

आयकर अपीलीय अधिकरण "ई" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री जी . एस. पन्नू, लेखा सदस्य एवं श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

आयकर अपील संख्या / ITA NO 236/Mum/2010
(निर्धारण वर्ष / Assessment year: - 2005-06)

D.C.I.T – 12(2) Room No. 114, Aayakar Bhavan, M.K. Road, Mumbai. 400 020.	Vs. `	Shri Fritz D. Silva C/o M/s Nanubhai Desai & Co. Chartered Accountants Sir Vithaldas Chambers 16, Mumbai Samachar Marg, Mumbai – 400 001.
स्थायी लेखा संख्या/जी आइ आर संख्या/ PAN/GIR No. AEEP3225Q		
Appellant		Respondent

राजस्व कि ओर से / Revenue By	Smt. N. V. Nadkarni.
निर्धारित कि ओर से / Assessee By	Shri Anuj Kisnadwala

सुनवाई कि तारीख / Date of hearing	27.4.2015
घोषणा कि तारीख / Date of pronouncement	08.5.2015

ORDER

Per G.S. Pannu, AM

The captioned appeal preferred by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the CIT(A)'] dated 27.10.2009, which in turn has arisen from an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961(hereinafter referred to as 'the Act') dated 31.12.2007 pertaining to assessment year 2005-06.

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In this appeal, the Revenue has raised following Grounds of appeal:-

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate that the interest on borrowed funds used for acquiring shares cannot be capitalized with the purchase cost of shares and indexation also cannot be claimed on the above capitalized cost for the purpose of computation of capital gain at the time of sale of shares as per the decision of the following tribunals.”*

- a) *Macintosh Finance Estates Ltd. Vs. Addl. CIT Special Range -36, Mumbai reported in (2007) 12 Sot 324 (Mumbai)*
- b) *Mohanlal M. Shah Vs. DCIT Central Circle -11, Mumbai reported in (2007) 105 ITD 669 (Mumbai)*
- c) *Harish Krishnakant Bhatt Vs. ITO reported in (2004) 91 ITD 311 (AHD).*

2. In brief, the relevant facts are that the assessee is an individual who filed his return of income for assessment year 2005-06 declaring a total income of Rs. 1,19,63,100/- which, *inter-alia* included a Long Term Capital Loss on shares sold during the year under consideration. The Assessing Officer differed with the assessee on the computation of capital gains on sale of shares which were acquired by the assessee in the past. The Assessing Officer noted that the interest cost incurred by the assessee for acquisition of shares in the past was treated as part of the cost of such shares and the same was considered by the assessee while computing the income under the head ‘capital gains’. As per the Assessing Officer, the interest paid by the assessee on acquisition of shares could not be considered as an expenditure while computing the income under the head ‘capital gains’ and that the assessee could claim deduction for the interest expenditure only if the income from sale of shares was declared as income from business. As a consequence, the Assessing Officer determined the Long Term Capital Gain on sale of shares at Rs. 1,98,58,101/- as against Long Term Capital Loss of Rs. 62,469/- computed by the assessee. The CIT(A) has since accepted the plea of the assessee, as according to

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him, all the expenses incurred for the acquisition of an asset would constitute its cost and, therefore, the assessee was justified in taking into account not only the original price paid for the shares but also the interest paid by him on borrowings made for paying the purchase price in order to calculate the cost of acquisition of shares for the purpose of computing capital gains. In coming to such conclusion, the CIT(A) relied upon the Judgment of Hon'ble Delhi High Court in the case of **CIT Vs. Mithilesh Kumari 92 ITR 09 (Del)**, wherein it has been held that the interest paid by the assessee on monies borrowed for purchase of an open plot of land constituted a part of the actual cost of the assessee for the purpose of determining the capital gain derived from the sale of land. Against the aforesaid decision of CIT(A), the Revenue is in appeal before us.

3. We have considered the rival stands. The controversy before us is as to whether the interest paid by the assessee on loans taken for acquiring the shares in the past can be allowed as a deduction u/s 48 as cost of acquisition while computing capital gain on sale of such shares. On this aspect, the Ld. Representative for the respondent assessee relied upon the Judgment of Hon'ble Madras High Court in the case of **Trishul Investments Ltd. 305 ITR 434(Madras)** which is directly on the point. In the case before the Hon'ble Madras High Court, the assessee was carrying on the business of investment in shares/securities and the profit derived from sale of shares was held subject to capital gains. Apart from other issues, the Revenue had contested the order of the Tribunal wherein the assessee was allowed the interest liability incurred on borrowings utilized to acquire the shares, while determining the cost of acquisition of shares for the purpose of computing capital gain. As per the Hon'ble High Court, the Tribunal was correct in holding that the interest paid for acquisition of shares would partake of the character of cost of shares and, therefore,

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the same was rightly capitalized along with the cost of acquisition of shares. The Hon'ble High Court affirmed the decision of this Tribunal that the interest payable on moneys borrowed for acquisition of shares should be added to the cost of acquisition of shares for the purpose of computing capital gains. The aforesaid legal position propounded by the Hon'ble Madras High Court fully covers the conclusion drawn by the CIT(A) in the present case. Notably, it is not disputed by the Revenue that the interest costs in question were incurred on the funds utilized for acquisition of shares in the past. In fact, as per the Statement of Facts filed before the CIT(A), the assessee had tabulated the amount of interest capitalized along with the cost of shares, which were purchased in the past. The assessee had also asserted before the CIT(A) without rebuttal, that the interest cost so incurred in the past was not claimed as a deduction against any other income. Be that as it may, in so far as the factual position is concerned, there is no denial by the Revenue that monies borrowed have been utilized for acquisition of shares in question. Therefore, having regard to the factual findings of the CIT(A), in our view, the legal position as propounded by the Hon'ble Madras High Court in the case of Trishul Investments Ltd (supra) supports the plea of the assessee that interest paid for acquisition of the shares would partake the character of cost of shares and, therefore, assessee had rightly capitalized the interest along with the cost of acquisition for the purpose of computing capital gains. The conclusion of the CIT(A) thus deserves to be affirmed.

4. Before us, the Ld. DR however referred to the decisions of Mumbai Bench of the Tribunal in the case of **Macintosh Finance Estates Limited Vs. Additional Commissioner of Income Tax (2007) 12 SOT 324**. The question before the Tribunal in the case of Macintosh Finance Estates Limited (supra) was as to whether interest expenses incurred for holding shares as investment can be added

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to the cost of investment. The Tribunal noted the factual matrix of the case before it and found that the assessee therein was earning dividend income from the investment in shares and it observed that it was a settled position that the interest was allowable under the head "income from other sources". However, the Tribunal did not deem it fit to allow the interest under the head "income from other sources" because of section 14A, under which any expenditure incurred in relation to exempt income cannot be claimed as deduction. The Tribunal decided to deny the claim of assessee on the ground that interest expenditure was an allowable expenditure only under the head "income from other sources" and that the same cannot be allowed to be added to the cost of investment only because in the year before the Tribunal no deduction could be allowed to the assessee with respect to interest because the dividend income was exempt from tax. As per the Tribunal it would result into double deduction. In fact, we find that the question which is presently before us, arose for consideration directly before the Hon'ble Madras High Court in the case of Trishul Investments Ltd. (supra). Ostensibly, the Mumbai Bench of the Tribunal in the case of Macintosh Finance Estates Limited (supra), did not have the benefit of the Judgment of Hon'ble Madras High Court because the Judgment of Hon'ble Madras High Court was rendered on 12.07.2007, whereas, the decision in the case of Macintosh Finance Estates Limited (supra), was rendered by the Tribunal on an earlier date i.e. on 27.02.2006. Therefore, the Judgment of Hon'ble Madras High Court being directly on the point, we prefer to follow the same.

5. The next decision which has been relied upon by the Ld. DR before us, is the decision of Ahmadabad Bench of the Tribunal in the case of **Harish Krishnakant Bhatt Vs. ITO [91 ITD 311]**. The said decision of Ahmadabad Bench of the Tribunal is not relevant in the present context because the issue therein was not relating to

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the treatment of interest paid as cost of acquisition but it was a case where interest paid was claimed as a revenue expenditure against dividend income which was not taxable in the relevant assessment year. The Tribunal opined that since the dividend was the exempt from tax, the interest expenditure could not be claimed as a deduction thereof. Quite clearly, the controversy in the present case stands on a different footing than in the case of Harish Krishnakant Bhatt (supra) We also find that the Hyderabad Bench of the Tribunal in the case of ACIT Vs. Mr. Vishnu Kant Inani [ITA No. 1787/Hyd/2013] dated 13.08.2014, in similar circumstances as are before us, distinguished the decision of Ahmadabad Bench of the Tribunal in the case of Harish Krishnakant Bhatt (supra), and applied the Judgment of Hon'ble Madras High Court in the case of Trishul Investments Ltd. (supra). Therefore, the decision of the Ahmedabad Bench of Tribunal in the case of Harish Krishnakant Bhatt (supra) does not help the Revenue in the present case. The third decision relied upon by the Ld. DR was in the case of **Mohanlal M. Shah. Vs. DCIT [105 ITD 669(Mum)]** which is also inapplicable in the present situation in as much as the same is merely a reiteration of the decision of Ahmadabad Bench of Tribunal in the case of Harish Krishnakant Bhatt (supra), which we have found to be inapplicable in the facts of the present case. Therefore, the decision of the Mumbai Bench of Tribunal in the case of Mohanlal M. Shah (supra) also does not help the case of Revenue in the present appeal.

6. In view of the above discussion and having regard to the Judgment rendered by the Hon'ble Madras High Court in the case of Trishul Investments Ltd. (supra), we find no error in the conclusion drawn by the CIT(A), which we hereby affirm.

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7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 08th day of May 2015.

Sd/-

Sd/-

(Amit Shukla)
(Judicial Member/न्यायिक सदस्य)

(G.S. Pannu)
(Accountant Member/लेखा सदस्य)

Mumbai dated 8-05-2015
SKS Sr. P.S,

Copy to:

1. The Appellant
2. The Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. The DR, "I" Bench, ITAT, Mumbai

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI