

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 955/Del/2022 : Asstt. Year : 2016-17

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| DCIT, Central Circle-32, New Delhi (APPELLANT) | Vs | M/s BPTP Ltd., M-11, Middle Circle, Connaught Circus, New Delhi-110001 (RESPONDENT) |
| PAN No. AACCB2442A | | |

Assessee by : Sh. Ajay Bhagwani, CA

Revenue by : Sh. Amitabh K. Sinha, CIT-DR

Date of Hearing: 20.07.2023

Date of Pronouncement: 17.10.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-30, New Delhi dated 25.02.2022.

2. The assessee is a company incorporated under the Companies Act, 1956. It is engaged in the business of real estate. The assessee filed return of income declaring loss of Rs. 1,38,19,17,993/-. The assessment was completed u/s 143(3) vide order dated 24.12.2018 at loss of Rs.1,09,21,08,344/- after making addition on account of disallowance of interest paid on borrowed capital of Rs.28,98,09,649/-.

3. Being aggrieved, an appeal was filed by the assessee before Commissioner of Income Tax (Appeals)-30, New Delhi. The appeal was allowed by the Id. CIT(A) vide order dated 25.02.2022 in Appeal No.10314/2018-19.

4. Being aggrieved by the order of CIT (A)-30, New Delhi, the Department has filed appeal before the ITAT, New Delhi which is present appeal.

5. The grounds of appeal in appeal filed by Department are as under:

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) erred in deleting the additions made by the AO.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) did not considered the facts of the case.

3. Whether the order of the Ld. CIT (A) is erroneous and is not tenable on facts and in law.

4. Whether the appellant craves to add, alter or forgo any grounds (s) of appeal either before or during the course of hearing of the appeal."

6. The assessee is engaged in the business of real estate. It is following percentage of completion method for recognition of revenue as per Accounting Standard-7 (AS-7). Assessment proceedings were completed u/s 143(3) on 24.12.2018 after making addition on account of disallowance of interest paid on money borrowed of Rs.28,98,09,649/- which was capitalized under 'inventory' in books and claimed through Computation. Interest paid on money borrowed was claimed through computation of income as period cost, being revenue in nature and as per provisions of Section 36(1)(iii) read with Section 43-B of Income Tax Act, 1961.

7. At page no.2 of Assessment Order, the AO has furnished details of total interest paid by the assessee of Rs.79.67 crores on the amount borrowed which is given in the Schedule No. 25

of Audited Balance sheet. Out of total interest paid of Rs.79.67 crores, interest of Rs.34.95 crore was claimed by appellant through direct debit to Profit & Loss a/c.

8. Balance amount of interest paid of Rs.44.72 crore was capitalized to inventory under respective Projects for which borrowing was made. Out of total interest capitalized under 'Inventory of Rs.44.72 crores, interest paid of Rs.15.74 crores was claimed through 'cost of revenue' by debit to Profit & Loss a/c while balance interest paid of Rs.28.98 crores was claimed through Computation as whole of interest paid was period cost, revenue in nature and being paid to banks and financial institutions which is covered under section 43B.

9. Computation of income for the AY 2016-17 is placed at Page no.2 of Paper Book. The assessee claimed deduction in respect of interest paid as per provisions of Section 36(1)(iii) read with Section 43B of Income Tax Act, 1961.

10. The AO requisitioned the assessee to explain vide notice dated 25.10.2018 as to why interest paid of Rs.28.98 crores on borrowed capital should be allowed. The assessee filed detailed reply vide letter dated 13.11.2018 explaining the detailed reasons for allowing the deduction in respect of its claim for interest paid on money borrowed claimed through computation of Rs.28,98,09,649/-. Reply filed vide letter dated 13.11.2018 is placed at page no. 48-70 of Paper Book. The AO raised further query vide notice u/s 142(1) dated 23.11.2018 copy of which is placed at page no. 71-73 of Paper book again repeating the same query. The assessee filed reply online dated 28.11.2018 asking for time. Before any reply could be filed by the assessee, the AO completed assessment after making disallowance of interest paid on money borrowed of Rs.

28,98,09,649/- claimed through Computation by treating the claim of interest as Capital expense in nature and by taking the plea that the assessee is trying to take two fold benefit i.e. on one hand the assessee is capitalizing the amount of Rs.28,98,09,649/- and on other hand also trying to take benefit of deduction of the same amount that too in the computation of income directly which is not permissible under the law.

11. Finance cost working and its claim by the assessee in tabular form is as under:

| S.No. | Finance Cost | For the year ended 31 March 2016 (Figures in Crores) |
|-------|---|--|
| | Interest on fixed period loans: | |
| 1. | On debentures | 30.78 |
| 2. | On term loans | 27.48 |
| 3. | Other | 9.08 |
| 4. | Processing Fees | 12.33 |
| 5. | Total Finance cost | 79.67 |
| 6. | Less: Finance charges transferred to stock (Inventory) | 44.72* |
| 7. | Charged directly to Profit and Loss account | 34.95 |

*Claimed as Revenue expenditure -Rs.15.73 Cr.

Capitalized to inventory – Rs.28.98 Cr.

12. Before us, the Id. AR relied on the order of the Id. CIT(A) while Id. DR supported the order of the Assessing Officer.

13. Heard the arguments of both the parties and perused the material available on record.

14. Brief submissions for allowability of deduction of interest paid which was claimed by the assessee through Computation as per provisions of law as contained u/s 36(1)(iii) read with Section 43-8 are summarized as under:

"a) Assessee is following percentage of completion method for recognition of revenue as per Accounting Standard-7 (AS-7).

b) The provision of Section 36(1)(iii) deals with allow ability of interest paid as business expense. The said provision as it stands during the period under consideration is reproduced as under:

Section 36 (1) (iii): "the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession:

Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.

As per provisions of Section 36(1)(iii) as reproduced above, there are three conditions for allowbility of interest paid as business expenses which are as under:

i. Interest is paid by the assessee.

ii. Capital is borrowed by the assessee on which interest is paid

iii. Capital Borrowed is used for Business or Profession carried on by assessee.

Further, as per proviso to Section 36(1)(iii), interest paid is not to be allowed as deduction if interest is paid in respect of capital borrowed which is used for acquiring any asset for extension of existing business or profession for the period till the date such asset acquired is not put to use. This is applicable in case of manufacturing concerns where addition Unit / Factory is set up with borrowed funds which has not commenced production.

As far as first three conditions as stated above are concerned, there is no adverse comments from the AO about non-compliance of any conditions. There is nothing in from the AO in the assessment order that proviso to Section 36(1)(iii) is applicable in case of assessee."

15. The assessee is claiming the part of interest paid on money borrowed capitalized under the head 'Inventory' through

Computation for last several years. The assessment of assessee is completed u/s 143(3) of Income Tax Act, 1961 for earlier years as well as for later years. This issue is examined in assessment of several earlier years and later years after examination, contention of assessee is accepted and no adverse inference is drawn by the department except in AY 2016-17. The assessment for the AY 2014-15 was completed by the same Assessing Officer. The copy of computation for AY 2014-15 is at page 101-102 and copy of assessment order passed u/s 143(3) is at page 100 of Paper Book. This very same issue was raised by him during the course of assessment proceeding. After examining the issue in detail, no adverse inference was drawn and no disallowance of interest paid was made. There is no change in the facts of case in AY 2016-17 as compared to AY 2014-15 or any of earlier years as well as subsequent years where similar claim is made by the assessee of part of interest paid u/s 36(1)(iii) read with Section 43B through Computation which is allowed by the department after detailed examination in assessment proceedings concluded u/s 143(3) for the AY 2011-12, 2012-13, 2013-14, 2014-15, 2017-18 and 2020-21. Copies of computation of taxable income for the AY 2011-12, 2012-13, 2013-14, 2014-15, 2017-18 and 2020-21 along with assessment orders passed u/s 143(3) of Income Tax Act, 1961 are placed at page no. 75 - 122 of Paper Book. The similar claim of part of interest paid through Computation as deduction made by the assessee in AY 2020-21 is allowed by same officer who has filed the Appeal before the ITAT, New Delhi. Copy of Computation and Copy of Assessment order are placed at page No.117-122 of Paper Book.

16. The case of the assessee does not fall under the proviso to Section 36(1)(iii) of Income Tax Act, 1961 as the assessee is

not engaged in manufacturing and amounts were not borrowed for expansion or setting up of new units which were not put to use or commercial production has not started. The AO has not made any case in the assessment order that the assessee's case is covered by the proviso to Section 36(1) (iii) of IT Act. Considering this, interest paid is not to be treated as capital expenses as interest paid in only those cases which are covered by proviso to Section 36(1)(iii) are to be treated as capital expenses and not to be allowed. Considering this, no part of interest paid in case of the assessee is to be disallowed.

17. Further, there is nothing adverse in the assessment order stating that the amount borrowed were not used for business purposes. It is a fact on record that amount borrowed was used wholly and exclusively for the purpose of business of the assessee. There is no finding by the Assessing Officer in the assessment order that interest paid was in respect of acquisition of any capital assets.

18. The assessee has borrowed amounts from Banks and Public Financial institutions and paid interest thereon. Interest paid is for the current period and revenue in nature. Part of interest paid of Rs.34.95 crore which was not related to any Project and was in respect of general borrowing was claimed by direct debit to Profit & Loss a/c which is allowed by the AO. Out of total interest capitalized under stock/inventory of Rs.44.72 crores on the basis of AS-7. Interest of Rs.15.73 crores was claimed as part of 'Cost of Revenue' by debiting to Profit & Loss a/c. Balance interest of Rs.28.98 crores was claimed through computation as interest paid being period cost, being revenue in nature and considering the fact that interest paid to Banks and Financial institutions was allowable on payment basis as

per provisions of Section 43B of Income Tax Act, 1961 in the year in which payment was made.

19. As Interest on money borrowed was paid to Banks and Financial Institutions, interest paid is allowable as deduction as per provisions of Section 36(1)(iii) read with provisions of Section 43-B of Income Tax Act, 1961 in the year in which payment is made irrespective of its treatment in books of accounts.

20. Reliance is being placed on following decisions for allowing of interest:

- Lakhanpal National Ltd. vs. ITO in 162 ITR 240 (Guj.) (1986)
- CIT vs. BPCL in 252 ITR 43 (Bombay) (2001)
- Chemicals and Plastics Ltd. vs. CIT 260 ITR 193 (Mad.) (2002)
- Berger Paints (India) Ltd. vs. CIT in 266 ITR 99 (SC) (2004)
- Associated Pigments Ltd. vs. CVIT in 234 ITR 589 (Cal.) (1998)
- CIT vs. C.L. Gupta & Sons in 259 ITR 513 (All.) (2002)
- CIT vs. Modipon Ltd. in C.A. no. 19763 of 2017 (SC) (2017)
- DCIT vs. GSK Consumer Healthcare Ltd. in 107 ITD 343 (Chd.)

21. To conclude,

- The assessee has filed working to show that it has not claimed double benefit in any of earlier years or during the year under consideration in AY 2016-17 and in any of later years as in none of the years, total deduction claimed in respect of interest paid under various heads exceeds total interest paid in those relevant years.
- To disallow the interest paid under proviso to Section 36(1)(iii) of IT Act, 1961 it is necessary to show that the borrowed capital was utilized for the purposes acquiring

new assets or for the extension of existing business or profession. The assessing officer has not made any case here that the borrowed capital was utilized for the purposes of new unit, land or capital asset and proviso to Section 36(1)(iii) is applicable.

- Similar claim of the assessee was allowed in respect of AY 2011-12, AY 2012-13, AY 2013-14, AY 2014-15, AY 2017-18 and in AY 2020-21. No evidences has been brought on record to justify the change in stand in this particular year. There is no finding given in the assessment order for upholding different view taken by the AO in the Assessment Order for AY 2016-17 as compared to view taken by him in AY 2014-15.
- Considering the entire facts and the legal proposition, the appeal of the assessee was rightly allowed by the Id. CIT(A) and hence, no interference in the order of Id. CIT(A).

22. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 17/10/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 17/10/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR