

आयकर अपीलीय अधिकरण ,'बी' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री एन. आर. एस .गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्यके समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकरअपीलसं/.I.T.A. Nos. 2084, 2085 & 2086/Chny/2016

निर्धारणवर्ष/Assessment Years : 2010-11 to 2012-13

Shri Mahindra World City Developers Ltd.,
Mandindra Towers,
Ground Floor,
17/18 Pattulous Road,
Anna Salai,
Chennai – 600 002.

Assistant Commissioner of Income
Tax,
Company Circle IV(1),
Chennai – 600 034.

[PAN: AAACM 6904A]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

Assessee by
Revenue by

: Shri. M. Viswanathan, CA
: Mrs. Ruby George, CIT

सुनवाईकीतारीख/Date of Hearing

: 19.04.2018

घोषणाकीतारीख/Date of Pronouncement

: 27.06.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed these appeals against the orders of the Commissioner of Income Tax (Appeals)- 8 ,Chennai, in ITA Nos. 451of 2013-14 ,65 of 2014-15 & 77 of 15-16 dated 30.03.2016 for the AYs 2010-11,2011-12 & 2012-13, respectively .

2. M/s Mahindra World City Developers Ltd., the assessee, is in the business of development of lands for various Industries which are in the Special Economic as well as in Non-Special Economic Zones. While making the assessments for the ays 2010-11, 2011-12 & 2012-13, the AO found that the assessee has added the interest expenditure incurred on the loan raised and utilized towards purchase of land in NH5 & Phase –V projects in the value of closing stock / work in progress and capitalized it in its books of account. However, in the computation memo, the assessee claimed such interest as an expenditure. On due examination of the assessee's submissions etc, the AO found that the assessee is still in the process of acquiring and developing the land, it is very correct to capitalize the cost of interest exclusively incurred for the purchase and development of inventory, where in no sales have been executed during the impugned a ys and hence, held that the method followed by the assessee in its books of account is correct and needs no adjustment as it is in accordance with principles of accountancy. Thus, he did not allow the interest expenditure claimed by the assessee in the computation memo, separately, for these a ys. Further, in the assessment made for ay 2011-12, the AO found that the assessee had invested Rs. 13 crores in Mahindra Integrated Township Ltd which is its subsidiary. On due examination, the AO held that the return on such investments can only be dividends which are not taxable and therefore he arrived the expenses pertaining to such investments u/s 14A rw r 8D (iii) at Rs.6,56,750/- and added to the returned income.

3. Aggrieved, the assessee filed appeals before the Ld.CIT(A) against the assessment orders of ays 2010-11,2011-12 & 2012-13. The learned CIT(A), on the interest expenditure claim held , inter alia, that the assessee cannot capitalize the interest expenditure on one hand and claim the same as revenue expenditure on the other hand for taxation purposes and upheld the decision of the AO. On the addition made u/s 14A rw r 8D (iii), learned CIT(A), following the decisions of the Hon'ble High Court of Bombay in the case of Godrej & Boyce Mfg. Co. Ltd (328 ITR 81 Bom) and the jurisdictional bench of the Hon'ble ITAT in the case of ACIT vs. Sun TV Networks Limited (in ITA Nos 1515 to 1520/ Mds/2013 dt 31.10.2013), confirmed the addition made by the Assessing Officer. Aggrieved, the assessee filed these appeals. Since the substantial issues are common, they are heard and disposed together for convenience sake.

4. The assessee filed common grounds of appeal and hence the grounds related to ay 2012-13 , as a model , are extracted as under :

"The order of the Learned CIT appeals is against law, facts and circumstances of the case.

Disallowance of Interest Expenditure of Rs. 23,34,50,882 incurred on the loan raised and utilized for the purpose of Purchase of Stock in Trade.

1) The work in progress including the interest cost capitalized is offered as income in the year under consideration.

2) Subsequently in the computation of income, said interest cost is claimed as deduction in the years under consideration as it relates to business operations.

3) *In the year in which the said portion of land is sold, the interest cost will be reduced from the cost of sales of the said land.(ie) the interest cost will be offered as income.*

4) *In essence, the assessee has been consistently claiming the interest cost included in the work in progress in the year which the interest is paid and will offer the interest expenditure (claimed as deduction in previous years) as income in the subsequent year in which the said portion of land is sold by reducing from the cost of sales.*

5) *There is no revenue loss to the department by virtue of the said treatment*

The method of accounting employed by the assessee in the Books of accounts, Viz. the interest component added to the cost of closing stock/work-in-progress of inventories, does not prevent the assessee from claiming the interest as an allowable expenditure under Income tax provisions.

The assessee has offered Rs. 85,08,080 (reversal of interest claimed as deduction in the previous years -Ay 2010-11, AY 2011-12) in the computation of income. We also wish to bring to your attention that the assessee has sold the land (in which the interest claimed in the previous years were inventorised) during FY 2015-16 and by virtue of the said sales, the assessee is offering during FY 2015-16, the reversal of Rs. 67.78 crores of interest claimed as deduction in the computation of income in the previous years.

Moreover, interest being period cost has to be claimed under section 37(1) in the year in which the same is incurred and attributable to the operations / business of the company and further that the same expenditure is wholly and exclusively laid out for the year's operations and hence rightfully claimed.

Based on the submission the Appellant prays that appeal be allowed."

5. The Ld. AR submitted that the business of the assessee primarily involves development of land that would normally take substantial period of time to make it ready for sale/lease. Therefore, the interest charges on bank borrowings have been included in the cost of land, being stock-in-trade, as per the Accounting Standards. The method of accounting employed by the

assessee in the Books of account, Viz. the interest component added to the cost of closing stock/work-in-progress of inventories, does not prevent the assessee from claiming the interest as an allowable expenditure under Income tax provisions. It was submitted that the interest inventorised has been reversed and offered as income in the subsequent assessment years viz in ay 2012-13 at Rs. 85,08,080/-, the year in which sale of land has taken place etc . Thus, there is no revenue loss to the department by virtue of the said treatment. Moreover, the interest being period cost it has to be claimed under section 37(1) in the year in which the same is incurred and attributable to the operations / business of the company and further that the same expenditure is wholly and exclusively laid out for the year's operations and hence rightfully claimed and hence pleaded to allow the appeals.

6. Per contra, the Ld. DR , inviting our attention to the relevant portions of the order of the Id. CIT(A) submitted that the assessee claims that interest component has been added to the stock in trade in consonance with Accounting Standard 2 (Valuation of Inventories) and Accounting Standard 16 (Borrowing Cost). Accounting Standard 16 explains how borrowing costs are recognized in the case of a qualifying asset as under :

"6. Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalised as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation should be determined in accordance with this Standard. Other borrowing costs should be recognised as an expense in the period in which they are incurred."

6.1 Thus, Accounting Standard AS 16 clearly states that only those borrowing costs that are not capitalized shall only be recognised as an expense for the period in which they are incurred. Thus, the assessee has capitalized the interest expenditure in accordance the Accounting Standards and arrived its true income in its books of account. However, in the memo of computation of income, it has gone totally against the letter and spirit of the Accounting Standard 16. Therefore, the assessee's claim is neither in accordance with the Accounting Standards nor with the statutory provisions of the Income Tax Act and hence , the DR pleaded that the orders of the Lower Authorities be upheld .

7. We heard the rival submissions and gone through relevant material. The relevant portion of the "Notes to the accounts for the year ended , 31st March, 2007&31st March, 2010 are extracted as under :

"Schedule 13

Name to the accounts for the year ended 31st March, 2007

Significant accounting policies

(a) Basis of accounting

The accounts have been prepared to comply in all material aspects in accordance with applicable accounting principles in India, the Accounting Standards issued by the Institute of Chartered Accountants of India and relevant provisions of the Indian Companies Act, 1956.

(b) Revenue recognition

a. Land lease premium is recognised as income upon creation of leasehold rights in favour of the lessee or upon an agreement to create leasehold rights with handing over possession.

b. Income from operation & maintenance charges and water charges are recognised on an accrual basis as per terms of the agreement with the lessees

.....
.....

(f) Inventories

Inventories are valued at lower of cost and net realisable value. Cost represents cost of land and all expenditure incurred in connection with, or attributable to the project, and, being a long-term project, includes interest.

.....
.....

7. The cost of land and related development expenditure is disclosed as work-in-progress as the company expects to incur further costs on land and infrastructure development.

8. The company is in the business of land development for industrial, commercial and residential use. The company acquires land and incurs expenditure on its development and related infrastructure facilities for lease/sale.

.....”

“SCHEDULE 14

Notes to the accounts for the year ended March 31, 2010

1. Significant accounting policies

(a) Basis of accounting

The financial statements have been prepared under the historical cost convention in accordance with the accounting principles generally accepted in India and comply with the mandatory Accounting Standards notified by the Central Government of India under The Companies

(Accounting Standards) Rules, 2006 and with the relevant provisions of the Companies Act, 1956.

(b) Revenue recognition

a. Land lease premium is recognised as income upon creation of leasehold rights in favour of the lessee or upon an agreement to create leasehold rights with handing over of possession.

b. Property lease rentals, income from operation & maintenance charges and water charges are recognised on an accrual basis as per terms of the agreement with the lessees.

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(g) Inventories

Inventories are valued at lower of cost and net realisable value. Cost represents cost of land and all expenditure incurred in connection with, or attributable to the project, and, being a long-term project, includes interest.

7. The cost of land and related development expenditure is disclosed as work-in-progress as the company expects to incur further costs on land and infrastructure development.

8. The company is in the business of land development for industrial, commercial and residential use. The company acquires land and incurs expenditure on its development and related infrastructure facilities for lease/sale. The company also maintains the Industrial Park for which it collects creation and maintenance charges from the lessees. During the year, the company has leased 16.082 (previous year 91.140) acres of land on long term basis.

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....."

7.1 Similar notes are there for the other assessment years also. For the periods relevant to a ys 2007-08, 2011-12 & 2012-13, A .F . Ferguson & Co , CAs have certified that the Balance Sheet , Profit & Loss account and cash flow statement dealt with by their reports give a true and fair view in conformity with the applicable accounting principles in India, the Accounting Standards issued by the Institute of Chartered Accountants of India and

relevant provisions of the Indian Companies Act, 1956 .For the period relevant to a y 2010-11, Deloitte Haskins & Sells, CAs have certified similarly.

7.2 From the above, it is clear that the assessee is in the business of land development for industrial, commercial and residential use. It acquired land and incurs expenditure on its development and related infrastructure facilities for lease. The cost of land and related development expenditure is disclosed as work-in-progress as the company expects to incur further costs on land and infrastructure development. Thus, the assessee capitalized the interest expenditure incurred on the loan raised and utilized towards purchase of land in NH5 & Phase -V projects, being long term projects, from the period relevant to a y 2007-08 onwards it in its books of account in accordance with applicable accounting principles in India, the Accounting Standards issued by the Institute of Chartered Accountants of India and relevant provisions of the Indian Companies Act, 1956 as it has not received any income from these projects during the impugned a ys. The most important aspect is that the impugned project is still in project stage during the impugned assessment years and hence this business is yet to commence its operations. Further, it has not claimed such interest as an expenditure in a ys 2007-08 & 2008-09. However, for a ys 2010-11onwards, it is claiming such interest expenditure that too, in the computation memo, ie outside the books of account. The Lower authorities rejected the assessee's claim, as it is neither in accordance with the Accounting Standards nor with the statutory

provisions of the Income Tax Act. The assessee challenges it. Let us examine this claim as under

7.3 The relevant portion of the Hon'ble Delhi High Court decision in the case of Commissioner Of Income-tax - IV, New Delhi. vs Insilco Limited. 320 ITR 322 (Del) is extracted as under:

"16.5 It is to be noted that these Accounting Standards are mandatory in nature and applied to accounts prepared after 1-4-1999. In that sense the submission of the assessee has to be accepted that the change in the accounting policy had been brought about by virtue of the issuance of the revised accounting standards issued by the Council of the ICAI, which was, applicable for the assessment year under consideration. Furthermore, the provisions of sub-sections (3A), (3B) and (3C) of section 211 of the Companies Act, 1956, clearly provide that every profit and loss account and balance sheet of a company shall comply with the Accounting Standards prescribed. Where the accounts of the company do not comply with the Accounting Standards it is required to disclose in the profit and loss account and the balance sheet: (a) the deviation from the Accounting Standards; (b) the reasons for such deviation; and (c) the financial effect, if any, arising, due to such deviation. What is important is that; sub-section (3) of section 211 provides that until the Central Government prescribes an accounting standard in consultation with the National Advisory Committee as set up under section 210A of the Companies Act, 1956 pursuant to a recommendation of the ICAI; the Accounting Standard issued by the ICAI shall prevail. Therefore, we have no difficulty in accepting the submissions of the learned counsel for the assessee that it was obliged to capitalize the entire cost of spares in consonance with the mandatory provisions of Accounting Standards (AS) 2 and (AS) 10.

16.6 It is not disputed that the assessee is maintaining the accounts based on a mercantile system. Under sub-section (1) of section 145 of the Act the assessee's income which is chargeable under the head "Profits and gains of business or profession" is required to be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

16.7 As indicated above the assessee has been maintaining a mercantile system of accounting, therefore, the treatment of emergency spares in accordance with the revised Accounting Standards (AS) 2 and (AS) 10 would be in consonance with the mercantile system of accounting which under the Act the revenue is required to look at for computing income of the assessee-chargeable under the head "Profits and gains" from business. The submission of the learned counsel for the revenue that the accounting treatment to be meted out to a transaction in accordance with the Accounting Standard has no relevance for the purposes of the Income-tax Act, 1961 is a submission which does not commend to us.

16.8 In the past, Courts have applied rules and principles of accountancy where words and expressions used in the Act have not been given a definitive meaning. The Supreme Court in the case of *Challapalli Sugars Ltd. v. CIT* [1975] 98 ITR 167 was called upon to interpret the meaning of the expression 'actual cost' for the purposes of determining the justifiability of the assessee's claim for depreciation and development rebate under the Indian Income-tax Act, 1961. The assessee sought to include in the cost of asset the interest paid by it for the period prior to commencement of business on borrowings taken up by it. The Supreme Court in coming to the conclusion that the assessee's stand was correct resorted to the rules of accountancy prevailing in the industry. In this context the following observations of the Supreme Court being apposite are extracted below:-

"In finding the answer to the question mentioned above, we have to bear in mind that it arises in the context of profits or gains of business and the permissible deductions on account of depreciation and development rebate relating to the machinery and plant of the assessee. As the expression 'actual cost' has not been defined, it should, in our opinion, be construed in the sense which no commercial man would misunderstand. For this purpose, it would be necessary to ascertain the connotation of the above expression in accordance with the normal rules of accountancy prevailing in commerce and industry....

It would appear from the above that the accepted accountancy rule for determining the cost of fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalized and

added to the cost of the fixed assets which have been created as a result of such expenditure. The above rule of accountancy should, in our view, be adopted for determining the actual cost of the assets in the absence of any statutory definition or other indication to the contrary."

16.9 The learned counsel for the revenue relied upon the judgment of the Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT [1997] 227 ITR 172 to buttress her submission that accountancy principles cannot override the provisions of the Act. This proposition is unassailable.

One cannot take resort to a principle or rule of accountancy when the Act provides specifically for the situation at hand. But when the situation is one where there is no definitive provision, a Court can take resort to well accepted accountancy rules and principles. The Supreme Court in Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case has not derogated from this principle enunciated in Challapalli Sugars Ltd.'s case. See observation in Tuticorin Alkali Chemicals & Fertilizers Ltd.'s case at pages 183-186, in particular, observations at page 185(H) to page 186(D).

16.10 The applicability of the principles of accountancy by the courts has also found favour in the judgments of the Supreme Court in the cases of CIT v. Indo Nippon Chemicals Co. Ltd. [2003] 261 ITR 275 at page 277 (D-E) & CIT v. U.P State Industrial Development Corpn. [1997] 225 ITR 703 and also the judgment of a Division Bench of this Court in CIT v. Woodward Governor India (P) Ltd. [2007] 294 ITR 451 at pages 463-464. The observations of UPSIDC being apposite are extracted hereinbelow:-

"In our opinion, this contention is devoid of force. The accounting practice followed by the assessee in the instant case was in consonance with the general principles of accountancy governing underwriting accounts. It is a wellaccepted proposition that for the purposes of ascertaining profits and gains the ordinary principles of commercial accounting should be applied, so long as they do not conflict with any express provision of the relevant statutes. [Whimster & Co. v. Commissioner of Inland Revenue [1925] 12 TC 813 (c. Sess); Commissioner of Inland Revenue v. Cock Rusell & Co. Ltd [1949] 29 TC 387 (KB). This proposition has been affirmed by this Court in P.M. Mohamed Meerakhan v. CIT [1969] 73 ITR735. In the said case it has been observed:

'For that purpose it was the duty of the Income-tax Officer to find out what profit the business has made according to the true accountancy practice.'"

7.4. If we apply the above ratios to the facts of this case, as discussed , supra, it is clear that the accounting practice followed by the assessee in its books of account , are in consonance with the general principles of accountancy as certified by their Auditors and the book results were also certified to give a true and fair view in conformity with the applicable accounting principles in India, the Accounting Standards issued by the Institute of Chartered Accountants of India and relevant provisions of the Indian Companies Act, 1956. Therefore, the assessee has not made out a case. The Lower authorities are correct in not disturbing the book results and in rejecting the assessee's claim through the income computation memo for the purposes of tax payment. Thus, the corresponding grounds of the assessee fail.

7.5 The above issue can be examined from another angle also. The assessee is not clear as to whether the impugned projects would be leased or sold. In the existing business, the assessee is admitting income from lease of land and properties constructed thereon only. It is seen from the materials furnished by the assessee that it has earned income from a single segment, namely, "lease of land and properties constructed thereon" till the end of a y 2015-16. From this ie from the assessee's conduct , it is clear that the assessee has treated such expenditure as capital

in nature and treated accordingly in its books of account which are consonance with the general principles of accountancy as certified by their Auditors and the book results were also certified to give a true and fair view in conformity with the applicable accounting principles in India, the Accounting Standards issued by the Institute of Chartered Accountants of India and relevant provisions of the Indian Companies Act, 1956. The assessee has capitalized the interest portion related to the impugned projects during the period in ays 2008-09 & 2009-2010 in its books but did not claim such interest in the income computed for the purposes of tax payment for these assessment years. For period relevant to assessment years 2010-11 to 2012-13, though the assessee has capitalized the interest portion related to the impugned projects in its books, it claimed them as an expenditure through the income computation memo for the purposes of tax payment. During the period relevant to ay 2012-13, it reversed interest of Rs.85,08,080/- also in the income computation memo for the purposes of tax payment. When the assessee has earned income from a single segment, namely, "lease of land and properties constructed thereon" till the end of a y 2015-16, it is clear that the impugned investments are still in project stage. Therefore, it is not known as to on what basis the assessee has undertaken all these changes in these assessment years that too in the income computation memo for the purposes of tax payment which is outside the books of accounts. Thus, when the entire facts and circumstances of this case are

considered in its totality, it is clear that the impugned expenditure incurred by the assessee is in capital in nature. The accounting practice followed by the assessee in its books of account, are in consonance with the general principles of accountancy as certified by their Auditors and the book results were also certified to give a true and fair view in conformity with the applicable accounting principles in India, the Accounting Standards issued by the Institute of Chartered Accountants of India and relevant provisions of the Indian Companies Act, 1956 are also in accordance with provisions of Act read with section 36 (1) (iii). Therefore, the assessee has not made out a case in these appeals. Hence, the Lower authorities are correct in their decisions that the assessee's claim through the income computation memo, is neither in accordance with the Accounting Standards nor with the statutory provisions of the Income Tax Act. Therefore, the corresponding grounds of the assessee fail for all these assessment years.

7.6 Since, the assessee's claim is rejected for these a ys, the income, if any, admitted by the assessee during these assessment years or in the subsequent years on reversal of interest claimed as deduction in the impugned years in the memo of computation of income, on due verification, be not charged to tax.

8. The next issue is , in the assessment made for ay 2011-12, the AO found that the assessee had invested Rs. 13 crores in Mahindra Integrated Township Ltd which is its subsidiary. On due examination, the AO held that the return on such investments can only be dividends which are not taxable and therefore he arrived the expenses pertaining to such investments u/s 14A rw r 8D (iii) at Rs.6,56,750/- and added to the returned income. On appeal, the Ld. CIT (A), following the decisions of the Hon'ble High Court of Bombay in the case of Godrej & Boyce Mfg. Co. Ltd (328 ITR 81 Bom) and the jurisdictional bench of the Hon'ble ITAT in the case of ACIT vs. Sun TV Networks Limited (in ITA Nos 1515 to 1520/ Mds/2013 dt 31.10.2013), confirmed the addition made by the Assessing Officer.

8.1 In this regard, the Ld AR submitted that during ay 2011-12, the assessee has not made any fresh investments through which exempt income may be earned. The investments were balances carried forward from previous years. The said investments were made during the FY 2006-07 to the extent of Rs. 12,98,70,000 and Rs. 27,30,000 in previous years. The previous years in which the investments were made through own funds as it is evident from the balance sheet of the concerned year that the assessee had only Rs.1 crore loans vis a vis the investments of Rs.12.99 crores made during the FY 2006-07. The investments were made by the assessee it its related namely Mahindra Integrated Township Ltd., which is also located inside Mahindra

World City. The primary object of investment is holding controlling stake in the group concern and not earning any income out of investment. The assessee had not directly or indirectly incurred any expenditure to earn exempt income. When Investments itself is not made in the year under consideration, no expenditure can be disallowed under Section 14A. Application of Rule 8D is not warranted when Section 14A is not applicable. Per contra, the Ld. DR supported the orders of the Lower authorities.

9. We heard the rival submissions. In support of its claim, the assessee submitted a cash flow statement for FY 2006-07 which was not filed before the Ld. CIT(A). Further, some of the plea taken by the assessee before us, like the investment made was for controlling interest etc., was not taken before the lower authorities. In the facts and circumstances, we deem it fit to remit this issues back to the AO for a fresh examination. The assessee shall place all the materials in its support before the AO and comply to the AO's requirements as per law. The A O is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law. In the result, the corresponding grounds of the assessee are treated as allowed for statistical purposes.

10. In the result, the assessee's appeals for ays 2010-11 & 2012-13 are dismissed. The appeal related to ay 2011-12 is treated as partly allowed for statistical purposes.

Order pronounced on Wednesday, the 27th day of June, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 27th June , 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF