

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND, SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.4095/Del/2017 (for Assessment Year 2013-14)

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| Vidya Education Investments Pvt. Ltd., 5C, Old Friends Colony (West) Main Mathura Road, New Delhi - 110065 PAN No. AABCV 9413 E (APPELLANT) | Vs. | DCIT Circle – 26(2), New Delhi (RESPONDENT) |
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And

ITA No.4901/Del/2017 (for Assessment Year 2013-14)

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| DCIT Circle – 26(2), New Delhi (APPELLANT) | Vs. | Vidya Education Investments Pvt. Ltd., 5C, Old Friends Colony (West) Main Mathura Road, New Delhi - 110065 PAN No. AABCV 9413 E (RESPONDENT) |
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| Assessee by | Shri Gaurav Bansal, C.A. |
| Revenue by | Sh. Prakash Dubey, Sr. DR |

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| Date of hearing: | 14/07/2021 |
| Date of Pronouncement: | 20/07/2021 |

ORDER**PER ANIL CHATURVEDI, AM:**

These cross appeals filed by the assessee and Revenue are directed against the order of the Commissioner of Income Tax (A)-13, New Delhi dated 16.02.2017 relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company who filed its return of income for A.Y. 2013-14 on 03.12.2013 declaring Nil income, current year business loss of Rs.5,98,037/- and loss from house property Rs.1,19,20,350/- to be carried forward. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 28.12.2015 and the total taxable income from House property was determined at Rs.1,80,79,650/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 16.02.2017 (in Appeal No. TR 114/16-17) granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee and Revenue are now in appeal before us. Before us, Assessee has raised following grounds in ITA No.4095/Del/2017 for A.Y. 2013-14:

“1. *Whereas on facts and circumstances of the case the learned CIT(A) erred in allowing only Rs.1,50,00,000/-, being 50% of*

interest claimed by the assessee i.e. Rs.3,00,00,000/-, paid on secured loan, utilized for construction of school building in respect of which full rental income is included the computation of taxable income.

2. *The Learned CIT(A) erred in law and facts and circumstances of the case in not considering the declared business loss Rs.5,98,037/- for the year, disallowed by the ld AO.*
 3. *The learned CIT(A) erred in law and facts and circumstances of the case in treating the interest Rs.1,95,598/- received from Income Tax Department on refund as an income from other sources by invoking the Provision of Section 251(2) of the Income Tax Act and directing the AO to add the same to the taxable income.*
 4. *That the appellant craves leave to add, modify and/or delete any ground(s) of appeal.”*
5. On the other hand, grounds raised by the Revenue in ITA No.4901/Del/2017 for A.Y. 2013-14 reads as under:

- “1. *On the facts and in the circumstances of the case and in law, the ld CIT(A) has erred in restricting the disallowance made by AO on account of interest on borrowed capital on Rs.3,00,00,000/- to 1,50,00,000/- u/s 24(b) of the Income Tax Act, 1961 just because in earlier years also this disallowance has been allowed to the assessee without proper documentary evidences regarding its claim.*
2. (a) *The order of the CIT(A) is erroneous and not tenable in law and on facts.*
 (b) *The appellant craves for reserving the right to amend, modify, alter, add or forego any of the Ground(s) of appeal at any time before or during the hearing of this appeal.”*

We first proceed with assessee's appeal:

6. At the outset, Learned AR submitted that assessee does not wish to press Ground No.2 & 3 raised in its appeal. In view of the aforesaid submission of the assessee these grounds are dismissed as not pressed.

7. He thereafter submitted that remaining ground raised by the assessee and Revenue in its appeal are interconnected and therefore, both can be considered together.

8. During the course of assessment proceedings, AO noted that assessee had set up school at Lonavala together with the Cathedral School Welfare Trust, Mumbai. The facilities of the school building are let out to M/s Cathedral Vidya Trust and assessee was deriving rental income from Cathedral Vidya Trust to whom the school building was let out. AO noticed that assessee has claimed interest expense of Rs.3 crore on borrowed funds. AO noted that in A.Y. 2011-12, out of similar claim of interest, 50% of the interest was disallowed as the assessee could not substantiate as to whether the said capital was borrowed for the purpose of earning rental income. Assessee was therefore asked to show-cause as to why the interest expense was not disallowed in case the income was treated as House property. Assessee *inter alia* submitted that the construction of school building at Lonawala was completed in A.Y. 2010-11 and the cost of land and school building was Rs.45.93 crore (rounded off) and the source

of fund was from Share Capital, Share Premium account and contribution by cathedral school welfare Trust Rs.19.72 crore and the secured loan from IIFL for the construction of school building of Rs.25 crore. Assessee further submitted that no fresh loan for construction of school building was raised during the year under consideration and the interest paid was on the loan taken from IIFL prior to 31.03.2010 and the interest on the same has been allowed in earlier assessment years against the property income. It was therefore submitted that there was no reason to disallow the interest paid on borrowed funds for the construction of school building. The submissions of the assessee was not found acceptable to AO. AO was of the view that as per Section 23/24 of the Act, deduction is available only when the funds was used for the purpose of acquisition or construction of the property. He noted that no documentary evidence has been filed by the assessee and the assessee's submissions that the interest has been allowed in earlier years is not found acceptable as according to AO every assessment year is a different year for the purpose of taxation. He therefore held that in the absence of any documentary evidence, the claim of interest of the assessee of Rs.3 crore to be not allowable and accordingly disallowed the same. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) noted that there are no difference in the facts between A.Y. 2012-13 & 2013-14. CIT(A) thereafter by following the order of her predecessor for A.Y. 2012-13 restricted

the disallowance of interest to the extent of 50%. Aggrieved by the order of CIT(A), assessee and Revenue are now before us.

9. Before us, Learned AR reiterated the submissions made before the AO and CIT(A) and further submitted that identical issue arose in assessee's own case in A.Y. 2010-11 to 2012-13 and the Co-ordinate Bench of Tribunal by order in ITA No.6177/Del/2014 for A.Y. 2010-11, ITA No.1778/Del/2016 for A.Y. 2011-12 and ITA No.1779/Del/2016 in A.Y. 2012-13 has decided the issue in favour of the assessee. He pointed to the relevant orders placed in paper book. He further submitted that since the facts in the year under consideration are identical to that of earlier years as also noted by CIT(A) therefore, matter be decided following the order of the Tribunal in earlier years.

10. Learned DR on the other hand supported the order of AO.

11. We have heard the rival contentions and perused the materials available on record. The issue in the present ground is with respect to the restriction of disallowance of interest. AO had disallowed the entire interest payment of Rs.3 crore but when the matter was carried before the CIT(A), CIT(A) restricted the disallowance to 50% of the interest payment. We find that identical issue arose in assessee's own case in A.Y. 2010-11 and the Co-ordinate Bench of Tribunal vide order dated 22.06.2018 in

ITA No.6177/Del/2014 decided the issue in favour of the assessee by observing as under:

“17. We have considered the rival submissions and do not find any justification to sustain the addition. The interest paid on borrowed funds used for the acquisition and construction of the property is an allowable deduction under section 24(b) of the I.T. Act. The authorities below have disallowed 50% of the interest because no bifurcation of the funds used for land and building and other assets have been provided by the assessee. The assessee has, however, given complete details before the Ld. CIT(A) to show how much own funds are available to assessee and how much amounts have been borrowed from the Bank and other institutions. The assessee claimed that the borrowings as on 31.03.2010 were only Rs.25,13,58,904/-, on which, above interest have been paid. The assessee has invested a sum of Rs.43,46,57,917/- in the school land and building. This itself proves that assessee utilized the entire borrowed funds for construction of school building. Learned Counsel for the Assessee also referred to page-10 of the synopsis to show bifurcation of the land and building of the demise property and other assets and submitted that the other net addition on other assets in assessment year under appeal is only Rs.60,35,902/- which is not disputed by the Ld. CIT(A), because, such Schedule-5 of the fixed assets was also filed before authorities below. He has, therefore, rightly contended that the entire borrowed funds have been used for the purpose of acquisition and construction of the school building. Similar deduction of interest claimed in earlier year not disputed by authorities below. Therefore, interest is allowable. We, accordingly, set aside the orders of the authorities below and delete the addition. This ground of appeal of assessee is allowed.”

12. We find that the Co-ordinate Bench of Tribunal while deciding the appeal for A.Y. 2011-12 followed the order of Tribunal in A.Y. 2010-11 and had allowed the claim of the assessee. We further find that while deciding the issue in A.Y. 2012-13, claim of assessee was allowed by the Co-ordinate Bench of Tribunal by following the order of the Tribunal for A.Y. 2010-

11. We thus find that on identical issue the claim of the assessee has been allowed in earlier years and we further find that CIT(A) while deciding the issue has also noted that in the year under consideration, facts are identical to that of earlier year.

13. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier years. Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of the Tribunal in assessee's own case for A.Y. 2010-11 and for similar reasons hold that no disallowance of interest is called for in the year under consideration. We therefore set aside the order passed by CIT(A). **Thus the ground of assessee is allowed and that of Revenue is dismissed.**

14. **In the combined result, appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.**

Order pronounced in the open court on 20.07.2021

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Date:- 20.07.2021

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Priti Yadav, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
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