

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 399/JP/2016
निर्धारण वर्ष / Assessment Year : 2007-08

M/s. Pareek Shreevastava & Associates Old Dhanmandi, Kota	बनाम Vs.	The ITO Ward- 2 (1), Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABFP 3841 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: None
राजस्व की ओर से / Revenue by : Shri R.A. Verma, Addl CIT-. DR

सुनवाई की तारीख / Date of Hearing : 19/01/2017
घोषणा की तारीख / Date of Pronouncement : 24 /01/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the ld. CIT(A),
Kota dated 18-02-2016 for the assessment year 2007-08 raising therein
following grounds:-

“1. That under the facts and circumstances of the case, ld. CIT(A) Kota erred in confirming non-allowability of interest paid to partners of firm property income ignoring directions of Hon'ble ITAT vis-a-vis of order of ld. CIT(A) for assessment years 2006-07 & 2008-09.

2. That under the facts and circumstances of the case the ld. CIT(A) Kota erred in not allowing deduction of interest paid to partners Rs. 1,66,401/- from property income.

2.1 None appeared on behalf of the assessee in spite of service of notice of this hearing. Consequently the Bench is left with no alternative but to decide the appeal on merits, ex parte qua the assessee, after hearing ld. DR and after perusal of the materials available on record.

3.1 Apropos ground Nos. 1 and 2 of the assessee, the facts as emerges from the order of the ld. CIT(A) is as under:-

“I have gone through assessee’s submission and AO’s findings.

The Hon'ble ITAT had given very clear directions while restoring the proceedings to the A.O that-“The Assessing Officer shall verify the actual capital borrowed for this purpose and allow deduction accordingly”.

The order of the ITAT itself was passed in 2013. It is not that the ITAT was not aware that the matter was very old and the assessee could not produce the linkage of the partners’ capital with the construction. The Assessee was required to show the specific details of purchase and construction, some record to show that the capital of the partners was used to buy the land and construct the building thereon, only then could the A.O allow the deduction of interest. This is clear from the use of the words “for this purpose” by ITAT. However, in response to notices sent by the A.O in the set aside proceedings, the assessee took the plea as under:-

(ii) As property was constructed before 17-18 years date was payment details for construction is not available. However, copies of partners capital accounts are attached vide Annexure A-1 & A-2 to this letter wherefrom total construction cost is verifiable.

.....Valuation of land was taken as agreed by all 8 partners at that time. We submit it was the minimum one. It is not possible for us to

provide Income Tax Computation, Profit & Loss and Balance Sheets related to Ass. Year 1996-97 & 1997-98 of all partners. Interest during Ass. Year 1995-96 to 2007-08 was credited to partner's account in consonance to provisions of Partnership deed. When the interest was paid during Ass. Year 1995-96 to Ass. Year 2007-08 is not possible to give. We submit it has no relevancy at all

It is wrong on the part of the assessee to claim that the A.O was only supposed to verify the actual capital contributed by the partners and allow interest deduction accordingly. Capital account debits do not necessarily mean that the amount was utilized for land or building cost. The A.O was correct in deducing that in absence of the direct linkage in any manner, any supporting documents, ledgers, account copies etc, the claim of deduction on account of interest was not allowable.

I see no reason to interfere with the assessment order.

This ground of appeal is treated as dismissed.”

3.2 During the course of hearing the ld. DR relied on the orders of the authorities below.

3.3 I have heard the ld. DR and perused the written submission of the ld. AR of the assessee and other materials available on record. Brief facts of the case are that the assessee filed the return of income declaring total income of Rs. 1,09,810/- on 19-03-2008. The assessee derived income from house construction. The assessment was completed u/s 254/148/143(3) on 30-08-2013 by the AO computing the total income of the assessee as under:-

Total income as per assessment order dated 20-11-2009	Rs. 4,86,880/-
Assessed total income	Rs. 4,86,880/-

In first appeal, the Id. CIT(A) had not allowed the deduction of interest paid to partners amounting to Rs. 1,66,401/- from house property income with following observations.

“It is wrong on the part of the assessee to claim that the A.O was only supposed to verify the actual capital contributed by the partners and allow interest deduction accordingly. Capital account debits do not necessarily mean that the amount was utilized for land or building cost. The A.O was correct in deducing that in absence of the direct linkage in any manner, any supporting documents, ledgers, account copies etc, the claim of deduction on account of interest was not allowable.”

In appeal before this Bench, the written submission filed by Id. AR of the assessee has also been taken into consideration while adjudicating upon the appeal of the assessee which could not controvert the findings of the Id. CIT(A) that the capital account debited by the assessee does not necessarily mean that the amount was utilized for land or building cost. Further in absence of the direct linkage in any manner, any supporting documents, ledgers, account copies etc. before the lower authorities, the Id. CIT(A) was correct in not allowing the claim of deduction on account of interest payable to partners amounting to Rs. 1,66,401/-. Hence, I concur with the findings of the Id. CIT(A) on the issue in question. Thus the appeal of the assessee is dismissed.

4.0 In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 24 /01/2017

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

24 /01/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant-M/s.Pareek Shreevastava & Associates, Kota
2. प्रत्यर्थी / The Respondent- The ITO, Ward 2(1), Kota
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 399/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar