Circle-1, Jaipur passed under Section 143(3) of the Income tax Act, 1961 (in short 'the Act') dated 26.12.2016.

2. In this appeal, the assessee has raised following grounds: -

1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has grossly erred in confirming the action of Id.AO in recomputing the Long term capital gain by not allowing deduction towards cost on account of interest capitalized to cost of asset amounting to Rs.77,04,728/-arbitrarily. Appellant prays cost of asset sold as claimed by assessee deserves to be allowed as claimed including interest paid.

1.1 That, Ld. CIT(A) has further erred in confirming the disallowance of interest without appreciating the fact that the funds borrowed were utilized in acquisition of asset and further erred in ignoring the submission made by assessee and evidences adduced. Appellant prays interest claimed by assessee deserves to be allowed while computing capital gain.

1.2 That, Ld.CIT(A) has further erred in confirming the action of Id.AO in recomputing the cost of asset sold by assessee, by ignoring the fact that the total cost of asset claimed by assessee was accepted as declared in scrutiny assessment of A.Y.2012-13 completed u/s 143(3) of the Income Tax Act, 1961. Appellant prays that interest capitalized for preoperative period deserves to be accepted as claimed.

That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.

3. Succinctly, the fact as culled out from the records is that assessee company has filed its e-return of income for the A.Y 2014-15 on 19.08.2014 declaring total income of Rs. 5,62,81,450/-. The assessee company derives income from House Property, Capital Gains & Other Sources. The case was selected for scrutiny assessment under CASS. The notice u/s 143(2) of the I.T. Act, 1961 was issued on 31.08.2015 and served upon the assessee. Due to change of incumbent notice u/s 142(1) of the I.T. Act, 1961 along with questionnaire was issued on 23.08.2016. It was noticed that the assessee company had sold a property and while calculating LTCG

the company took the benefits of indexation and deducted index cost of acquisition. The AR was asked to submit the details regarding cost of acquisition claimed. The AR submitted vide his letter dated 04.10.2016 that loan was taken from ICICI Bank and interest paid on this loan was capitalized.

4. Before going into the merits of the case it would be apt to mention that in this case the issue has been decided by the ITAT in ITA No. 110/JP/2018 vide order dated 19.11.2020. The finding of the co ordinate bench on the issue is mentioned at para 8 and the same is reiterated here in below :

“8. We find that the assessing officer did not assign any reason as to why the explanation of the assessee was not acceptable when under the similar facts and circumstances, claim of the assessee regarding capitalization of interest was allowed in the earlier year.

We are of the considered view this approach of the assessing officer is contrary to the settled principles of law. It is incumbent upon the assessing officer at least assign the reason as to why he was adopting a different view then the adopted by its predecessor in earlier years. Further, the Ld. CIT(A) recorded the finding that the issue of capitalization was not examined by the assessing officer as the assessee capitalized the interest without routing through its profit and loss account and the case as relied by the Ld. DR is on a different set of facts are not applicable on the facts and circumstances of the present case. We cannot affirm this view of the Ld. CIT(A) where he made guesswork by using word it appears that means the finding is not based upon correct appreciation of the facts. There is no dispute so far issue regarding allowability of interest paid on the borrowed capital used for acquisition of property. Hence cost of acquisition would also include the interest paid on such borrowed capital. However, both the authorities below have disallowed the claim of the assessee, on the ground that there is no nexus between the capital borrowed and its utilization for acquisition of the

property. It is not in dispute that the property was acquired by a borrowed capital initially borrowed from the relatives of the Directors. Thereafter, the loan taken from such persons was repaid out of the loan received from ICICI bank. Therefore, it cannot be construed that there is no nexus between the acquisition of the property and the utilization of the capital so borrowed. Under these undisputed facts, we are of the view that the authorities below were not justified in disallowing the claim of the assessee. However, the interest paid on the capital utilized for repayment of loan, we allow as cost of acquisition. Therefore, the assessing officer is hereby directed to allow capitalization of interest to the extent that the assessee had utilized borrowed funds for repayment of loan taken from directors and other relatives.

9. In the result, the appeal filed by the assessee is allowed in the terms indicated hereinabove.”

5. In accordance with the above direction the assessee preferred a Miscellaneous application (MA) in MA No. 2/JP/2022. The said MA was disposed with the following observations:

“By way of this Miscellaneous Application, the assessee is seeking rectification of the Tribunal's order passed in ITA No. 110/JP/2018 dated 19.11.2020 for the assessment year 2014-15. The present combination of the Bench was not there at the time when the impugned order dated 19.11.2020 in ITA No. 110/JP/2018 for the assessment year 2014-15 was passed. However, while going through the order in ITA No. 110/JP/2018 for the assessment year 2014-15 dated 19.11.2020, we find that while accepting the appeal of the assessee it appears that the claim of the assessee regarding interest on acquisition of property and also interest on borrowed funds utilized for repayment of loan taken from Directors and other relatives was contemplated to be allowed but while issuing such directions only interest paid on capital utilized for repayment of loans was allowed. Thus in our view, there appears to be error apparent while passing the impugned order. Therefore, considering the apparent mistake, we recall the order of the Tribunal dated 19.11.2020 in ITA No. 110/JP/2018 for the assessment year 2014-15 for fresh hearing. The Registry is directed to fix the case in regular course and notice be sent to both the parties.

2. In the result, Miscellaneous Application of the assessee is allowed.”

6. Thus, both the parties were issued notices to decide the issue on hand. A propose to the issue on hand the relevant finding of the Id. CIT(A) is reiterated here in below:

“(iv) I have duly considered the submissions the appellant, assessment order and the material placed on record. It is noted from the balance-sheet of the appellant company as at 31/03/2010 that as on 31/03/2009, its issued and paid up share capital was to the tune of Rs. 1 Lac only and it has shown free hold land as a fixed asset at Rs. 80,04,892/- thereof and the source of such investment in land appears to be out of unsecured loans taken from the directors of the appellant company. It may not be out of place to mention here that the agreement for purchase of the land was executed in the year 2006 and the payments were stated to be made in installments over a period of time. However, the appellant has failed to bring on record any material which may suggest that these unsecured loans from its directors were interest-bearing and it had paid interest thereon prior to 30.01.2010, when the loan of Rs. 2.15 Crore was sanctioned by the ICICI bank. It is interesting to note that the cost of acquisition of the land was to the tune of Rs. 96,42,905/- only inclusive of stamp duty and registration charges. It may be mentioned that as on 31/03/2010, the investment in freehold land was shown at Rs. 1,15,52,132/- and it appears that for the first time, a sum of Rs. 19,09,227/- was capitalized on account of preoperative expenses and interest during the financial year 2009-10 L.e. prior to that, no interest was capitalized. During the appellate proceedings, the AR was required to explain why loan of Rs. 2.15 crore was taken whereas the cost of acquisition of land was to the tune of Rs. 96,42,905/- only but no explanation could be submitted by the AR. I fail to understand why the appellant has taken a huge loan of Rs. 2.15 crore for repayment of outstanding loans taken by it earlier for acquisition of the said property.

(v) It would not be out of place to mention here that as on 31.03.2009 and 31.03.2010, the unsecured loans from Shri Rajendra Kumar Jain and Shri Sanjay Godha, the Directors of the appellant company, were shown at Rs. 41,58,395/- & Rs. 38,30,000/- and Rs. 0/- and Rs. 43,50,000/- respectively, whereas as on 31.03.2010, the appellant company has provided loans and advances to the tune of Rs. 1,17,82,880/- and Rs. 24,33,120/- to M/s Ruby Buildcon P Ltd and M/s Royal Classic Buildmart P Ltd respectively. Thus, it is crystal clear that the borrowed funds from ICICI bank were not used for repaying the loans taken by the appellant company from its Directors for the purchase of the property under consideration, as claimed by the appellant.

(vi) The contention of the appellant that it has capitalized only the net interest on the loan taken from ICICI bank has also been examined very carefully and it has been observed that the interest paid ledger account was submitted for the FY 2011-12 and FY 2012-13 only and not for the FY 2009-10 and FY 2010-11, whereas the loan from ICICI bank was taken during FY 2009-10 and substantial amount was also advanced by the appellant during the FY 2009-10 to other parties, which means that the appellant has not charged any interest from these parties for FY 2009-10 and 2010-11. These facts clearly prove that the appellant has tried to reduce its tax liability on sale of the land under consideration. Thus, this contention of the appellant deserves to be rejected.

(vii) It has been noted from the sanction letter of ICICI bank that the loan was sanctioned for "Home Equity (HE) + Residential" i.e. apparently, the loan of Rs. 2.15 crore was taken for the purpose of construction of residential property(ies) on the said piece of land and not for the purpose of acquisition of the property under consideration. It has also been noted that the loan under consideration was a mortgage loan as Maximum loan to value ratio was shown at 59.94% of valuation of property in the above referred sanction letter of ICICI bank.

(viii) The appellant has relied upon the assessment order passed by the AO u/s 143(3) of the Act for the AY 2012-13 stating that the returned income was accepted therein. It is noted that since there were no business activities during that year, the AO has accepted the returned income and it appears that the issue of capitalization of interest was not examined by the AO as the appellant has capitalized the interest without routing it through its profit and loss, account. Further, the principle of res judi cata do not apply to income tax proceedings and each assessment year is independent of the other assessment years.

(ix) In view of the above discussion and looking to the totality of facts and circumstances of the case, it is held that the AO was justified in not including the interest payment on the loan taken by the appellant from ICICI bank as cost of acquisition of the property sold by the appellant during the year under consideration and thus. the addition of Rs. 77,04,728/- made by the AO is hereby sustained.

4. In the result, the appeal is hereby dismissed."

7. The Id. AR appearing on behalf of the assessee reliance on the written submission which is extracted in below;

“Brief facts of the case are that appellant is a private limited company incorporated under The Companies Act, 1956. Return of Income for the year under consideration was filed on 19.8.2014 declaring total income at Rs.5,62,81,450/- comprising of the income from house property, capital gains and interest income. Assessment was completed u/s 143(3) dt. 26.12.2016 at a total income of Rs.6,39,86,180/- by making disallowance of Rs. 77,04,728 claimed as indexed cost of interest u/s 48(ii) from the long term capital gains declared by the assessee which has been challenged in the present appeal. In elaboration to the grounds of appeal raised, following humble submission is made for your honours’ kind and sympathetic consideration;

Grounds of Appeal No. 1 & 1.2:

All these grounds of appeal, assessee has challenged the action of Id. AO of not allowing the indexed cost of interest paid of Rs. 77,04,728/- on borrowed funds claimed u/s 48(ii) as capitalization against the long term capital gains arisen from the sale of property.

Brief facts of the case are that the appellant company purchased a property R-63, Raj Angan, NRI Colony, Sanganer, Jaipur for a total sum of Rs. 90,57,235/-. Out of total sale consideration Rs. 23,43,375/- were paid as on the date of agreement made and executed on 30.5.2006 to the seller and thereafter the balance payments were made in various years prior to FY 2009-10 and after making the entire payment in FY 2009-10 the same was got registered in its own name in terms of registered sale deed dt. 13.1.2010. Since the funds for the acquisition of property were borrowed funds interest paid thereon was included in the total cost of acquisition of property. During the year under appeal the appellant company sold the said property and claimed the amount paid for acquiring asset, stamp duty and interest paid as cost of acquisition from sale consideration for computing the long term capital gains in terms of the provisions of section 48(ii) of the Income Tax Act, 1961 and paid due taxes. Ld. AO without giving any plausible reason and ignoring the case laws cited made the disallowance of the interest paid in arbitrary manner .

In this regard it is submitted that the Assessee company sold the property owned by it for a total consideration of Rs 7,65,00,000/- and after reducing Indexed cost of acquisition of Rs 2,20,31,767/-, long term capital gain of Rs 5,44,68,233.00 was offered for tax in the return of income filed. The indexed cost of acquisition as claimed is tabulated as under :

Particulars	Year	As per books of Accounts	Income from Capital
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			Gains		
Sale Proceeds			7,65,00,000.00		7,65,00,000.00
Less: Cost/Indexing Cost		Actual cost		Indexed cost	
Cost of purchase till date	2009-10	90,57,235.00		1,34,56,873.00	
Stamp duty	2009-10	4,00,100.00		5,94,452.00	
Registration Fees	2009-10	1,85,570.00		2,75,713.00	
Interest paid till acquisition	2009-10	19,09,227.00		28,36,652.00	
Interest capitalized	2010-11	9,65,764.00		12,75,460.00	
Interest capitalized	2011-12	14,46,718.00		17,30,533.00	
Interest capitalized	2012-13	16,89,559.00	1,56,54,173.00	18,62,084.00	2,20,31,767.00
Capital Gain			6,08,45,827.00		5,44,68,233.00

It is relevant to state that indexation of the cost incurred prior to registration is not claimed from the year from which it is paid and was claimed from the year when the title of the said property has transferred in the name of appellant as per registered sale deed and the interest paid on the amount borrowed for the acquisition was capitalized every year as the asset was not put to use. All the amount debited to the cost of assets are duly verifiable from the audited Balance sheets of the Company (APB 6,8,13,27 & 28). The agreement for purchase of property was made in 2006 and payments were made in Installments from time to time. As the company had no funds, loans were taken to pay the installments and interest was paid to the respective lender. Initially the loan was taken from Directors and their relatives for acquiring the property. However after registration of sale deed in Jan. 2010, loan of Rs 215.00 lacs was taken from ICICI Bank in Feb 2010 (APB 21-21). After paying off the loan to Directors and their relatives, surplus loan amount was advanced to group concerns. The loans were given in February 2010 and interest was recovered from them and only net interest was capitalized.

The Id. AO, without assigning any reasons, disallowed the interest and pre operative expenses being interest which were capitalized in the year of payment. Copy of loan sanction letter of ICICI Bank, Balance sheets for the earlier year, bank statement showing credit of loan proceeds were submitted to the Id. AO during the course of Assessment proceedings and its nexus was also verifiable from the Balance sheets. The company had only one asset and on excess loan which was advanced to group concerns, interest was recovered and only net interest was capitalized. It was also submitted that the assessment for AY 2012 - 13 was completed u/s 143(3) wherein the income returned was accepted. In that year also appellant has claimed the capitalization of interest paid on loan.

Ld. CIT(A) while confirming the disallowance has alleged that the loan taken was not housing loan and further payment to one of the director was not paid immediately after the loan taken. He further observed that interest paid upto the

registration is not appearing in financial records separately. While alleging so Id. AO has failed to appreciate the fact that the interest paid was included in the total cost of the property on year to year basis and indexation of the same is claimed only after the date when the appellant has become the owner of the property upon registration. Further loan taken was taken after the acquisition of the property and it is an admitted fact that loan borrowed for the acquisition of the property were paid off from the funds so borrowed from bank. Once the interest is allowable on the funds borrowed for purchases of property, interest paid on subsequent loan for repayment of such loan is also allowable as part of cost of asset so purchased. The borrowed funds were either utilized towards acquisition of property or were advanced as Loans to it group concerns and interest was recovered from such loans and only net interest was capitalized. It is immaterial whether it is housing loan or mortgage loan and it has to be established that the funds borrowed are utilized in the acquisition of property or for making payment of the funds borrowed for acquisition. By filing each individual details the Assessee company had established the nexus of loan taken with the acquisition of the property. Regarding the assessment for AY 2012-13 completed u/s 143(3), Id. CIT(A) has observed that since the interest is not routed through P&L account and further principle of *Resjudicata* is not applicable in income tax proceedings, he did not accepted this contention. In this regard it is submitted that Id. CIT(A) failed to understand the accounting principal according to which any cost incurred on fixed asset is directly debited to its account and not to be routed through P&L Account thus appellant has made no mistake in doing so. Moreover, once the assessment was completed after proper verification of all the details and cost incurred during the year, it is presumed that a prudent assessing officer before passing the assessment order has made proper verification of all the facts to the best of his wisdom. Once department has accepted the cost of interest to be capitalized, following the principle of consistency, the same should have been allowed as cost u/s 48(ii) against the sale consideration for computing the long term capital gains.

In this regard reliance is placed on the decision of hon'ble Karnataka High Court in the case of CIT V/s Sri Hari Ram Hotels Pvt Ltd (2010) 325 ITR 136 wherein it has held that Interest paid is to be treated as part of cost of acquisition of the assets from year to year and is entitled to the benefit of indexation while computing the indexed cost of acquisition. This preposition is also held by various courts in following cases also:

- Delhi High Court in the case of CIT V/s Mithilesh Kumari 92 ITR 9
- ITAT Chandigarh Bench in the case of DCIT V/s Sunena Garg

Hon'ble Karnataka High Court in the case of CIT –vs. Maithreyi Pai reported in 152 ITR 247, held that interest paid on the borrowings for the acquisition of an capital asset could not be deducted for the purpose of computation under section 48, if the same was already the subject matter of deduction under other heads like those under section 57.

In the circumstances, it is humbly prayed that the disallowance of indexed cost of interest paid on the funds borrowed for the acquisition of property/ repayment of earlier loans taken for such purpose deserves to be allowed as expenditure u/s 48(ii) of the Income Tax Act, 1961 and the appellant humbly prays for deletion of the same.”

8. The Id. AR appearing on behalf of the assessee drawn our attention to the copy of the interest paid account placed on record and submitted that there is no dispute so far as liability of interest paid on the borrowed capital used for acquisition of property. Therefore, the cost of acquisition should include the interest paid on such borrowed capital. The Id. AR of the assessee relying on the amendment made in the year 2023 in the budget wherein section 48(ii) has been amended and it has been categorically held that if the interest is allowed u/s 24 of the Act. Then the benefit cannot be given u/s 48(ii) of the Act. This amendment even more clarifies the contention of the assessee and the intention of the revenue to allow the interest claimed by the assessee and the same is allowable while computing the cost of acquisition of the property. Therefore, the action of the Assessing Officer not allowing the interest paid to the bank to the extent of the interest paid to repay the loan taken from director and relative. The

Id. AR of the assessee submitted that there is no dispute so far as the interest paid by the assessee by the lower authorities. The assessee had taken a loan to repay the loan of unsecured loan taken by the assessee from directors and relatives to acquire the property and the interest paid to bank was allowed but interest on the amount used to repay the loan taken from director and relative was denied, merely on the reason that the assessee has taken much more loan than value of the asset, the assessee has taken loan based on valuation of the property and paid amount to sister concern partly for which the interest is already recovered and there is no dispute on that aspect also. So merely the assessee has repaid loan to unsecured loan giver by borrowing the money from bank loan that interest part cannot be denied merely on the reason that the assessee has repaid the loan and the assessee has advanced the excess money to the sister concern.

9. Per contra, the Id. DR appearing on behalf of the revenue submitted that the loan was not utilized to acquire the asset and it was used to repay the loan taken by the assessee.

10. We have heard the rival contentions and perused the material placed on record and also gone through the orders of the lower authorities. The bench noted that it is not in dispute that the property was acquired by a borrowed capital initially borrowed from the relatives of the Directors. Thereafter, the loan was taken from such persons was repaid out of the loan received from ICICI bank. Therefore, it cannot be construed that there is no nexus between the acquisition of the property and the utilization of the capital so borrowed. Once the interest is allowable on the funds borrowed for purchase of property, interest paid on subsequent loan for repayment of such loan is also allowable as part of cost of asset so purchased. As in this case the loan was taken was utilized for repaying the loan to director and relative and other part used for advancing it to group concerns. Under these undisputed facts, we are of the view that the authorities below were not justified in disallowing the interest claim of the assessee. Hence cost of acquisition would also include the interest paid on such borrowed capital from director and relative. The authorities below have disallowed the claim of the assessee, on the ground that there is no nexus between the capital borrowed from the bank and its utilization for acquisition of the property. However, the interest paid on the capital utilized for repayment of loan, we allow as cost of acquisition. Therefore, the assessing officer is hereby

directed to allow capitalization of interest to the extent that the assessee had utilized borrowed funds for repayment of loan taken from directors and other relatives and the interest paid on capital borrowed for acquisition of property by way loan from director and relatives.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 26/06/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 26/06/2023

*Ganesh Kumar

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

1. The Appellant- M/s Shri Siddeshwar Organic Foods Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-01, 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. 110/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar