

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 1973/DEL/2018
[A.Y 2014-15]

Shri Sanjeev Laroia
504, Savitri Cinema Complex
Greater Kailash - II
New Delhi

Vs.

The Dy.C.I.T
Circle -27(1)
New Delhi

PAN: AABPL 3428 Q

[Appellant]

[Respondent]

Date of Hearing : 09.09.2021

Date of Pronouncement : 09.09.2021

Assessee by : Shri Rajev Mago, CA

Revenue by : Dr. Maninder Kaur, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] - 9, New Delhi dated 22.12.2017
pertaining to Assessment Year 2014-15.

2. The grievances of the assessee read as under :

"1. That the Ld. CIT(A)-9, New Delhi and the Ld. Assessing Officer, Circle 27(1), New Delhi have wrongly interpreted the provisions of section 57(iii) of the Act thus making the Order passed bad in law.

2. The Ld. CIT(A), New Delhi and the Ld. Assessing Officer have erred in fact and law in upholding the disallowance of interest of Rs. 5,65,706.00 claimed u/s 57(iii) which act of the CIT(A) and the A.O. is contrary to the facts of the case and against provisions of law.

3. The Ld. CIT(A) and the A.O. failed to appreciate the nature of interest *payment* made of Rs. 5,65,706.00 as also the consequent receipt of interest of Rs. 4,35,992.00 while upholding the disallowance, which act of the Ld. CIT(A) and the A.O. is wrong both on facts and in law.

4. The Ld. CIT(A) has erroneously observed that the assessee had not objected to the interest income of Rs. 4,17,084.00 being assessed u/s 56 of the Act which finding of CIT(A)-9 is against the facts of the case."

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned interest income of Rs. 4,35,992/- from ERA

Landmark India Ltd. The Assessing Officer found that the assessee has set off the same with interest expense of Rs. 5,65,706/-. The assessee was asked to justify its claim. The assessee replied as under;

"Your honour's attention is invited to Clause A.2.(a) of the buyers agreement entered into by the assessee with. Era Inn marks (India) Ltd. dated 2307.2008. The Clause refers to the discounted Cash Down Plan for the purchase of the property whereby he was given a special discount of Rs. 12,36,243/-. Further, on *the assessee preferring to adopt the Discounted Cash Down Plan as per para A 2.(c) the assessee was* entitled to a monthly guarantee assured income which would further reduced his cost of investment. For earning this income and also availing the discount the assessee, as against liquidation all his investment preferred to go for a top up his home loan to take advantage of the available discount of Rs. 12,36,243/- and also earned income thereon

It can thus be stated that the interest been paid to *ike* bank is for the purpose of availing *the* discounted scheme and earning interest which has been declared in the return. If the assessee had adopted this financial pattern he would have lose the opportunity to avail the discount, earned interest without impacting his other revenue earning assets.

There is thus a direct nexus between the income *earned* from Era Landmark (India) Ltd. (now known has Prasandi Infotech Park Pvt. Ltd.)"

4. Assessee's reply was duly consider by the Assessing Officer but the Assessing Officer was not convinced as he was of the opinion that interest payment was in the nature of capital expenditure and accordingly, disallowed the same and made addition of Rs. 5,65,706/-.

5. The assessee agitated the matter before the ld. CIT(A) but without any success.

6. Before us, the ld. counsel for the assessee drew our attention to the decision of the Tribunal in assessee's own case in ITA No. 6934/DEL/2017 for A.Y 2012-13 and pointed out that the Tribunal, after considering the facts had set aside the dispute back to the file of the Assessing Officer to decide afresh.

7. It is the say of the ld. counsel for the assessee that pursuant to the directions of the Tribunal, the Assessing Officer framed assessment order and has accepted the contention of the assessee and allowed the interest expenditure to be set off against the interest income.

8. The ld. DR fair conceded to this acceptance by the Assessing Officer.

9. We have carefully considered the orders of the authorities below and the order of the Tribunal referred to by the ld. counsel for the assessee. We find force in the contention of the ld. counsel for the assessee. In A.Y 2012-13, on a similar quarrel, the Tribunal set aside the matter to the file of the Assessing Officer for fresh adjudication and we find that the Assessing Officer, vide assessment order dated NIL, framed u/s 254 of the Act giving effect to the directions of the Tribunal has accepted the contention of the assessee and allowed set off of expenditure against the interest earned. Considering the facts in totality, we direct the Assessing Officer to delete the impugned addition.

9. In the result, the appeal filed by the assessee in ITA No. 2061/DEL/2018 is allowed.

The order is pronounced in the open court on 09.09.2021 in the presence of both the rival representatives.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

MEMBER

Dated: 09th September, 2021

VL/

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. Sr. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	