

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manjunatha, G. Accountant Member

आयकर अपील सं./I.T.A. No.2984/Chny/2018  
निर्धारण वर्ष/Assessment Year: 2014-15

The Assistant Commissioner of  
Income Tax, Corporate Circle 2,  
63-A, Race Course Road, Coimbatore.

Vs. M/s. Tristar Accomodations Ltd.,  
657, Naren Byuildings, Avinashi Road,  
P.M. Palayam, Coimbatore 641 037.  
**[PAN:AAACT7921Q]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri Suresh Guduri, JCIT  
: Shri K.R. Vasudevan, Advocate &  
: Shri V. Balaji, CA

सुनवाई की तारीख/ Date of hearing  
घोषणा की तारीख /Date of Pronouncement

: 22.08.2023  
: 30.08.2023

**आदेश / O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the  
Id. Commissioner of Income Tax (Appeals) 1, Coimbatore, dated  
06.08.2018 relevant to the assessment year 2014-15.

2. Brief facts of the case are that the assessee filed the return of  
income for the assessment year 2014-15 on 29.09.2014 declaring total  
income of ₹.58,29,780/-. The case was selected for through CASS for  
scrutiny and notice under section 143(2) of the Income Tax Act, 1961

["Act" in short] dated 01.09.2015 was issued and served on the assessee. After verification of details furnished by the assessee against statutory notices, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 08.11.2016 assessing total income of the assessee at ₹.1,74,56,701/- under normal provision and ₹.24,88,908/- under section 115JB of the Act after making additions towards disallowance of interest claimed at ₹.64,39,587/- under section 24(b) of the Act, disallowance of income from other sources of ₹.43,71,981/- and disallowance of inadmissible expenditure of ₹.8,15,353/-. On appeal, after considering the submissions of the assessee, the Id. CIT(A) partly allowed the appeal of the assessee.

3. Aggrieved, the Revenue is in appeal before the Tribunal. The first ground raised in the appeal of the Revenue relates to deletion of addition of interest expenses at ₹.64,39,587/- in violation of Rule 46A of IT Rules.

4. In the assessment order, the Assessing Officer has observed that the amount of loan borrowed by mortgage of property was invested in commercial projects and therefore, the claim of interest on borrowed capital under section 24(b) of the Act is not allowable and brought to tax. After considering the submissions of the assessee, the Id. CIT(A) deleted the addition.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the addition towards disallowance of interest expenses of ₹.64,39,587/-, the Id. CIT(A) has deleted the addition by holding that the interest expenses are related to business expenditure by observing as under:

*5.1.2 Authorized Representative of the appellant made submission that the ₹.5,05,00,000/- loan borrowed by mortgaging the property was given as advance to M/s. Tristar Consultancy Services for the purchase of 8 residential villas from out of TRILOK project being developed by M/s. Tristar Consultancy Services. Further, he submitted that the appellant has paid in all an amount of ₹.5,05,00,000/- as advance only to take cost advantage. M/s. Tristar Consultancy Services were selling villas at an average price of ₹.84,00,000/- while the appellant assessee negotiated a price of ₹.70,00,000/- per villa. Thus, the appellant saved an amount of ₹.14,00,000/- per villa. As the amount of loan obtained by mortgaging the property was utilized for business purpose, the amount of interest paid on the mortgage loan was wrongly claimed u/s 24(b) in return of income instead of claiming deduction u/s. 36(1)(iii) against business income. After considering the Authorized Representative's submission, I am convinced that this amount of ₹.64,39,587/- has to be allowed as interest on borrowed capital for business purpose u/s 36(1)(iii). Hence this addition is deleted.*

However, while doing so, the Id. CIT(A) has not called for remand report from the Assessing Officer before adjudicating the issue. Accordingly, we set aside the order of the Id. CIT(A) on this issue and remit the matter back to the file of the Assessing Officer to consider the submissions of the assessee and decide the issue afresh in accordance with law.

6. The next ground raised in the appeal of the Revenue relates to the directions to the Assessing Officer to decide the claim which was not made in the return of income. In the assessment order, the Assessing Officer has noted that the assessee has disallowed a sum of

₹.2,34,39,877/- as cost of project shelved and explained vide his letter dated 28.07.2016 that the assessee has not carried out any property development and sale activity and did not have any operational income and no income was earned from sale of property or development of property. The appellant had written off the above project cost incurred till date in its profit and loss account during the relevant year. Since the assessee has made any claim in this regard in the return of income, the assessment order was silent on the above claim. On appeal, the Id. CIT(A) has directed the Assessing Officer to decide on the claim of the assessee on the allowability of the abandoned project cost made during the course of assessment proceedings, but not made in the return.

6.1 Before us, the Id. DR has contended that the Id. CIT(A) has no power to remit the matter back to the file of the Assessing Officer to decide the issue.

6.2 On the other hand, the Id. Counsel for the assessee has submitted that there is no loss to the Revenue in remitting the issue to the Assessing Officer.

6.3 We have heard both the sides and perused the orders of authorities below. When a fresh claim has been raised before the Id. CIT(A), the Id.

CIT(A) should have called remand report and adjudicate the same in accordance with law. In this case, the Id. CIT(A) has simply allowed the additional ground raised by the assessee and directed the Assessing Officer to decide, in our opinion, it is not correct. Be that as it may, considering the facts and circumstances of the case, we remit the matter back to the file of the Assessing Officer to decide on the claim of the assessee on the allowability of the abandoned project cost made during the course of assessment proceedings, which was not claimed in the return of income.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 30<sup>th</sup> August, 2023 at Chennai.

Sd/-  
(MANJUNATHA, G.)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 30.08.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.