

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5081/MUM/2017
Assessment Year: 2010-11**

HGP Community Pvt.
Ltd., 514, Dalamal
Towers, 211, F P J
Marg, Nariman Point,
Mumbai-400021

Vs.

Income Tax Officer,
Word 3(1)(4), Room No
666, Aayakar Bhavan
Mumbai.

PAN No. AAFA4103H
Appellant

Respondent

Assessee by
Revenue by

: Mr. Chetan A. Karia, AR
: Mr. M.C. Omi Ningshen, DR

Date of Hearing : 29/11/2017
Date of pronouncement : 26/02/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-28, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The ground raised by the appellant is that the Ld. CIT(A) erred in (i) confirming the action of the Assessing Officer (AO) in reducing the amount of Work-In-Progress (WIP) by Rs.1,10,02,425/- incurred towards brokerage and (ii) confirming the action of the AO in reducing

the amount of WIP by Rs.7,35,52,483/- being interest incurred on loan borrowed towards the project.

3. Briefly stated, the facts of the case are that the AO found during the course of assessment proceedings that the appellant had debited Rs.96,93,12,794/- as expenditure on project completed. As per the details, it debited Rs.1,10,02,425/- as 'brokerage on lease' and Rs.2,33,36,658/- as 'interest account' and Rs.5,02,15,825/- as 'interest on loan'. The appellant had paid the brokerage amount of Rs.1,10,02,425/- to C B Richards for leasing the properties owned by the assessee. The AO was of the view that neither section 23 nor section 24 provide for the deduction of expenditure towards brokerage paid for putting the property on rent. Therefore, he disallowed the above expenses of Rs.1,10,02,425/-.

As the appellant had debited the above expense in the account of expenditure for work done during the year, the AO disallowed the same from the expenditure done for work account and reduced the corresponding expenditure on project completed during the year to Rs.95,83,10,369/- from Rs.96,93,12,794/-.

3.1 The AO further observed that the appellant had offered lease rental income under the head 'Income from house property'. While computing the taxable income, it had claimed deduction of interest paid on borrowed funds amounting to Rs.7,35,52,483/-. The appellant had shown a receipt of Rs.11,39,20,047/- as the license fee. The net income, after the said claim of interest and standard deduction of 30% was

offered by the appellant as income under the head 'Income from house property'.

On verification of the expenses capitalized to the projects under construction, the AO observed that the appellant had apportioned interest expenses incurred of Rs.7,35,52,483/- to various ongoing projects under the head "expenditure on projects completed during the year", thereby making the interest as the component of WIP. The AO was of the view that as the appellant had already claimed the deduction of interest paid from income under the head 'Income from house property', capitalizing the same interest to WIP would result into dual claim of the same amount. Therefore, the AO reduced Rs.7,35,52,483/- from WIP. Thus he restricted the expenditure done on project completed during the year to Rs.88,47,57,886/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) has held that once the aspect of income having been earned from house property is found, deductions have to be limited to those which are specified in section 24. The expenditure of brokerage on lease is not one of the qualifying expenditures. Therefore, the Ld. CIT(A) confirmed the disallowance of brokerage done by the AO and also the reduction of the same amount on project completed during the year.

4.1 In respect of the disallowance of interest of Rs.7,35,52,483/- made by the AO, the Ld. CIT(A) found it strange that the appellant has capitalized cost of asset and again claimed the same as deduction under the head 'Income from house property'. This leads to double deduction

has held in the case of *Escorts Ltd. v. UOI* (1993) 199 ITR 43 (SC). Following the above judgment, the Ld. CIT(A) upheld the order of the AO.

5. Before us, the Ld. counsel of the appellant submits that the assessee is a registered partnership firm. The main activities of the firm are construction and development of properties. During the year under consideration, the appellant had carried on and completed construction of project 'Knowledge Park'. During the year, the appellant had earned lease income from units. It is submitted by him that the appellant had hired certain professionals to sell the units in stock and it had to pay fees to these professionals for the services rendered by them for the business of the firm and the said expenditures are business expenses and squarely covered by section 37(1). Reliance is placed by him on the decision in *Mukti Properties (P.) Ltd. v. CIT* (2011) 344 ITR 177 (Cal).

5.1 In respect of interest paid, it is explained that the appellant had taken loan from HDFC Ltd. and had taken overdraft facility for construction of 'Knowledge Park' and paid interest of Rs.7,35,52,483/- and the same has been added to WIP of 'Knowledge Park' building'. The appellant required funds to complete the construction of the building so that the units could be sold/leased at an early date and therefore, borrowed funds for the same. Interest on borrowed funds for the project is certainly a cost incurred for the project and need to be added to the total WIP.

The Ld. counsel further submits that the appellant has claimed deduction of the interest from the license fees received while computing the income under the head ‘Income from house property’. Further, the appellant has added the same to WIP of the building ‘Knowledge Park’ and the same also will be fully allowable as cost.

As the premises have been constructed and developed for lease purposes, rent and compensation received for letting out has been offered as ‘Income from house property’ u/s 22. As the building has been developed for lease, it is not stock-in-trade but capital asset as the appellant would be earning regular income from the same, while owning the building.

It is submitted by him that different heads of income have been prescribed under the Act for the purpose of computation of income falling under specific heads of income. The said building has been constructed with borrowed funds. Different treatment is provided to interest expense under both heads of income. It is stated by him that the issue would arise only till the time the building is fully developed and constructed as after the said date, interest cost will not be capitalized to cost of asset after the said date.

It is thus submitted by him that the legislature has specifically provided for two separate deductions in as much as interest incurred before putting assets to use is capitalized as well as allowed as deduction as per section 24. Reliance is placed by him on the order of the Chennai Bench of the Tribunal in *ACIT v. C. Ramabrahmam* (ITA No.943/Mds/2012).

Thus it is submitted that the interest paid by the appellant is finance cost for construction of 'Knowledge Park' building and is allowable as deduction from 'Income from house property' and as cost to building also.

6. *Per contra*, the Ld. DR supports the order of the Ld. CIT(A).

In respect of the claim of interest expenses of Rs.7,35,52,483/- the Ld. DR submits that WIP is an item of business transaction and the AO has computed the WIP with regard to the business transaction of the appellant. Since the expenses have already been claimed u/s 24(b), it cannot be claimed as business expenses subsequently. Therefore, the AO has rightly reduced the amount from the business WIP which will form part of business project costs in future. It is stated by him that the appellant can always account the interest expenses in the cost of acquisition of property for the purpose of capital gains u/s 48 of the Act even if the same is not shown in WIP as proof of such expenses is evident from the fact that it has been claimed u/s 24(b) of the Act.

The Ld. DR also distinguishes on facts the decision in *Shri C. Ramabrahman* (supra) relied on by the Ld. counsel.

7. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

We begin with the case laws relied on by the Ld. counsel of the appellant. In *Shri C. Ramabrahman* (supra), the AO was of the opinion that since the interest in question on housing loan, had already been claimed as deduction u/s 24(b) in the assessment years 2004-05 to

2006-07, the same could not be taken into consideration for computation u/s 48 of the Act. The Tribunal held :

“Deduction u/s 24(b) and computation of capital gains u/s 48 of the Act are altogether covered by different heads of income i.e., income from ‘house property’ and ‘capital gains’. Further, a perusal of both the provisions makes it unambiguous that none of them excludes operative of the other. In other words, a deduction u/s 24(b) is claimed when concerned assessee declares income from ‘house property’, whereas, the cost of the same asset is taken into consideration when it is sold and capital gains are computed u/s 48. We do not have even a slightest doubt that the interest in question is indeed an expenditure in acquiring the asset. Since both provisions are altogether different, the assessee in the instant case is certainly entitled to include the interest amount at the time of computing capital gains u/s 48 of the Act.”

