

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 105/AHD/2018
निर्धारण वर्ष/Asstt. Year: 2014-2015

Oceanic Vehicles Pvt. Ltd., A-5, Navkruti Flats, Nr. Tagore Park Nehru Nagar, Ahmedabad-380015. PAN: AACCK5602K	Vs.	D.C.I.T., Circle-3(1)(2), Ahmedabad.
--	-----	--

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Dhrunal Bhatt, A.R with Shri Biren Shah, A.R
Revenue by :	Shri Purushottam Kumar, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **29/12/2022**
घोषणा की तारीख /**Date of Pronouncement**: **01/03/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-7, Ahmedabad, dated 13/11/2017 arising in the matter of Assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The assessee has raised following grounds of appeal:

1. *In law and in the facts and in the circumstances of the appellant's case, the Ld. CIT(A) has erred in confirming disallowance of interest expenditure for Rs 76,00,227/- stating that the same is neither allowable u/s 24(a) nor u/s 36(1)(iii) without appreciating that entire expense is duly allowable. The disallowance confirmed by CIT(A) is liable to be deleted.*

2. *In law and in the facts and circumstances of the case of appellant, the Ld. CIT(A) has erred in confirming disallowance of Rs. 16,29,800/- on account of mismatch in Form 26AS when the appellant had duly explained that no income has arisen to it and such amount has been reimbursed by HDFC bank to the appellant on payment being made to Indian Electric Corporation by appellant on behalf of HDFC Bank. The disallowance confirmed by CIT(A) is liable to be deleted.*

3. *In law and in the facts and in the circumstances of the appellant's case, the Ld. CIT(A) has erred in confirming disallowance of insurance expense of Rs. 68,425/- without appreciating that such expenses are incurred for maintenance of business and shall be allowed. The same is liable to be deleted.*

4 *The appellant craves leave to add, alter, amend and/or withdraw any of the grounds either before or at the time of appeal hearing.*

3. The first issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowances of interest expense of Rs. 76,00,227/- by holding the same is neither allowable under section 24(a) nor under section 36(1)(iii) of the Act.

4. The facts in brief are that the assessee in the present case is a private limited company and engaged in the activity of trading of vehicles. The assessee during the assessment proceedings claimed that it has acquired a property for the purpose of the business out of the loan taken from Bajaj Auto Finance Ltd in the month of January 2010. However, the assessee failed to use such property for the purpose of the business or for any other purpose till immediately preceding year. However, the assessee has let out such property on rent to HDFC Bank in the year under consideration and earned rental income of ₹ 19,53,373/- only.

4.1 As per the assessee, it has taken a fresh loan from the company known as Capital First Ltd in the immediate preceding year dated 27th of February 2013

which was utilized for the repayment of the loan borrowed by the assessee from the Bajaj Auto Finance Ltd in the earlier years. The assessee has incurred interest cost on such borrowing amounting to ₹ 76,00,227/- only. The assessee has claimed such interest expenses as deduction under section 24 of the Act against the rental income declared by it (the assessee).

4.2 The assessee alternatively also claimed that if such expenses are disallowed under the provisions of section 24 of the Act, then the same should be allowed as deduction as business expenses under the provisions of section 36(1)(iii) of the Act.

5. However, the AO was not satisfied with the contention of the assessee on the reasoning that there was no evidence brought on record by the assessee to reach the conclusion that the loan taken from the Bajaj Auto Finance Ltd was utilized for the purpose of the investment in the property as discussed above. The assessee has just filed the ledger copy of the Bajaj Auto Finance Ltd where the repayment entries were reflecting which is not sufficient enough to establish the fact that such loan was used for the purpose of acquiring the property. Further, the utilization of fund of fresh loan obtained from Capital First Ltd was also not provided. Accordingly, the assessee cannot claim the deduction of interest expenses against the rental income.

5.1 The AO further found that the assessee has closed down its business and therefore there remains no ambiguity to the fact that the impugned amount of loan has not been used for the purpose of the business. Accordingly, the amount of interest expenses cannot be allowed on such expenses against the business income.

5.2 In addition to the above, the AO also found that there were investments in the shares amounting to ₹12.15 crores and therefore the possibility of using the borrowed fund against the investments cannot be ruled out.

5.3 In view of the above the AO disallowed the amount of interest expenses incurred by the assessee which was claimed against the income under the head house property. Thus, the addition was made on account of interest of ₹76,00,227/- to the total income of the assessee.

6. Aggrieved assessee preferred an appeal to the learned CIT(A) who confirmed the addition made by the AO by observing as under:

4.2.1 On going through the observations of the AO and submissions made by the appellant, find that it is a fact that no business activity has been carried out by the appellant during the year under consideration. It is also a fact that the property that was purchased during the year by taking a loan from Bajaj Finance Ltd, was also not used for the purpose of business. Further, the appellant has borrowed funds from Capital First Ltd. to repay the loan taken from Bajaj Finance Ltd. This loan has ostensibly been taken for the purpose of expansion of business, the appellant was aware that no business had been carried out during the year and that in the absence of the same, the said property had been given on rent to HDFC Bank. Therefore, borrowing funds from Capital First Ltd. claiming it; was for expansion of its business is misrepresentation of facts and patently wrong. It may have been the intention of the appellant to procure the loan for the purpose of business but the fact is that the loan has been used for something entirely different i.e. for repayment of another loan, that too for the repayment of the loan taken for purchase of property which has not been used for the purpose of business. Thus, from any angle whatsoever, this amount of Rs.76,00,227/-cannot be allowed and the addition of Rs.76,00,227/- made by the Assessing Officer is confirmed. 'Grounds of appeal Nos. 2 & 2.1 are dismissed.

7. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

8. The learned AR before us filed a paper book running from pages 1 to 94 and contended that the property was purchased out of the interest-bearing fund.

Therefore, any income arising from such property, there should be allowed the deduction of the corresponding expenses.

9. On the other hand, the learner DR before us vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The 1st controversy that arises before us whether the property in dispute was acquired by the assessee out of the loan taken from the Bajaj Auto Finance Ltd. To this effect, we do not find any direct material available on record evidencing that the money received by the assessee was paid to acquire the property in dispute. However, we find that there are certain other circumstantial evidences available on record in order to find out whether the assessee has acquired the property in dispute out of the borrowed fund. First of all, we note that the assessee in the earlier years has not claimed any deduction qua to the interest expenses in the profit and loss account. As such, we note that the assessee in the earlier year has capitalized the interest cost to the capital work in progress. We are holding so that the interest was capitalized on the understanding that there was no deduction claimed by the assessee of such interest expenses despite the fact that the cost qua the interest expense was incurred. Furthermore, there was always addition in the value of the WIP shown by the assessee in the earlier years. All these facts strongly suggest that the interest expenses incurred by the assessee in the earlier years were capitalized by enhancing the value of property. For this purpose, we have referred the financial statements of the earlier years available on record and based on such financial statements reached to the conclusion that there was no enhancement in the value of any fixed assets except the capital work in progress. Thus, it can be presumed that such interest cost has been incurred towards the loan from Bajaj Auto Finance Ltd which was effectively utilized for acquiring the property. Thus, we hold that the Bajaj loan was used the purpose of acquiring the property in dispute.

Proceedings further, there is no dispute to the fact that the assessee has obtained fresh loans from Capital First Ltd dated 27 February 2013. It was submitted that such loan has been utilized for repayment of the loan of the Bajaj Auto Finance Ltd. In this regard, we note that the money borrowed from the Capital First Ltd was Rs. 6 crores which is evident from the loan sanction letter and ledger accounts available on pages 16 to 17 and 19 to 20 of the paper book.

10.1 As per the ledger account of Bajaj Auto Finance Ltd placed on page 31 to 32 of paper book, the amount of loan was settled against the loan taken from the Capital First Ltd is for Rs. 9,26,287/- and Rs. 3,89,78,640/- only. Remaining amount of loan from Bajaj Auto Finance was settled by cheque payment Rs. 35,13,078/- dated 04-03-2013 and through ECS for Rs. 5,19,708/- & 87,893/- only. In other word, the gross total of Rs. 4,40,025,606/- only was paid for full and final settlement of loan from Bajaj Auto Finance Ltd whereas fresh loan of Rs. 6 crores was received from Capital First Ltd. Thus, the doubt arises that how the balance amount was utilized by the assessee. Certainly it cannot be for the purpose of incurring the expenses in connection with the building/ property. Thus, the amount of balance loan from Capital First Ltd after settlement of outstanding loan in the name of Bajaj Auto Finance was utilized somewhere else. The onus lies upon the assessee but he did not furnish any detail to this effect as far as the quantification of the amount of loan adjusted against Bajaj Finance and other utilization. In the absence of sufficient documentary evidence, we hold that the amount borrowed by the assessee from the company namely Capital First Ltd over and above the amount of loan settled against such borrowing was not utilized for the purpose of acquiring the assets. Thus, we hold that the assessee is eligible for the deduction against the rental income on account of the interest cost incurred by it in proportion to the borrowing from Capital First Ltd utilized for repayment to the Bajaj Auto Finance Ltd loan.

10.2 A question also arises, whether such extra amount of interest can be allowed as deduction under section 36(1)(iii) of the Act which provides that the amount of interest paid on capital borrowed for the purpose of business should be allowed as deduction while computing business income. It is the settled position of law that any expense incurred by the assessee for the purpose of the business the same can be allowed as deduction provided it is not capital or personal in nature. It is the onus upon the assessee to justify based on the documentary evidence the utilization of the loan borrowed by the assessee from Capital First Ltd over and above the amount used for the settlement of outstanding loan from Bajaj Auto Finance Ltd. However, on perusal of the financial statements of the assessee pertaining to the different years, we note that the assessee is not carrying out any business activity. Admittedly, the assessee is a corporate and legal entity. Indeed, the assessee to maintain legal entity has to incur certain expenses such as audit expenses, ROC filing charges etc. However, to maintain the legal status of the assessee, it is not required to incur the expenses beyond the certain points until and unless some cogent material is brought on record by the assessee. Considering the fact that there was no business carried on by the assessee during the year under consideration and in immediate previous year, we therefore hold that the amount of loan borrowed by the assessee from the Capital First Ltd over and above the amount utilized for settlement of outstanding loan of Bajaj Auto Finance Ltd was not for the purpose of business. Hence the interest cost incurred thereon cannot be considered for the purpose of the business. Hence, the ground of appeal of the assessee is partly allowed.

11. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 16,29,800/- on account of mismatch in the interest amount with form 26AS.

12. The necessary fact are that AO from the form 26AS observed that during year the HDFC Bank made payment of Rs 16,29,800/- to the assessee and

deducted tax on the same under the provision of section 194C of the Act. But the assessee has not included such receipt in the computation of income. The assessee explained that impugned amount represent reimbursement of amount paid by it to Indian Electric Corporation incurred on behalf of the bank. However, the AO disagreed with the contention of the assessee and held that there was no detail furnished with regard to the fact that payment was made to Indian Electric Corporation on the instruction of HDFC bank. Thus, the AO treated the same as income of the assessee and added to its total income.

13. On appeal by the assessee, the learned CIT(A) also confirmed the addition made by the AO by observing as under:

8.2 I have carefully considered the assessment order, facts of the case and the submission made by the appellant. The AO made the impugned addition since the amount of Rs.16,29,800/- received from HDFC Bank by the appellant was not included in the profit and loss account as its income. The appellant has claimed that this amount was in the nature of reimbursement made by HDFC Bank to the appellant for a payment made by it to Indian Electric Corporation on behalf of HDFC Bank, to whom the premises had been given or rent. However, no documentary evidences have been filed in this regard. In the absence of any addition of Rs.16,29,800/- made by the Assessing Officer is confirmed. Ground of appeal no.3.

14. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

15. The learned AR before us contended that the receipt as discussed in the assessment order represents the reimbursement of expenses which cannot be made subject to the income in the hands of the assessee.

16. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

17. We have heard the rival contentions of both the parties and perused the materials available on record. The controversy which needs to be resolved in the given case is that whether the amount received by the assessee from the HDFC

Bank represents the income in the hands of the assessee as the bank has made the payment to the assessee after deducting the TDS under section 194C of the Act which is reflecting in the Form-26AS generated by the Department. Generally, the payer is liable to deduct the TDS on the payments made to the party which is an expense in the hands of the payer and income in the hands of the recipient. In the present case, it is certainly an expense in the hands of the HDFC bank but the question arises whether the amount received by the assessee from the bank represents the income in its hands. Generally, any payment received by the payee after the deduction of tax is considered as income of the payee. But this rule cannot be made applicable to each and every receipt in the hands of the assessee that it represents the income. In the given case, the assessee has categorically submitted that it has incurred certain expenses on behalf of the bank which was reimbursed to the assessee by the bank and therefore the same does not represent any income in its hands. To this effect, we note that the assessee before the authorities below has filed the copy of the ledger and receipt issued by Indian Electric Corporation, payments received from the bank, invoice issued by Indian Electric Corporation in the name of the bank and the latter issued by the assessee to the bank for the reimbursement of the expenses which are placed on pages 34 to 39 of the paper book. None of the document placed in the paper book has been doubted by the authorities below. Likewise, the authorities below have not taken any confirmation from the bank or the company namely Indian Electric Corporation so as to verify the genuineness of the claim of the assessee. But the revenue has disbelieved the version of the assessee despite having many information in respect of which no doubt was raised. Undeniably, there was no direct evidence available on record from the bank stating that the payment made to the assessee was representing the reimbursement of the expenses incurred by the assessee on behalf of the bank. But in the absence of such evidence, the revenue is not expected to ignore the other information submitted by the assessee which have been elaborated in the preceding paragraph.

17.1 Without prejudice to the above, the transaction shown in form 26AS cannot be taken as the gospel truth that it represents the income in the hands of the assessee especially in a situation where the assessee has contended that the above amount representing was reimbursement of the expenses. In such a situation, the Revenue is expected to be more vigilant before reaching to the conclusion that the assessee has not shown certain income. In simple words, the scope of necessary verification in such facts and circumstances is widened in order to disprove the contention raised by the assessee during the assessment proceedings. But we find that no such exercise has been done by the authorities below. Accordingly, in the absence of necessary verification and having any doubt on the details filed by the assessee, we do not find any reason to uphold the finding of the learned CIT(A). Hence, we direct the AO to delete the addition made by him. Thus, the ground of appeal of the assessee is hereby allowed.

18. The last issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of insurance premium of Rs. 68,425/- only.

19. The assessee in computation of income claimed the deduction on account of insurance premium for Rs. 68,425/- only. However, the AO found that assessee has not carried out any business activity, therefore insurance premium was not for any business purpose. Further, the assessee has not furnished the documentary evidence for payment of such insurance premium. Hence, the AO disallowed the same and added to the total income.

20. On appeal by the assessee, the learned CIT(A) also confirmed the same by holding that no evidence or justification was furnished in respect of impugned payment.

21. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

22. The learned AR before us contended that the prepaid expenses were incurred in the earlier year which were shown in the audited balance sheet and no defect of whatsoever was pointed out therein. As per the learned AR, the expenses were incurred for the purpose of the business and therefore the same should be allowed as deduction.

23. On the contrary, the learned DR before us vehemently supported the order of the authorities below.

24. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee has claimed insurance expense amounting to 68,425/- which was claimed as prepaid expenses incurred in the earlier year. For this purpose, we have referred the balance sheet of the last year ending as on 31st March 2013 and find that the assessee in the immediate preceding year has shown prepaid expenses under the head short-term loans and advances amounting to ₹68,425/- only which was written off in the year under consideration. Thus, to this extent it cannot be said that the assessee has claimed any expense which is bogus in nature. The books of accounts of the assessee were audited and no defect of whatsoever was pointed out by the AO during the assessment proceedings. Thus, we hold that the assessee has incurred the expenses.

24.1 Undeniably, the assessee has not been carrying out any business activity but the assessee being our body corporate has to carry out necessary compliance to maintain its status. For this purpose, the assessee may require to employ some staff, incur certain administrative expenses. Thus it cannot be said that the expenses claimed by the assessee will be ineligible for deduction in the absence of any business activity. Furthermore, the genuineness of the expenses cannot be doubted in the year under consideration as the same is arising from the earlier

year. Accordingly, we are not convinced with the finding of the authorities below. Hence, the ground of appeal of the assessee is hereby allowed.

25. In the result, the appeal of the assessee is hereby partly allowed.

Order pronounced in the Court on 01/03/2023 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 01/03/2023
Manish