

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.4540 & 6663/Del./2017  
Assessment Years 2012-2013 & 2014-2015

M/s. Lalamal Sangamlal Seth Construction (P) Ltd., 1, Under Hill, Civil Lines, Delhi – 110 054. PAN AAACL0135G	VS	The Income Tax Officer, Ward-15(1), C.R. Building, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri S.K. Tulsiyan, Advocate Ms. Nisha Rachh, C.A. & Shri Karan Kumra, C.A.
For Revenue :	Shri Ravi Kant Gupta, Sr. D.R.

Date of Hearing :	17.05.2018
Date of Pronouncement :	07.06.2018

**ORDER**

**PER BHAVNESH SAINI, J.M.**

Both the appeals by the same assessee are directed against the different orders of the Ld. CIT(A)-5, Delhi, Dated 18.04.2017, for the A.Y. 2012-2013 and Dated 24.07.2017 for the A.Y. 2014-2015.

2. We have heard the learned Representatives of both the parties and perused the material on record. Both the appeals are decided as under.

ITA.No.4540/Del./2017 – A.Y. 2012-2013 :

3. This appeal is filed on the following grounds :

*“1. That on the facts and law involved the Ld. A.O. has erred in computing and disallowing a sum of Rs.1,673,452/- over and above the sum of Rs.21,58,758/- suo motu disallowed/capitalized by the assessee on account of interest on unsecured loans utilized for the inventory in respect of Model Town and Sukhdev Vihar project. The Ld. CIT(A) has erred in sustaining the disallowance. The disallowance as made and sustained is erroneous and deserves to be deleted.*

*2. That without prejudice to the above, the disallowance for interest of Rs 1,673,452/- as made by the Ld. AO and sustained by Ld. CIT(A) is excessive as the*

*same exceeds the amount of interest of Rs.10,23,183/- related to unsecured loans which was claimed by the assessee as revenue expenditure as per the return of income. As such too the disallowance as made and sustained is erroneous and deserves to be deleted.”*

4. During the year under consideration, it was found that assessee had claimed interest in P & L A/c at Rs.55,25,092/-, out of which, assessee had capitalized interest of Rs.32,19,030/- and Rs.11,66,729/- on utilisation of borrowed funds for Common Wealth Games Flats and Model Town project. As the borrowed funds are mainly utilised for inventory and work-in-progress, assessee was requested to explain why all the interest payments may not be capitalized. In response to this, assessee stated that term loan from Religare was utilised for Common Wealth Games Flats, interest on which, had already been capitalized. The assessee further stated that out of total unsecured loans of Rs.4,03,60,241/-, an amount of Rs.2,34,46,285/- had been utilised for Model Town

and Sukhdev Vihar projects, on which, interest of Rs.11,65,729/- and Rs.9,93,029/- had already been capitalized. The contention of the assessee was not found to be correct as the assessee had capitalized a sum of Rs.11,65,729/- (computation of income) and Rs.4,54,373/- (Note-24 of financial statement) only. Further, assessee did not furnish the details how he has calculated the interest at this amount. Perusal of details of interest and unsecured loans revealed that assessee is paying interest @ 12% on unsecured loans. Hence, interest @ 12% on Rs.2,3,46,285/- which comes to Rs.28,13,554/- had to be capitalized against interest capitalized at Rs.16,20,102/-. Hence, difference of Rs.11,93,452/- was added to the income of the assessee. Besides this, perusal of balance sheet revealed that assessee has given advance of Rs.40 lakhs to the land owner of Model Town Project. Since, the advance given was for Model Town Project, interest @ 12% on this amount which comes to Rs.4,80,000/- was also added to the income of assessee. Thus, total disallowance on account of interest was worked out to Rs.16,73,452/-.

5. The assessee challenged the addition before the Ld. CIT(A). However, it is noted by the Ld. CIT(A) that assessee has not advanced any arguments in the summarized arguments on the impugned addition. Therefore, this issue was decided on the basis of the financial statements available on record. The Ld. CIT(A) dismissed this ground of appeal of assessee.

6. Learned Counsel for the Assessee filed detailed written submissions and it was submitted that before dealing with the specific issues, it would be of relevance to lay down the specific facts relating to the interest expenditure debited and capitalized by the assessee. The same are reproduced as under.

“In connection to the above, it is stated that during the relevant financial year, the assessee debited interest expenditure of Rs.55,25,092/- on various loans in the Profit & Loss A/c.

The said figure of Rs.55,25,092/- was debited in the Profit & Loss A/c after adjusting an amount of Rs.9,93,029/- on account of capitalization towards *Sukhdev Vihar project* and further adjusting an amount of Rs.7,500/- towards miscellaneous adjustment.

The details of the Total Interest Cost is as under :

(detailed chart enclosed at page 26 of the P/k)

(i)	Interest on Secured Loan from Religare for CWG Flats	Rs.32,19,030/-
(ii)	Interest on Secured loan from HDFC Bank for car	Rs. 1,17,150/-
(iii)	Interest on Unsecured loan	<u>Rs.31.89,440/-</u>
	<b>Total Interest</b>	<b>Rs.65,25,620/-</b>

**Less:**

(i)	Miscellaneous Adjustment	Rs. 7,500/-
(ii)	<b>Interest Capitalised for Sukhdev Vihar Project^</b> (out of Interest on Unsecured loan)	<u><b>Rs. 9.93,029/-</b></u>

**Interest debited to the P & L Account** **Rs.55,25,092/-**  
(Note 17 to the Accounts, page 8 of P/k)

**Less:** (claimed in Computation of Income at page 29 of P/k)

(i)	<b>Interest on the Secured Loans from Religare Finvest Ltd. used in purchase of Common Wealth Games flats capitalised in the Computation of Income (in computation at page 29 of P/K)</b>	<b>Rs.32,19,030/-</b>
(ii)	Interest Capitalised for <b>Model Town Project</b> capitalised in Computation of Income (out of Unsecured loans) (in computation at page 29 of P/K)	<u><b>Rs.1 1,65,729/-</b></u>

Total Interest claimed as Revenue expense in Income tax Return Rs.1 1,40,333/-

(including Rs.10,23,182 Interest on unsecured loan)

Thus from the above it is conclusively seen that capitalisation of Interest was under the following heads:

Interest on the Secured Loans from Religare Finvest Ltd. used in purchase of Common Wealth Games flats capitalised in the Computation of Income (in computation at page 29 of P/K)	Rs.32,19,030/-
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Interest Capitalised <b>for Sukhdev Vihar Project</b> (out of Interest on Unsecured loan)	<b>Rs. 9,93,029/-</b>
- Interest Capitalised <b>for Model Town Project</b> capitalised in Computation of Income (out of Unsecured loans) (in computation at page 29 of P/K)	<b>Rs.11,65,729/-</b>

3.1. He has submitted that authorities below have all along wrongly contended that interest to the tune of Rs.4,54,373/- and not Rs.9,93,029/- was capitalized towards the Sukhdev Vihar Project based on the incorrect representation in Note-24 of the Audited accounts. It was a mistake by the Accountant. It was corrected by making a declaration by the Auditor in this behalf. Copy of the letter of verification is also placed on record. Thus, the assessee capitalized Rs.9,93,020/- for Sukhdev Vihar Project instead of Rs.4,54,373/-. He has further submitted that A.O. and the Ld. CIT(A) have applied flat rate of 12% on unsecured loans merely on assumptions. The authorities below have totally ignored the detailed calculation of interest provided by the assessee wherein the specific interest on specified loans are listed, chart of which, is filed at page-26 of the paper book. Here in this connection,

the exact break-up of the interest comes to Rs.21,58,758/-. The authorities below have accepted the figure of Rs.2.34 crores provided by the assessee but have not accepted the interest relatable to the same and without any basis, applied interest @ 12%. The detailed chart is given for all the projects in the written submissions. He has also submitted that assessee has interest free loans of Rs.88,65,316/- which have been ignored. The assessee had also considered the total investment in various projects which even includes amount of Rs.40 lakhs shown as advance recoverable from land owner of Model Town Project. It is after considering all the investments in various projects that the assessee has arrived at the figure of Rs.2,28,92,475/- which is the maximum total investment which may be presumed to be out of unsecured loans. After arriving at the above figure, assessee has worked-out the proportion of total investment out of interest bearing unsecured loans which comes to Rs.1,78,64,036/-. Thereafter, applying the interest rate of 12%, the assessee arrived at the figure of Rs.21,43,684/-, being the figure of maximum interest that may be attributable to the on

going projects of the assessee. The assessee had already capitalized an amount of Rs.21,58,758/- (Rs.11,65,729/- towards Model Town Project and Rs.9,93,029/- towards Sukhdev Vihar Project) which is more than the figure of maximum interest allocable as calculated in chart filed, it is clear that no further amount of interest may be allocated towards the ongoing project of the assessee as alleged by the A.O. It is agreed by the authorities below that term loan taken from Religare was utilised for Common Wealth Games flats, interest on which to the tune of Rs.32,19,030/- has already been capitalized and was not claimed as revenue expenditure. Therefore, no further addition is justified. It was further stated that the authorities below have applied adhoc interest @ 12% on advance of Rs.40 lakhs given for Model Town Project merely by observing that assessee has given above advance to the land owner as reflected in the balance sheet. It was submitted that an amount of Rs.95 lakhs was given by the assessee to the land owner of Model Town during F.Y. 2009-2010. Reference was made to page-27 of the paper book. However, due to re-

negotiation of the collaboration agreement, sum of Rs.80 lakhs became refundable in view of lower share in constructed area to be taken by the assessee company. Accordingly, sum of Rs.40 lakhs was received back during the relevant financial year. Copy of the ledger account is filed at page-33 of the paper book. The balance sum of Rs.40 lakhs was shown as receivable in the books of account of the assessee-company. In effect, the assessee reduced sum of Rs.80 lakhs from the work-in-progress of the Model Town Project. Copy of the same is filed at page-34 of the paper book. Hence, from the above, it is clear that balance amount of Rs.40 lakhs was shown under the Head "Short Term Loan and Advances" represents only amount to be received back from the land owner of the Model Town Project. Therefore, conclusion could be drawn in assessee's case that advance of Rs.40 lakhs was made out of non-interest bearing loans as there were sufficient receipt of non-interest bearing funds during the concerned period. Assessee maintained mixed bank accounts wherein all funds including own funds being share capital, sales and loan funds comprising of secured loans, interest bearing

unsecured loans, non-interest bearing unsecured loans etc., are credited. Therefore, it is difficult to bring out the exact nexus of utilisation of the unsecured loans especially when the said loans were received in earlier years. The A.O. has made the notional disallowance of Rs.4,80,000/- by arbitrarily applying the interest rate @ 12% on the amount of Rs.40 lakhs. Learned Counsel for the Assessee relied upon decision of the Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd., vs. CIT (1954) 26 ITR 775 (SC) in which it was held that "*ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all*". It is, therefore, submitted that entire addition is liable to be deleted.

4. The Ld. D.R. relied upon the orders of the authorities below.

5. After considering the rival submissions, we do not find any justification to sustain the addition. The assessee has given detailed explanation with regard to interest capitalized on three projects as noted to above, which have not been disputed

by the authorities below. The assessee ultimately claimed Rs.11,40,333/- as revenue expenditure. The assessee has given basis as to how much interest is to be capitalized on three projects. The authorities below without any justification have applied interest rate of 12% for the purpose of making addition against the assessee. The assessee's Auditor has filed letter of verification to the effect that the interest cost of Rs.4,54,373/- is wrongly mentioned, whereas the correct figure is Rs.9,93,029/-. Therefore, such a figure should not have been disbelieved without verification of the fact. The assessee has explained this figure through the evidence and material on record as well as by filing Letter of Declaration from the C.A. The authorities below have not disputed the interest capitalized on loan taken from Religare Finvest Ltd., used in the projects of Common Wealth Games flats. The assessee already explained the basis of claim of interest capitalized for various projects, details of which, were filed in the paper book. It is also established on record that assessee has interest free loans of Rs.88,65,316/- which is available to assessee for making

investment. The assessee also explained that assessee correctly capitalized the interest for Model Town Project and Sukhdev Vihar Project. Therefore, further enhancement was wholly unjustified. For Model Town Project, it is stated that assessee has given advance of Rs.40 lakhs. However, assessee has rightly explained that an amount of Rs.95 lakhs was given to the landlord but after re-negotiation, a sum of Rs.80 lakhs become refundable. Rs.40 lakhs was received back during relevant F.Y. which is shown in the audited accounts and for balance amount, it was claimed as “short term loan and advances” which could be out of non-interest bearing loans available to the assessee. Therefore, there were no justification for the A.O. to make notional disallowance of Rs.4,80,000/- by applying arbitrary interest rate of 12% on advances of Rs.40 lakhs. Since the explanation given by the assessee in the written submissions reproduced above, have not been rebutted by the Revenue through any evidence or material on record, therefore, the calculation given by assessee for capitalizing interest in various projects is just and proper which is supported by book

entries. The assessee availed balance amount in business and rightly claimed it to be revenue expenditure because all the amounts are coming-up in the mixed bank accounts maintained by assessee. Therefore, separate bifurcation would not be possible for the assessee. However, the facts and figures explained above clearly justify the explanation of assessee that disallowance of the interest of Rs.16,73,452/- was wholly unjustified. We, accordingly, set aside the orders of the authorities below and delete the entire addition.

6. In the result, ITA.No.4540/Del./2017 of the Assessee is allowed.

ITA.No.6663/Del./2017 – A.Y. 2014-2015 :

7. In this appeal, assessee challenged the disallowance of a sum of Rs.25,27,036/- on account of interest on unsecured loans.

8. Briefly, the facts of the case are that the main business activity of the assessee is construction activity primarily in collaboration with land owners to construct on

plots owned by them and share the built-up space. Occasionally, the Company also undertakes contractual construction work. The assessee e-filed its return of income declaring NIL income. The assessment was concluded by disallowing the interest expenses of Rs.25,27,036/-. The assessee challenged the addition before Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee explained that during the year under appeal, assessee was involved in two development projects in collaboration namely Model Town Project and Sukhdev Vihar Project. Whereas Model Town Project was ready for sale and in fact, one flat out of it was sold by the assessee and another project being Sukhdev Vihar Project was still under development. Apart from the above, the assessee-company has also invested in flats at Common Wealth Games, pending possession of which, the advance/instalments given has been shown under "Long Term Loans and Advances" under sub-head "Advance/Expenditure for purchase of flat". Such flat was purchased out of loan taken from M/s. Religare Finvest Limited

and the entire interest paid on loan from Religare Finvest Limited during the year has been added to such advance account and not claimed as revenue expenditure. The assessee filed details of interest on loan, unsecured loans and loans from Religare Finvest Limited and it was explained that interest on loan from Religare Finvest Limited was not claimed as revenue expenditure. Similarly, interest on unsecured loans added to the cost of inventory of Sukhdev Vihar Project and interest on unsecured loans added to the cost of inventory of Model Town Project at NIL. Interest of unsecured loans claimed as revenue expenditure of Rs.25,27,036/-. The assessee has duly capitalized interest on term loans/ unsecured loans wherever it was required to be capitalized. No interest has been capitalized to Model Town Project this year as the construction has been completed and no construction was done during the year under consideration. The details of the accounts and bank statements are filed in support of the contention. The unsecured loans were utilised for various business purposes of assessee including working capital. The assessee incurred expenditure for the

purpose of business as no further capitalization was required. Whatever interest have been paid for business purposes shall have to be allowed as deduction. The assessee relied upon Accounting Standard AS-16 in support of the contention that interest is an allowable deduction. The assessee filed project inventory of all the projects in support of the contention. The Ld. CIT(A), however, noted that assessee has not discharged burden upon it and since entire money in the business entity comes in a common kitty and assessee's business is no different, therefore, disallowance of interest was confirmed, by relying upon decision of Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries Ltd., 286 ITR 1. This ground was accordingly dismissed.

9. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that this issue is same as have been considered in A.Y. 2012-2013 and submitted that in the year under consideration, the Model Town Project was ready for sale and in fact, one flat out

of it was sold, therefore, interest on unsecured loan was claimed as revenue expenditure. He has submitted that complete details and inventory of the projects were filed which have not been disputed by the authorities below. He has referred to Accounting Standard-16 relating to borrowing cost in which it is provided "*capitalization of borrowing costs should cease when substantially all the activities necessary to prepare the qualifying asset for its intended use or sale are complete.*" An asset is normally ready for its intended use or sale when its physical construction or production is complete even though routine administrative work might still continue. It is amply clear that no capitalization of interest is required for Model Town Project. He has further submitted that assessee maintained mixed bank accounts wherein all funds including own funds being share capital, sales and loan funds comprising of secured loans, interest bearing unsecured loans, non-interest bearing unsecured loans etc., are credited. Therefore, it is, difficult to bring-out the exact nexus of utilisation of the unsecured loans, especially when the said loans were received long back. In view

of the contention of the assessee that mixed bank accounts are maintained wherein both interest bearing unsecured loans and non-interest bearing unsecured loans have been credited, it may be safely presumed that alleged utilisation of unsecured loans for Common Wealth Games flat is out of assessee's non-interest bearing unsecured loans, which stands at a figure of Rs.3.6 crore out of the total figure of unsecured loans of Rs.5.45 crores as on 31.03.2014. He has referred to PB-22 giving working of capitalization/period, cost of interest paid during the relevant year. He has also referred to PB-23 giving details of utilisation of unsecured loans for various projects as well as for Common Wealth Games flat, which, even though is not admitted but presume even otherwise. Perusal of these papers reveals that funds to the tune of Rs.1.5 crores may be considered to be utilised from unsecured loans in Common Wealth Games flat. Hence, since the total non-interest bearing unsecured loans is much higher than the amount of Rs.1.5 crores which may be considered to be utilised from unsecured loans in Common Wealth Games flat, which is apparent that no

further allocation of interest on unsecured loans is warranted.

In view of the fact that assessee possessed sufficient non-interest bearing funds to cover the presumed utilisation of unsecured loans in Common Wealth Games flat, there arises no question of making any further disallowance of interest expenditure as alleged by the A.O. Learned Counsel for the Assessee relied upon the decision of Hon'ble Supreme Court in the case of Munjal Sales Corporation vs. CIT (2008) 298 ITR 298 (SC) in which it was held that *"when opening balance is sufficient to give small loans to the sister concern and profit earned during the relevant assessment year were also sufficient to cover the impugned loan, no disallowance should be made."* He has also relied upon the decision of the Hon'ble Rajasthan High Court in the case of CIT vs. Vijay Solvex Ltd., (2015) 274 CTR 384 (Raj.) (HC) wherein it was held that *"where assessee-company had its own sufficient funds and Revenue was unable to prove nexus between the borrowed funds and advances given to the sister concerns, notional interest disallowed by A.O. was to be deleted."* He has also relied upon the decision of the

Hon'ble Delhi High Court in the case of CIT vs. Bharti Televenture Ltd., (2011) 331 ITR 502 (Del.) (HC) in which it was held that "*advances were given to the subsidiary companies for business consideration i.e., out of commercial expediency, therefore, departmental appeal were dismissed.*" Learned Counsel for the Assessee, therefore, submitted that addition may be deleted.

10. On the other hand, Ld. D.R. relied upon the orders of the authorities below.

11. After considering the rival submissions, we do not find any justification to sustain the addition. Similar issue have been considered in A.Y. 2012-2013 as well and the assessee explained that wherever interest is to be capitalized, for various projects, it was capitalized and the balance amount have been used wholly and exclusively for the purpose of business, therefore, interest was allowed in A.Y. 2012-2013 as deduction. In the assessment year under appeal, the assessee further explained that Model Town Project was ready for sale and in

fact, one flat out of it has been sold. Therefore, the interest to that extent shall have to be allowed as deduction in favour of the assessee. The assessee further explained similarly that wherever interest is to be capitalized for pending projects, it has been capitalized. The assessee also explained that assessee has sufficient capital and reserves, therefore, it should be presumed that funds available with the assessee have been used for the purpose of making investments. Therefore, such explanation should be taken into consideration while deciding the issue in favour of the assessee. AS-16 supports the claim of assessee that no capitalization of interest is required for Model Town Project. The assessee explained issue in written submissions with documents filed in paper book that interest is claimed as deduction on unsecured loans. The closing balance of such loans would be at Rs.1,82,20,253/- whereas, assessee's non-interest bearing unsecured loans stands at figure of Rs.3.61 Crores (PB-22). The explanation of assessee has not been rebutted by Revenue Department. A.O. rejected the claim of assessee by relying upon judgment of the Hon'ble Punjab &

Haryana High Court in the case of Abhishek Industries Ltd., (supra) in which the entire money in business entity comes in a common kitty. However, this judgment has been overruled by the Hon'ble Supreme Court in the case of Hero Cycles Pvt. Ltd., 379 ITR 347 (SC). The explanation of assessee has not been rejected by the authorities below. Therefore, considering the totality of the facts and circumstances of the case and that similar issue has been considered in A.Y. 2012-2013 above, the facts in this assessment year are on better footing, therefore, authorities below were not justified in disallowing the interest incurred by assessee wholly and exclusively for the purpose of business. The A.O. also has not brought any evidence on record if borrowed funds have been used for non-business purposes? No nexus has been pointed-out between borrowed funds and non-business activities of the assessee or if borrowed funds have been used for the projects pending completion. In this view of the matter, we set aside the orders of the authorities below and delete the entire addition.

12. In the result, ITA.No.6663/Del./2017 of the assessee is allowed.

13. To sum-up, both the appeals of the assessee are allowed.

Order pronounced in the open Court.

Sd/-  
(L.P. SAHU)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 07<sup>th</sup> June, 2018

VBP/-

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