In *Mukti Properties (P.) Ltd.* (supra) the Hon’ble High Court found that there had been mixed income arising out of profits and gains of business and real estate as well as income from house property. Under such circumstances, usual statutory deduction as allowable under different heads had to be taken note of. The types of business being carried on by the assessee is to be found from articles of associations and also from the audit report. Section 14 provides for several heads of income. Usual statutory deduction as allowable under different heads has to be taken note of. Income from house property is one such heads whereas gains from business and profession is another head. Section 24 of the Act is applicable when the income is exclusively derived from house property as mentioned in section 22.

7.1 Broadly stated the issue is whether the order of the AO reducing the amount of brokerage of Rs.1,10,02,425/- and interest on loan of Rs.7,35,52,483/- from the WIP is correct or not?

7.2 In the computation of income, the appellant has shown income from house property of Rs. 5,031,349/-, business loss of Rs. 2,909,265/- and interest income of Rs.97,060/-

As evident from the above computation of total income, the appellant derives income not only from house property but also from business.

7.3 Now we discuss the relevant Accounting Standard (AS) issued by the Institute of Chartered Accountants of India, which has persuasive value. As per AS-10, costs of fixed assets to include purchase price, non-refundable duties and taxes and all costs required bringing the fixed assets to its working condition for its intended use. Any change in cost-e.g. refund of duties, Government grant etc. to be adjusted in cost of fixed assets. Subsequent expenditure to be capitalized only if they result in the benefits more than the previously assessed standard of performance.

7.4 As per AS-16, borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset (should be capitalized as part of the cost of that asset). Other borrowing costs should be recognized as an expense (i.e. charged off to P&L account) in the period in which they are incurred. Capitalization should be done only when

- It is probable that they will result in future economic benefits to the enterprise and
- The cost can be measured reliably.
- Other borrowing cost should be expensed in the period in which they are incurred
- When the carrying amount or the expected ultimate cost of the qualifying asset exceeds the recoverable amount, the carrying amount is written off or written down in accordance with AS-28 (Impairment of Assets)
- The amount of borrowing cost to be capitalized depends upon-
 - Type of borrowed funds
 - Expenditure on qualifying assets
 - Period taken to complete the acquisition construction or production
 - Income from temporary investments of borrowings pending their expenditure on qualifying assets.

7.5 The Hon'ble Supreme Court in the case of *Challapalli Sugars Ltd v CIT* [1975] 98 ITR 167 (SC) has held that interest on amount borrowed for acquiring and installing machinery for the period prior to commencement of production, forms part of actual cost. It has also been held in *CIT v Fort Gloster Industries Ltd* [1971] 79 ITR 48 (Cal) that expenses on registration, stamp duty, insurance, guarantee commission necessary for acquisition of a depreciable asset shall form part of the actual cost.

Companies generally must capitalize interest costs associated with acquiring or constructing an asset that requires a long period of time to get ready for its intended use. As a consequence of this accounting treatment, a company's interest costs for a period can appear either on the balance sheet (to the extent they are capitalized) or on the income statement (to the extent they are expensed).

7.6 Both AS 10 and Ind AS 16 define elements of cost in an identical manner and contain several examples of costs that are includible or excludible in the determination of cost of assets.

7.7 Having examined the relevant documents, we find that the claim of the appellant that the AO should not have reduced brokerage and interest on loan from WIP has not been examined either by the AO or the Ld. CIT(A) on the basis of parameters as narrated at para 7.3,7.4&7.5. In view of the above facts, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a *de novo* order in the light of our observation at para 7.3,7.4 &7.5 hereinbefore after giving reasonable opportunity of being heard to the appellant. We direct the appellant to file the relevant accounts/documents before the AO.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 26/02/2018.

Sd/-

(SAKTIJIT DEY)

JUDICIAL MEMBER

Mumbai;

Sd/-

(N.K. PRADHAN)

ACCOUNTANT MEMBER

Dated: 26/02/2018
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai