

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
Ms. SUCHITRA KAMBLE : JUDICIAL MEMBER

ITA no. 6160/Del/2015

Asstt. Yr: 2010-11

GVM Infrastructure Pvt. Ltd., Vs. Income-tax Officer,
C/o M/s Sanjay Kumar & Co., CAs Ward-1(2), Meerut.
318, Sadar Bundela,
Dalmandi Meerut Cantt (UP)
PAN: AADCG 4058 J

(Appellant)

(Respondent)

Appellant by : Shri C.S. Anand Adv.
Respondent by : Shri T. Vasanthan DR .

Date of hearing : 08/02/2016.
Date of order : 12/02/2016.

ORDER

PER S.V. MEHROTRA, A.M:

This is assessee's appeal against the order dated 16.09.2015 passed by the ld. CIT(A), Meerut in appeal no. 139/13-14, relating to A.Y. 2010-11.

2. Brief facts of the case are that in the relevant assessment year the assessee, a private limited company, was engaged in the business of sale and purchase of land. During the course of assessment proceedings the AO noticed that assessee had given interest of Rs. 8,13,501/-, on unsecured loans, during FY 2009-10. He noted that the opening balance of unsecured

loan was Rs. 93,87,885/-, which amount was given to the assessee by various persons, which also included the directors as well as the share holders for purchasing land during FY 2008-09. The AO observed that the land which was purchased by the assessee company during FY 2008-09 was not put to any use till 31.3.2010 and, therefore, the interest on borrowed capital was to be capitalized. The assessee explained that the interest on borrowed capital was not to purchase assets but was invested in stock in trade. The AO observed that the funds had been invested in purchase of stock in trade and, therefore, it was not allowable u/s 36(1)(iii). He, accordingly, disallowed Rs. 8,13,501/- u/s 36(1)(iii).

3. Ld. CIT(A) confirmed the AO's action, inter alia, observing that there was no sale done during the year and, therefore, interest expenses claimed became preoperative expenses. Aggrieved, the assessee is in appeal before us and has taken following grounds of appeal:

“1. That on the facts of the case and under the law, the expenditure of Rs. 8,13,501/- incurred/claimed by the Assessee on a/c of interest on borrowed funds, ought to had been allowed as revenue expenditure for the year under consideration.

2. That on the facts of the case and under the law, the determination of total income of the assessee for the year under consideration at Rs. 8,13,501/- (being the amount of disallowance made) is unjust & illegal, in as much as there was loss of Rs. 8,32,438/- for the year under consideration. .

3. *That on the facts of the case and under the law, the creation of liabilities of Rs. 3,41,872/- (including interest of Rs. 90,500/- charged u/s 234B) is unjust & illegal.*

4. Ld. counsel for the assessee submitted that assessee's claim has been allowed in earlier as well a subsequent year as under:

F.Y.	A.Y.	Amount of interest (in Rs.)
2008-09	2009-10	284516
2009-10	2010-11	813501
2010-11	2011-12	816614
2011-12	2012-13	925908
2012-13	2013-14	615305
2013-14	2014-15	651408

5. He, therefore, submitted that the assessee's claim is squarely covered in favour of the assessee.

6. Ld. DR relied on the order of lower revenue authorities.

7. We have considered the submissions of both the parties and have perused the record of the case. There is no dispute that assessee had utilized the unsecured loans for purchase of land. The AO has noted that the assessee company was engaged in the business of sale and purchase of land, therefore, the assessee's contention that the land was its stock in trade cannot be doubted. Once the funds have been invested in purchase of stock in trade, then merely because there was no sale during the year, it could not be concluded that the entire interest paid on borrowed capital was towards capital asset. It is well settled law that for allowability of interest u/s

36(1)(iii), there need not be any sale/ turnover during the year. If the business of assessee has started and assessee is acquiring the raw-material/ goods for trading purposes, then the utilization of borrowed capital is for business purpose and is to be allowed u/s 36(1)(iii). We, accordingly, direct the AO to allow the assessee's claim.

8. Charging of interest u/s 234B is consequential.

9. In the result, assessee's appeal is allowed.

Order pronouncement in open court on 12/02/2016.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 12/02/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.