

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 254/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>M/s. Lavender Buildcon Pvt. Ltd.</b> Central Mall, Ambawadi, Ahmedabad-380015	<b>बनाम/ Vs.</b>	<b>DCIT</b> Circle 2(1)(2), Ahmedabad Navjivan Trust Building, Ashram Road, Ahmedabad 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCL5863E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Deepak Soni, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Smt. Aparna Agarwal, CIT.D.R.

सुनवाई की तारीख / Date of Hearing	12/12/2018
घोषणा की तारीख /Date of Pronouncement	19/12/2018

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the Assessee against the order of the CIT(A)-2, Ahmedabad ('CIT(A)' in short), dated 03.01.2017 arising in the assessment order dated 02.11.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The grounds of appeal raised by the assessee read as under:

*“1.0 The CIT(A) under the facts ought to have quashed the order framed by the assessing officer. The order is contrary to the provisions of law and contrary to the facts in the case of the appellant. The order be quashed.*

*2.0 The CIT(A) erred in upholding assessment of leasing income of Rs.8,18,25,840/- under the head income from house property as against computation made by your appellant under the head profit and gains of business. The appellant submits that income of Rs. 8,18,25,840/- be directed to be assessed under the head Profit and Gain of Business.*

*2.1 The appellant further submits that depreciation and each and every expenditure was incurred wholly and exclusively for the purpose of the business operations and the assessing officer be directed to allow deductions for depreciation and expenses.*

*3.0 The CIT(A) erred in upholding disallowance at the rate of 4.25% of interest paid to M/s Thakur Finvest Pvt Ltd. The appellant submits that interest at the rate of 18% was reasonable and in consonance with market rate. The disallowance of 4.25% of interest adopting rate of interest at 13.75% is grossly erroneous and contrary to the facts. The disallowance be quashed.*

*3.1 The appellant without prejudice to above submits that the disallowance made by the AO is contrary to the law. The property was acquired with borrowed capital and the AO has assessed income under the head house property and therefore entire interest is deductible u/s 24(b). The disallowance of interest at 4.25% be quashed.*

*4.0 The CIT(A) erred in upholding assessment of Rs. 31,14,501/- under the head income from other sources. The appellant submits that income was derived during business operations carried on by the appellant and therefore income of Rs. 31,14,000/- was assessable under the head profit and gains of business. The appellant submits that it be so held now.*

*4.1 The appellant further submits that each and every expenditure (including depreciation) debited to the Profit and Loss account was incurred wholly and exclusively for the purpose of the business. The appellant submits that the assessing officer be directed to allow deduction for expenses including depreciation.*

*5.0 The CIT(A) erred in upholding addition of Rs. 24,475/- in computation of the total income. The appellant submits that interest*

*of Rs. 24,475/- has neither been received by it nor has accrued. Addition of Rs. 24,475/- being erroneous be quashed.”*

3. When the matter was called for hearing, the learned AR for the assessee submitted at the outset that Ground No.1 is general in nature and therefore does not require any separate adjudication.

4. The learned AR submitted that he also does not seek to press Ground Nos. 2 & 2.1 of its appeal. In view of the averments made in this regard, Ground Nos. 2 & 2.1 are dismissed.

5. As regards Ground Nos. 3 & 3.1, the learned AR for the assessee submitted that the assessee has borrowed funds from Punjab National Bank as well as from holding company M/s. Thakur Finvest Pvt. Ltd. The term loan from Punjab National Bank is secured in nature and interest was chargeable thereon at 13.75%. As against this, the assessee has paid interest @18% to the holding company on loan obtained of unsecured nature. The AO has disallowed the differential interest of 4.25% of borrowals made from the holding company. In this regard, the learned AR referred to its statement at para no.4.1 page 7 of the assessment order and submitted that holding company is a non-banking finance company and has declared an income of Rs.43.60 Crore at a maximum marginal rate. Thus, the so called excess interest charged by the lender has not in fact caused any prejudice to the Revenue owing to more collection of tax. Therefore, the terms and conditions of the loan are bonafide inevitably. The learned AR thereafter submitted that the loan from Punjab National bank is secured and therefore rate of interest is naturally likely to be lower. The learned AR further added that the assessee herein has filed loss return and therefore, apparently does not stand to gain

from the alleged higher rate of interest charged by the holding company to the assessee. We find substantial force in the plea of the assessee for bonafides of the interest charged. Therefore, the disallowance of interest on loan from holding company TFPL amounting to Rs.1,09,75,753/- paid to the holding company is reversed and the claim of the assessee in this regard is restored. Ground Nos. 3 & 3.1 are accordingly allowed.

6. Ground Nos. 4 & 4.1 concern re-characterization of income under the head 'income from other sources' by the AO as against business income offered by the assessee. In the course of hearing, the learned AR for the assessee submitted that he does not seek to press this aspect of the grievance. However, in the same vain, he submitted that the assessee has incurred audit fees of Rs.67,416/- and bank charges of Rs.35,113/- which are inextricably linked to the corporate status and structure of the assessee company and therefore, such expenditures are required to be allowed irrespective of any income generated under the head 'business income'. We find considerable force in the aforesaid claim of the assessee for allowance of expenditure for retaining the status of company viz. towards audit fee and bank charges notwithstanding absence of any income under the head 'business income' in view of the Hon'ble Allahabad High Court in the case of Rampur Timber & Tannery Co. Ltd. 129 ITR 58 (All.). Thus, Ground Nos.4 & 4.1 is allowed in part.

7. Ground No.5 concerns addition of Rs.24,475/- on account of interest. The AO noticed accrual of interest income of aforesaid amount from 26AS statement of the assessee. The learned AR for

the assessee has not submitted any concrete evidence to dislodge the accrual of income shown in the annual statement. Thus, we do not find any merit in the grievance raised by the assessee on this score. Ground No.5 of the assessee's appeal is accordingly dismissed.

8. In the result, appeal of the Assessee is partly allowed.

**This Order pronounced in Open Court on 19/12/2018**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 19/12/2018

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

*True Copy*

*S. K. SINHA*

**आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।