

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 761/JP/2016
निर्धारण वर्ष/Assessment Year : 2011-12.

The Asstt. Commissioner of Income-tax, Circle-6, Jaipur.	बनाम Vs.	M/s Aditya Propcon Pvt. Ltd.,A-2, Pushp Enclave, Pratap Nagar, Sector-5, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAACD6226A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by: Shri R.A. Verma (JCIT)

निर्धारिती की ओर से/ Assessee by : Shri Sandeep Jhanwar (CA)

सुनवाई की तारीख/ Date of Hearing : 06.04.2017.

घोषणा की तारीख/ Date of Pronouncement : 11/04/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the Revenue is directed against the order of Id. CIT (A)-5, Jaipur dated 20.06.2016 pertaining to assessment year 2011-12. The Revenue has raised the following grounds of appeal :-

"1. Whether on the facts and in circumstances of the case and in law the Id. IT(A) was justified in deleting the addition of Rs. 30,36,540/- made by AO on account of excess stock claimed in respect of sales during the year.

2. Whether on the facts and in circumstance of the case and in law the Id. CIT(A) was justified in deleting the addition of Rs. 3,24,92,621/- made by AO on account of inclusion of interest cost incurred for Project-2 in the value of inventory of Project-2.

3. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and assessment under section 143(3) of the I.T. Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 20.02.2014. While framing the assessment, the Assessing Officer made addition by enhancing the value of inventory of Rs. 3,24,92,621/- and on account of interest on Ricco loan and unsecured loan, excess cost of stock amounting to Rs. 30,36,540/-. Aggrieved by this order, the assessee preferred an appeal before Id. CIT (A) who after considering the submissions, deleted both the addition.

Aggrieved by this, the revenue is in present appeal.

3. At the time of hearing, Id. Counsel for the assessee submitted that both the issues are squarely covered in favour of the assessee by the decisions of this Hon'ble Tribunal, pertaining to the assessment year 2009-10 and 2010-11. Id. Departmental Representatives conceded this fact. However, he supported the assessment order.

3.1 We have heard the respective representatives perused the material available on record.

4. Ground no. 1, in the Revenue's appeal is against deletion of addition of Rs. 30,36,540/- made by the Assessing Officer. Id. CIT(A) deleted the addition by following decision of the Tribunal in assessee's own case for the assessment year 2009-10. We find that the Tribunal in ITA NO. 762/JP/2012 decided the issue of excess stock in para 7 as under:-

"We have heard the rival parties. On perusal of material on record and orders of the authorities below, we find that the assessee has allocated the entire cost on each and every unit. The cot of construction is pro-rata in the ratio of

area of each unit but the cost of land is allocated on weighted average selling rate of each unit as there are large variation in the selling rates of the units depending on their respective location. Major difference is because of the floor. Government also recognizes it for the purpose of stamp duty valuation and take different value of land for registration of property at different floors. The manner in which AO has allocated the cost is giving distorted result of profit/loss on each unit as against which the formula drawn by the assessee balances the same. There is no dispute as to the fact that the same basis is adopted in the books of accounts. In our considered opinion the method adopted by the assessee is more logical and does not leave any possibility of leakages in revenue also. In these facts and circumstances we find no merit in the first ground of departmental appeal. Regarding the second ground, we find that the working shown by the assessee was the basis of financial statements and preparation of books of accounts. There is no finding of the Assessing Officer that any of the information regarding financial statement or books of account was not provided by the assessee. In such circumstance, it is wrong to consider the calculation as additional evidences. The Id. CIT(A) has, to his satisfaction, verified the calculations which he founds has correct. We find no merit in the arguments of Ld. DR that verification of computation of allocation of cost, which has not been done by the AO is not within the jurisdiction of the Id. CIT(A). We accordingly dismissed ground no. 2 of the departmental appeal also."

4.1 It is stated that the Id. Counsel for the assessee that there is no changed into the facts and circumstances. The Id. Departmental Representatives as not refuted the submissions of the Id. Counsel for the assessee. Therefore, following the decision in ITA No. 762/JP/2012 (supra), we do not see any reason to interfere into the order of the Id. CIT(A), same is hereby affirmed. Therefore, Ground no. 1 of Revenue's appeal is dismissed.

5. Ground no. 2 is against deletion of addition of Rs. 3,24,92,621/- Id. Counsel for the assessee stated that the Assessing Officer made addition on account of on the basis that interest cost of project 2 cannot be set off against income of project 1, since the assessee maintain separate inventories for project 1 and project 2. However, Id. CIT(A) held that the assessee gave correct treatment in debiting the interest expenses in profit and loss account. The same is in accordance with the

provisions of AS 2 and AS 16 also as per provision of Sec 36(1)(iii), interest paid in respect of capital borrowed is allowed as deduction in the year in which it was incurred. This treatment is accepted by the by the auditor of the company and also covered by the decision of the Tribunal in ITA No. 762/JP/2012 and also ITA No. 728/JP/2016. We find that the Tribunal in ITA No. 762/JP/2012 has decided the issue in para 18 of this order by observing as under:-

"We have heard the parties and perused the material available on record and also the orders of the authorities below. We find that the books of accounts of the assessee are audited and the ld. Auditor has not given any adverse comment for not following the accounting standards which are mandatory for a company u/s 211 of the Companies Act, 1956. We also find that there is no dispute that the said land is part of inventory for the assessee and is not a capital asset. The assessee has produced evidences of no increase in the land price and AO has not brought anything on record to support that the assessee would be able to realize the interest cost incurred over and above the cost of purchase of land. In such circumstances, as per basic accounting principles of valuation of inventory that the inventory is to be valued at cost or net realizable value whichever is lower. The uncontroverted evidences show that there is no buyer of the similar land in same vicinity at the price which is lesser than the price paid by the assessee and therefore, we are convinced with the CIT(A) and A/R of the assessee that the inventory of land cannot be valued at a price higher than it is bought. Ld. A/R has stated that the assessee has not taken up the project activity even till 31/03/2013. The delay in project is for economic reasons. In such circumstances, the AS-16 does not allow capitalization of interest cost along with the cost of land. It allows capitalization of interest cost only during normal period of construction and not for inordinate delay in the construction activity due to adverse market forces. There is specific requirement of AS-16, not to capitalization of interest cost along with the cost of land if it is held without any associated

development activity. Accordingly, the accounting treatment of the interest cost is perfectly in line with the Accounting Standards. We further find that despite any accounting treatment, the interest on capital borrowed for the purpose of business is allowable u/s 36(1)(iii). A proviso has been inserted w.e.f. 1.4.2004 which reads as under:-

“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.”

The proviso specifically referred to the interest paid in respect of capital borrowed for acquisition of any asset for extension of existing business. The present case is of acquisition of land for its development in course of real estate activity of the assessee. Assessee is about to complete one project and to continue the activities has purchases another land to develop another project. The argument of the Id. DR that the proviso would apply to the assessee's case cannot be accepted. We are of the considered opinion that the purchase of inventory is continuation of the same business activity in routine course and cannot be termed as extension of the business activity. The proviso has been inserted to disentitle claim of interest on funds borrowed for acquisition of capital assets for the period upto the asset is put to use. The term 'put to use' here applies to capital asset only because a capital assets is held to facilitate the business activity and sometimes it needs to be prepared after its acquisition for being used to facilitate the business activity. As against this, purchase and holding of inventory item itself is a business activity. In absence of this proviso, section 36(1)(iii) earlier entitled assessee to claim interest in respect of capital assets, even for the period during which they were under construction as held in various judgments pointed out by the Id. AR of the assessee. The interest was found allowable despite its capitalisation in the books of accounts in the judgments. We are therefore, of the opinion that the interest on funds borrowed to purchase land which is part of inventory of the assessee company is an allowable deduction

u/s 36(1)(iii). We accordingly reject the ground of the departmental appeal also."

5.2 It is contended by the Id. Counsel for the assessee, that the facts are identical as were in ITA No. 762/JP/2012. The revenue has no rebutted these submissions by placing any contrary material. Therefore, we do not see any reason to interfere into the order of the Id. CIT(A), same is hereby affirmed. Therefore, Ground no. 2 of the Revenue's appeal is dismissed.

6. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on Tuesday, the 11th Day of April 2017.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member
Jaipur

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Dated:- 11/04/2017.

Pooja/

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

1. The Appellant-The Asstt. Commissioner of Income-tax, circle-6, Jaipur.
2. The Respondent-M/s Aditya Propcon Pvt. Ltd., A-2, Pushp Enclave, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 761/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

