

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.5190/Del/2019, A.Y.2013-14)**

Mr. Rajesh Saluja s/o. Mr. Hazarilal Saluja 703, Casa Granda-1, Sanapati Bapat Marg, Lower Parel, Mumbai, Maharashtra- 400013 <b>PAN : ANEPS5070P</b>	Vs.	DCIT, Circle-70(1), New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Malik Girish, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of Hearing	11/01/2024
Date of Pronouncement	15/02/2024

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)- 32, New Delhi ["Ld. CIT(A)", for short], dated 27/03/2019 for the Assessment Year 2013-14.

2. Grounds of the assessee are as under :-

*"1. That the Assessment order passed u/s 143(3) is illegal, bad in law. The CIT(A) has erred in upholding the same.*

*2. That the Assessing officer has erred in computing the total income at Rs. 2,47,09,790/- as against the declared income at Rs. 1,30,66,270/-, and make the*

addition of Rs.1,16,43,521/-which is illegal, unjust, highly excessive and is not based on any material on record.

3. That the Assessing officer has erred in disallowing the interest paid on housing loan as cost of acquisition and cost of improvement.

4. That the Assessing officer has erred in disallowing the amount of Rs. 94,17,082/-which is interest paid on housing loan and indexed cost of the same is Rs. 1,16,43,521/-.

5. That the Assessing officer has wrongly interpreted the judgment of CIT Vs Mithilesh Kumari (1973), 92 ITR 9 (DEL).

6. The CIT(A) has erred in disallowing the same on the basis of the judgment passed in the case of Commissioner of Income-tax vs. Tata Iron & Steel Co. Ltd. 31 ITR 285 (SC), which is also in favor of the assessee. The CIT(A) has also wrongly interpreted the judgment.

7. That the additions confirmed and the observations made by CIT(A) are unjust, unlawful and based on mere surmises and conjunctures. The additions made cannot be justified by any material on record.

8. That the explanation and evidence produced, material placed and available on record has not been properly considered and judicially interpreted and the same do not justify the additions/allowances made.

9. That the impugned assessment order passed by the Assessing Officer and order passed by the CIT(A) are against principal of natural justice and the same has been passed without affording reasonable and adequate opportunity of being heard.

10. That the interest u/s 234A and 234B has been wrongly and illegally charged as the appellant could not have foreseen the disallowances/additions made and could not have included the same in current income for payment of Advance tax.

11. The appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.

All of the above grounds of Appeal are without prejudice and are mutually exclusive to each other.”

3. Brief facts of the case are that, the assessee declared income at Rs. 1,30,66,270/- which was selected for scrutiny through CASS. Subsequently, notice u/s 142(1) of the Act was issued along with the questionnaires. The Assessment Order came to be passed u/s 143(3) of the Act by reducing a sum of Rs. 1,16,43,521/- from cost of acquisition of the property claimed by the assessee. As a result, the Long Term Capital Gain of the assessee has been determined without excluding the indexed cost payment of interest as claimed by the assessee. As against the assessment order dated 25/02/2016, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 27/03/2019 dismissed the Appeal filed by the assessee. Aggrieved by the order of the Ld. CIT(A) dated 27/03/2019, the assessee preferred the present Appeal on the grounds mentioned above.

4. The Grounds of Appeal of the assessee are argumentative in nature which are not precise. In the present Appeal, the assessee is aggrieved by the disallowance of interest on housing loan of Rs. 94,17,082/- which has been claimed as part cost of acquisition.

5. The Ld. Counsel for the assessee submitted that the assessee has not claimed benefit of the interest under any other heads of income, the assessee could not avail the benefit under any other Section of the Income Tax Act as the assessee obtained the possession of the property only on 29/12/2011. The benefit of interest u/s 24 of the Act has not been availed in Assessment Year 2012-13 & 2013-14 as the assessee was having the intention to disposing off

the property and the deal of sale could be materialized only in the Assessment Year 2013-14, therefore, the findings and the observations of the Lower Authorities in disallowing the interest on housing loan amounting to Rs. 94,17,082/- is erroneous, therefore, sought for intervention by the Tribunal.

6. Per contra, the Ld. Departmental Representative submitted that the interest claimed by the assessee as cost of acquisition is not allowable and relied on the order of the Tribunal of Mumbai Bench in ITA No. 1101/Mum/2022 dated 31/07/2023 and sought for dismissal of the Appeal.

7. We have heard both the parties and perused the material available on record. During the course of the assessment, it is observed by the A.O. that the assessee sold property bearing No. 1403, 14<sup>th</sup> Floor, Springs, G. D. Ambedkar Marg, Dadar, Mumbai for consideration of Rs. 7,74,00,00/- on 04/01/2013. The Long Term Capital gain arising from the property has been computed as under:-

<i>“Sale consideration</i>	7,74,00,000/-	
<i>Less sale expenses</i>	58,79,547/-	
<i>Net sale consideration receipt</i>		7,15,20,453/-
<i>Less: indexed acquisition cost</i>		
<i>(2,41,34,901/551*852)</i>		
<i>Indexed cost of improvement</i>	73,19,302/-	
<i>(2,08,44,290/551 *852)</i>		<u>2,62,66,923</u>
	<u>6,35,86,228/-</u>	
<i>LTCG</i>		79,34,225/-
<i>Less: exemption claimed u/s 54 Taxable LTCG arising from the property</i>		79,34,225/-
<i>Taxable LTCG arising from the property</i>		NIL

The assessee was asked to provide the details of the cost of improvement as claimed in the computation of income, the assessee submitted the cost of acquisition and cost of improvement as under:-

<i>Years</i>	<i>Interest</i>	<i>Cost of purchase</i>
<i>Up to F.Y 2008</i>	<i>865,005</i>	<i>2,41,34,901</i>
<i>F.Y 2008-09</i>	<i>2,701,326</i>	
<i>F.Y 2009-10</i>	<i>34,12,208</i>	<i>63,16,438</i>
<i>F.Y 2010-11</i>	<i>24,38,543</i>	
<i>F.Y 2011-12</i>		<i>35,32,142</i>
<i>F.Y 2012-13</i>		<i>15,78,628</i>
	<b><i>94,17,082</i></b>	<b><i>3,55,62,109</i></b>

8. As per the details given by the assessee, the cost of improvement of asset includes an amount of Rs. 94,17,082/- which being the interest paid to the bank on the loan taken by the assessee for acquisition of asset. The assessee has also claimed indexation at applicable rates on the interest payable so made. The indexation claimed on the interest amount by the assessee are as under:-

<i>Interest paid</i>	<i>Financial Year</i>	<i>Index CII</i>	<i>Indexed amount claimed as cost of improvement</i>
<i>865,005</i>	<i>2009-10</i>	<i>582</i>	<i>1,266,296</i>
<i>2,701,326</i>	<i>2010-11</i>	<i>632</i>	<i>3,641,661</i>
<i>3,412,208</i>	<i>2011-12</i>	<i>711</i>	<i>4,088,891</i>
<i>2,438,543</i>	<i>2012-13</i>	<i>785</i>	<i>2,646,673</i>
<i>94,17,082</i>			<b><i>1,16,43,521</i></b>

Thus, the assessee claimed intention on the amount paid as interest to the bank and has included the said amount of Rs. 1,16,43,521/- as indexed cost of

improvement, hence, the cost of the asset has been increased by the above amount and the long term capital gain has been reduced to the same extent. The A.O. after verifying the details and also relying on the judicial precedents, reduced an amount of Rs. 1,16,43,521/- from the cost of acquisition of the property claimed by the assessee, as a result of the Long Term Capital Gain of the assessee has been determined without including the indexed cost of payment interest as claimed by the assessee.

9. The Ld. CIT(A) while dismissing the Appeal filed by the assessee held as under:-

*“5.5. I have carefully considered the observations AD and submissions of appellant. In view of the provisions of section 55(2), (interest due or paid on the money borrowed from the date of borrowing of money and till the last day of previous year prior to the previous year of construction/acquisition shall be accumulated and such accumulated interest shall be allowed as deduction in first equal installments starting from the previous year in which construction at the house is completed or the house is acquired and interest from the year of construction or acquisition of house till it is repaid, shall be allowed as deduction in respective previous years to which it belongs: However, where the house property is sold within 5 years of the year of purchase or construction and the Interest for the pre-construction period could not be claimed as deduction as it is allowed as deduction in five equal installments starting from the previous year in which construction of the house is completed or the house is acquired, the balance interest may be treated as part of cost of asset for computing capital in However, in my view, the cost of acquisition will made only the amount made with the purchase of property The Interest on the loan taken has no nexus with the property purchased and, therefore, appellant canto claim the benefit of interest for calculating the cost of acquisition: Hon'ble Supreme Court in the case of Commissioner of Income-tax vs. Tata Iron & Steel Co. Ltd 31 ITR 285 (SC) have held that cost of an asset and cost of raising money purchase of asset are two different and independent transactions and events subsequent to acquisition of assets cannot change price paid for it. It held as under:-*

*“3. Coming to the question raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan, it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with non assessee for acquiring the asset. In the instant case, the allegation is that at the time of loan, there was a fluctuation in the rate of foreign exchange as a result of which the assessee had to repay a much lesser amount than he would have paid in our judgment, this is not a factor which can alter the cost by the for purchase of the used the assessee many have raised the funds to purchase the by borrowing but what the assessee has found for it is the price of the asset. There cannot change by any event subsequent to the acquisition of the asset. In our payment the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs*

*5.6 Further, Hon'ble ITAT Delhi in the case of ACIT, Circle 32(1), Vs. Sunil Batra, I.T.A. No. 3644/Del/2010 Assessment year: 2007-08 have held that payment of interest on loan for purchasing house property does not form part of cost of asset. It held as under:*

*8.2. Ld. CIT(A) in para 6.2 at page 9 of the impugned order observed that the AD has erroneously assessed the cost of acquisition of property at PNA-013, the Pinnacle Gurgaon at Rs. 18,68,000/ as against actual cost of acquisition of Rs. 40,92,651. During the proceedings before the CIT(A), he has called commitment from Ld. ICIT, Range 32, New Delhi which are as under the respect of the computation of capital gains on property loaned a PC 2 103 submitted that only turn components could be deducted from the full value of consideration while computing capital gains. These are expenditure incurred wholly and exclusively in connection with the transfer and the cost of acquisition of assets along with the cost of any improvement interest on capital for purchased property does not increase the cost of acquisition of asset (MLG Enterprises Vs CIT (Karnataka) (HC) 167 ITR 11 ITO Vs Vikram Sadananda Hoskote (ITAT, Mum 1800 SOP 130) Therefore, the computation was done as per the provision of the I.T Act, 1961*

*8.3 The Ld DR by relying upon the judgement cited as CIT Vs Tata Iron & Steel Co. Ltd. 231 ITR 285 IS Contended that Ld. CIT(A) has wrongly ignored laid down by Hon'ble Supreme Court in the judgement (supra) by adding the amount of Rs. 1,58,209/ as orders paid to Mrs. Gunjan Batra in the cost of acquisition:*

*8.4 The Hon ble Apex Court in the judgment (supra) held as under:-*

*The manner of repayment of a loan cannot affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan it will not alter the cost of the asset, if the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset*

*is purchased with non repayment at subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. Held accordingly. that for the assessment 1960-61 and 1961-62, at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which the assessee had to repay a lesser amount than he would have otherwise paid. This was not a factor which alters the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by cogent facts subsequent to the requisition of the asset. In our judgment, the manner of mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business."*

*8. 5 The ratio of the judgment (supra) is applicable to the facts and circumstances of the case and the cost of acquisition in the present case is to be taken at the actual amount of Rs. 38,68,000/- paid by the assessee to M/s DLF Universal Ltd as is apparent from the receipt placed at page 2 of the paper book filed by the assessee and the amount of Rs 1,58,209 cannot be added to the amount being the interest paid by Mrs. Gurgan Batra.*

*5.7 The facts of this case are identical. Therefore, the ratios of aforesaid judgments are applicable to the facts of appellant's case. In fact, in view of the aforesaid judgment, appellant is not entitled to claim the benefit of unutilized interest pertaining to preconstruction period as cost of acquisition. Moreover, it is also not the case of appellant that possession of the house property was not taken. Appellant has relied on the judgment of Hon'ble Delhi High Court in the case of CIT vs. Mithilesh Kumari (1973), 92 ITR 9 (DEL) in which it has been held that interest on amount borrowed was expenditure incurred for acquiring capital asset (land), and had to be included in actual cost. However, it is seen that the facts of that case are different as it was a case where loan was taken for purchase of land on which assessee could not avail the benefit of interest on loan in five installments as it was a case of purchase of land and, therefore, no benefit under the head income from house property could be availed. Therefore, the ratio of judgment is not applicable to the facts of appellant's case. Therefore, in view of the facts of the case and aforesaid judgment it is held that AO is correct in making the disallowance of Rs.1,16,43,521/- being indexed cost of acquisition of property of Rs.94,17,082/ on account of interest paid on borrowed capital. In view of the above, appeal is dismissed.*

*6. in the result, appeal is dismissed."*

10. It is the case of the assessee that deduction under Section 24(b) of the Act as claimed when the assessee declares income from house property whereas the indexed cost of the said asset was taken into consideration when the asset was sold and capital gains are computed u/s 48 of the Act. As per Section 48 of the Act, the cost of acquisition is the value for which the property has been acquired by the assessee and, therefore, expenses of capital nature for completing or acquiring the title of the property are includable in the cost of acquisition. Further it is also claimed that the assessee has not taken benefit of the interest or claimed the same under any of the provisions of the Act.

11. As per Section 55(2) of the Act, the interest due or paid on the money borrowed from the date of borrowing of money and till the last day of previous year prior to the previous year of construction/acquisition shall be accumulated and such accumulated interest shall be allowed as deduction in five equal installments starting from the previous year in which construction of the house is completed or the house is acquired and interest from the seat of construction or acquisition of house till it is repaid, shall be allowed as deduction in respective previous years to which it belongs. However, where the house property is sold within 5 years of the year of purchase or construction and the interest for the pre-construction period could not be claimed as deduction as it is allowed as deduction in five equal installments starting from the previous year in which construction of the house is completed or the house

is acquired, the balance interest may be treated as part of cost of asset for computing capital gain. Thus, in our considered view, the cost of acquisition will include only the amount which has direct nexus with the purchase of property and the interest on the loan taken has no direct nexus with the property purchases.

12. The Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Tata Iron Steel held that the cost of asset and cost of raising money for purchase of asset are two different and independent transactions and even subsequent to acquisition of assets cannot change the price paid for it. The observation of the Hon'ble Supreme Court are as under:-

*“3. Coming to the question raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan, it will not alter the cost of the asset. If the borrower defaults in repayment of part of the loan, the cost of the asset will not change. What has to be borne tend is that the cost of an asset and the cost of raising money for purchase of the asset are different and independent transactions. Even if an assets purchased with non repayable subsidy received from the Government, the cost of the asset will be the price assessee for acquiring the asset. In the instant case, the allegation is that the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as f which, the assessee had to repay a much lesser amount than he would have the paid. In our judgment, this is not a factor which can alter the cost incurred by the for purchase of the asset. The assessee may have raised the funds to purchase the by borrowing but what the assessee has paid for it is the price of the asset that price cannot change by any event subsequent to the acquisition of the asset be our the manner or mode of repayment of the loan has nothing to do with the cost of acquired by the assessee for the purpose of his business. We hold that the quest rightly answered by the High Court. The appeals are dismissed. There will be to costs.”*

13. Further, the Mumbai Bench of the Tribunal in the case of DCIT, Central Circle Vs. Narendra Gehlaut in ITA No. 1101/Mum/2022 held as under:-

*“6.3 We have heard rival submission of the parties and perused the relevant material on record. on housing loan whether eligible for deduction as cost of acquisition while computing long Tribunal Delhi bench in order dated 30/09/2015 in the case of ACIT Vs Sunil Batra in ITA No. 3644 /Del/2011 for assessment year 2007-08. The tribunal relied on the decision of the Hon’ble Supreme Court in the case of CIT Vs Tata Iron and steel Co Ltd( ITR 285 SC) . The Hon’ble Supreme Court held that cost of the asset and cost of raising money for purchase of the asset, a different transactions. The relevant finding of the Hon’ble Supreme Court is reproduced as under:*

*“We are of the view that Mr. Murthy is right in his contention on this aspect of the matter. Coming to the question raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raisi asset are two different and independent transactions. Even if an asset is purchased with non Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. that at the time of Commissioner Of Income Steel Co. Ltd. on 17 December, 1997 repayment of loan, there was a fluctuation in the rate of fore the assessee bad to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment, the manner or mode of repayment of the lo acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs.*

*6.4 Though in above case, the issue was impact of fluctuation of foreign currency loan borrowed for purchase of the asset, but the same analogy apply for interest for money borrowed purposes of capital asset , which in the case of the assessee is right in the flat. Thus following the decision of the Hon’ble Supreme Court (supra), the interest claimed as cost of acquisition is not allowable. We are of the view that Mr. Murthy is right in his contention on this aspect of the matter.*

*Coming to the question raised, we find it difficult how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with non-repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment, the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court.*

*On the contrary, the Ld. DR submitted that interest is allowable as cost of acquisition to the assessee for two reasons. , the documentary evidences of loan sanction letter is not in respect of the Flat C-3501 and therefore, the assessee can't be allowed deduction of the interest paid as cost of acquisition for housing loan taken for Flat No. C-2901. Secondly, that interest paid on housing loan in respect of right acquire financial liability of the assessee and not part of the cost of e submitted that said interest payment is allowable 'income from house property expenditure and therefore, cannot be included as part of capital expenditure for computing cost of acquisition. We have heard rival submission of the parties and perused the relevant material on record. We find that the issue of interest p on housing loan whether eligible for deduction as cost of acquisition while computing long-term capital gain hasn't decided by the Tribunal Delhi bench in order dated 30/09/2015 in the case of ACIT Vs Sunil Batra in ITA No. 3644 /Del/2011 for assessment 08. The tribunal relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs Tata Iron and steel Co Ltd( . The Hon'ble Supreme Court held that cost of the asset and cost of raising money for purchase of the asset, a transactions. The relevant finding of the Hon'ble Supreme Court is reproduced as under: Shri Narendra Gehlaut26ITA No. 1101/Mum/2022On the contrary, the Ld. DR submitted that interest is not allowable as cost of acquisition to the assessee for two reasons. , the documentary evidences of loan sanction letter is not in 3501 and therefore, the assessee can't be allowed deduction of the interest paid as cost of acquisition for Secondly, he submitted right acquired in flat not part of the cost of e submitted that said interest payment is allowable income from house property' as revenue expenditure and therefore, cannot be*

*included as part of capital We have heard rival submission of the parties and perused the We find that the issue of interest paid on housing loan whether eligible for deduction as cost of acquisition term capital gain hasn't decided by the Tribunal Delhi bench in order dated 30/09/2015 in the case of ACIT Vs Sunil Batra in ITA No. 3644 /Del/2011 for assessment 08. The tribunal relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs Tata Iron and steel Co Ltd(231 . The Hon'ble Supreme Court held that cost of the asset and cost of raising money for purchase of the asset, are two transactions. The relevant finding of the Hon'ble Supreme "We are of the view that Mr. Murthy is right in his contention on this aspect of the matter. Coming to the question raised, we find it difficult to follow how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising asset are two different and independent transactions. Even if an asset is purchased with non Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. repayment of loan, there was a fluctuation in the rate of fore the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment, the manner or mode of repayment of the lo acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs.*

*6.4 Though in above case, the issue was impact of fluctuation of foreign currency loan borrowed for purchase of the asset, but the same analogy apply for interest for money borrowed purposes of capital asset , which in the case of the assessee is right in the flat. Thus following the decision of the Hon'ble Supreme Court (supra), the interest claimed as cost of acquisition is not allowable. We are of the view that Mr. Murthy is right in his contention on this aspect of the matter. Coming to the question raised, we find it difficult low how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions. Even if an asset is purchased with non-repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee for acquiring the asset. In the instant case, the allegation is that at the time of*

repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee may have raised the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment, the manner or mode of repayment of the loan has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs. Though in above case, the issue was impact of fluctuation of foreign currency loan borrowed for purchase of the asset, but the same analogy apply for interest for money borrowed purposes of capital asset, which in the case of the assessee is flat. Thus following the decision of the Hon'ble Supreme Court (supra), the interest claimed as cost of acquisition is not allowable. We are of the view that Mr. Murthy is right in his contention on this aspect of the matter. Coming to the question raised, we find it difficult to say how the manner of repayment of loan can affect the cost of the assets acquired by the assessee. What is the actual cost must depend on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee, but even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the money for purchase of the asset are two different and independent transactions. Even if an repayable subsidy received from the Government, the cost of the asset will be the price paid by the assessee. In the instant case, the allegation is Tax vs Tata Iron And Steel Co. Ltd. on 17 December, 1997. repayment of loan, there given exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. In our judgment, this is not a factor which can alter the cost incurred by the assessee for purchase of the asset. The assessee issued the funds to purchase the asset by borrowing but what the assessee has paid for it, is the price of the asset. That price cannot change by any event subsequent to the acquisition of the asset. In our judgment, the manner or mode of an has nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. We hold that the questions were rightly answered by the High Court. The appeals are dismissed. There will be no order as to costs." Though in above case, the issue was impact of fluctuation of foreign currency loan borrowed for purchase of the asset, but the same analogy apply for interest for money borrowed purposes of capital asset, which in the case of the assessee is flat. Thus following the decision of the Hon'ble Supreme Court (supra), the interest claimed as cost of acquisition is not allowable.

6.5 Further we note that the loan sanction letter filed by the assessee is in respect of another flat i.e. C of the flat in relation to which capital gain has been declared by the assessee. The clarification letter issued subsequently by the banker or financial institution does not seem to be part of a regular practice of the bank or financial institution assessee the developer and the financial institution both being

*part of the same group, of which the assessee is part, otherwise in normal course no bank can give loan against the property which was not owned by the assessee and al against one property to another property without making changes in the loan sanction letter or issuing revised sanction letter. In the case, the documents produced do not give confidence of authenticity.*

*6.6 Accordingly, the find dispute is set aside and finding that of the Assessing Officer is restored. The ground No. accordingly allowed.”*

14. In view of above facts and circumstances and the ratio laid down by the Hon'ble Supreme Court and the Tribunal, we find no error or infirmity in the order of the Ld. CIT(A) in confirming the disallowance of Rs. 1,16,43,521/- being indexation cost of acquisition of property of Rs. 94,17,082/- on account of interest paid on borrowed capital. Thus, we find no merits in the Grounds of appeal of the assessee.

15. In the result, the Appeal filed by the assessee is dismissed.

Order pronounced in open Court on 15<sup>th</sup> February, 2024

Sd/-

Sd/-

**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

Dated: 15/02/2024

*Binita/R.N Sr. PS*

Copy forwarded to:

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

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

