

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 3507/Mum/2024
Assessment Year : 2016-17

Right Channel constructions Pvt. Ltd., 202, Sakhi Apartment, Near Dheeraj Residency, M.G.Road, Kandivali (West), Mumbai PAN : AAECR2174D	vs.	Dy. Commissioner of Income Tax, Circle-13(3)(1), Aayakar Bhavan, Maharshi Karve Road, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Prakash Jhunjunwala
Revenue by : Smt. Mahita Nair, Sr.DR

Date of Hearing : 28/08/2024
Date of Pronouncement : 14/11/2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 20-03-2023 passed by the Ld.CIT(A), NFAC, Delhi and it relates to the Assessment Year (AY.) 2016-17. The assessee is challenging the order of Ld.CIT(A) in confirming the action of the AO in capitalizing part of interest expenditure to Work in Progress.

2. The appeal is barred by limitation by 416 days. The assessee has filed an affidavit explaining the delay and accordingly requested the Bench to condone the delay. It is stated in the affidavit that the all income tax matters were looked after erstwhile Managing Director, Shri Sudhir G. Mandhana, who died on 06-07-2023 due to prolonged illness. Due to the death of the above said partner, the business activities got disrupted and further, there was a communication gap between the CA who had handled the appeal matter before the Ld.CIT(A). It is stated that the above said CA is not a regular CA and hence, the assessee was not aware about the order passed by the Ld.CIT(A). Subsequently, when the recovery notice came to the assessee, then it was realized that the appeal has been dismissed by the Ld.CIT(A). Immediately thereafter, the assessee took steps to file the appeal through the present CA. Accordingly, it is stated that the delay in filing appeal is on account of reasonable cause and accordingly it is prayed that the delay be condoned.

2.1. We heard Ld D.R on this preliminary issue. From the submissions made in the affidavit, we are of the view that there was reasonable cause for the assessee in not filing the present appeal in time. Further, it is not shown by the Revenue that the delay in filing the present appeal is deliberate one. The Hon'ble Supreme Court in the case of Collector of Land Acquisition vs. Mst Katiji & others (1987) (167 ITR 461) has held that, *when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.* Accordingly, we condone the delay and admit the appeal for hearing.

3. The assessee is engaged in construction of apartments. The AO noticed that the assessee has claimed interest expense of

Rs. 1,00,23,012/-. The AO also noticed that the assessee is constructing various residential apartments. Accordingly, he took the view that a part of interest expenditure should be allocated to the properties under construction. Accordingly, he allocated a sum of Rs.80,18,410/- to Work in Progress account, which resulted in enhancement of total income by above said amount. The Ld.CIT(A) also confirmed the same and hence the assessee has filed this appeal before the Tribunal.

4. The Ld.AR submitted that the assessee is engaged in the business of construction and sale of residential apartments. Till the time, a particular project is completed; the expenditure incurred on construction is accumulated under the head "Work in Progress" (WIP). The assessee is carrying on various projects of constructions for the purposes of sale. Hence, all the flats constructed by it as well as the WIP constitute "stock in trade" for the assessee. The Ld.AR submitted that loan taken for acquisition of stock in trade is allowable as deduction u/s.36(1)(iii) of the Act. He submitted that the proviso to sec.36(1)(iii) of the Act mandates that the interest on loan taken against capital asset is required to be capitalized till the time the said asset is put to use. However, the said proviso will not be applicable for the apartments constructed by the assessee, as it constitutes stock in trade in the hands of the assessee. In support of this proposition, he placed reliance on the decision rendered by the Hon'ble Bombay High Court in the case of CIT vs. Lokhandwala Constructions Inds Ltd (2003) (131 Taxman 810) (Bom). He submitted that the Co-ordinate Benches, in the following cases, have followed above said decision of the Hon'ble Bombay High Court and deleted identical disallowance of interest made:-

- (a) ACIT vs. M/s Frontline Realty P Ltd (ITA Nos.7472 & 7573/Mum/2018)
- (b) Keystone realtors P Ltd vs. DCIT (ITA No.3004/Mum/2019 & others)
- (c) ACIT vs. M/s MMR Social Housing P Ltd (ITA No.1891/Mum/2022).

5. The Ld D.R, on the contrary, supported the order passed by the Ld. CIT(A).

6. We heard the parties and perused the record. There is no dispute with regard to the fact that the assessee is engaged in the business of construction and sale of apartments. Hence the apartments shall constitute stock in trade in the hands of the assessee. The deduction of interest expenditure is governed by the provisions of sec.36(1)(iii) of the Act, which reads as under:-

“36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the total income referred to in section 28---

(i), (ia), (ib), (ii).....

(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 (whether capitalised 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.

Explanation. - Recurring subscriptions paid periodically by shareholders or subscribers in Mutual Benefit Societies which fulfill such conditions as

may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;”

In the instant case, there is no dispute that the loan was taken by the assessee for the purposes of business and hence u/s 36(1)(iii) of the Act, the same is allowable as deduction. The Proviso to sec.36(1)(iii) of the Act mandates capitalization of interest only in respect of capital asset till the time it is put to use. In the instant case, the assessee is constructing apartments for the purpose of sale and hence they constitute trading stock in trade in the hands of the assessee. Hence, the proviso to sec. 36(1)(iii) of the Act, referred above, is not applicable. Hence, the entire interest expenditure claimed by the assessee is allowable as deduction u/s 36(1)(iii) of the Act. Accordingly, we are of the view that the AO was not correct in law in not allowing deduction of interest expenditure claimed by the assessee in toto. We derive support for our view from the decision rendered by the Hon’ble jurisdictional Bombay High Court in the case of Lokhandwala Construction Inds Ltd (supra), wherein the Hon’ble High Court held as under:-

“...The project constituted stock in trade of the assessee. The project did not constitute a fixed asset of the assessee. Since the assessee had received loan for obtaining stock in trade, it was entitled to deduction under section 36(1)(iii).”

Accordingly, we hold that the Ld.CIT(A) was not justified in confirming the disallowance of interest expenditure made by the AO by way of allocating part of interest expenses to WIP. Accordingly, we set aside the order passed by Ld.CIT(A) on this issue and direct the AO to allow interest expenses as claimed by the assessee.

7. The assessee has also raised a ground, challenging the validity of reopening of assessment. However, the same was not argued at the time

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of hearing. Further, the same shall become academic in nature, since we have decided the issue contested on merits in favour of the assessee. Accordingly, we leave the said legal issue open.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14-11-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 14-11-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai