

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.330 to 332/Bang/2017
Assessment years : 2005-06 to 2007-08

M/s. Golflinks Softwar Park (P) Ltd., 1 st Floor, Embassy Point, 150 Infantry Road, Bangalore – 560 001. PAN : AABCG 7106 K	Vs.	The Deputy Commissioner of IncomeTax, Circle - 11(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. G. Sitaraman, CA
Revenue by	:	Shri. Pradeep Kumar, CIT

Date of hearing	:	28.01.2019
Date of Pronouncement	:	15.02.2019

ORDER

Per B. R. Baskaran, Accountant Member

These three appeals have been filed by the assessee challenging the orders passed by learned CIT(A)-3, Bangalore, and they relate to the Assessment Years 2005-06 to 2007-08. All these appeals were heard together, since the issue contested therein is identical in nature. Accordingly, for the sake of convenience, these appeals are being disposed of by this common order.

2. In all the three appeals, the assessee is contesting the decision of learned CIT(A) in confirming addition of interest income of Rs.58.00 lakhs, Rs.66.95 lakhs and Rs.29.00 lakhs made by the AO in Assessment Years 2005-06 to 2007-08 respectively.

3. The facts relating to the case are stated hereunder in brief:

The assessee company belongs to the Embassy Group and is involved in the business of real estate development. The original assessment for all the three years was completed under section 143(3) of the Act. The Revenue carried out search and seizure operations in the case of Shri. Sanjay Ghodawat Group of cases located at Kolhapur. Consequent thereto, survey operations were conducted under section 133A of the Act in the Embassy Group of cases including the assessee herein. The impounded materials revealed that the assessee has advanced money from time to time to a company named M/s. Topaz Investments Pvt. Ltd., as under:

Financial Year	Amount Advanced (Rs.)
2004-05	4,53,52,000
2005-06	3,83,30,000
Total	8,36,82,000

4. It was noticed that M/s Topaz Investments P Ltd belonged to Shri. Sanjay Ghodawat Group. During the course of survey proceedings, statement of the Managing Director of the assessee herein was recorded and he was asked about the nature and purpose of advance given to M/s. Topaz Investments Pvt. Ltd., (TIPL). He explained that the money was given to the above said company as advance for purchase of land. When questioned as to whether any interest has been charged on the advance so given, he replied that there was no understanding to charge any interest. During the course of search, Shri. Sanjay Ghodawat was also asked to explain the details of property sold by him to the assessee company for which advance was received by him. However, he could not furnish details thereof. Hence, the AO proposed to assess interest on the amount advanced to M/s. TIPL.

The assessee objected to the same by stating that the advance was given for commercial purposes for acquiring properties in and around Pune and hence no interest was charged. The assessee also relied on the decision rendered by Hon'ble Supreme Court in the case of SA Builders Vs. CIT (2007) 288 ITR 1 in order to contend that the transaction made out of commercial expediency will not call for disallowance of interest expenditure.

5. The AO was not convinced with the contentions of the assessee and accordingly added interest in all the three years as stated below:

2005-06	58,07,800/-
2006-07	66,94,560/-
2007-08	29,00,000/-

6. In the appellate proceedings, the learned CIT(A) noticed that the assessee has paid advance amount to M/s. TIPL every month i.e., the assessee paid a sum of Rs.56.36 lakhs every month for first few months and subsequently Rs.72.50 lakhs was paid every month from August 2005 to March 2006. Accordingly, the learned CIT(A) took a view that the amount so paid on monthly basis could be for some other purpose, since such kind of payments made instalments could not be for the purpose of purchase of land as claimed by the assessee. However, the learned CIT(A) noticed that the assessee has not confirmed if any land was purchased subsequently with the money advanced to M/s. TIPL. Accordingly, the learned CIT(A) took the view that the money so paid to M/s. TIPL cannot be considered for the purpose of business, since the assessee has not proved the existence of any commercial expediency. Accordingly, he took the view that the assessee cannot take the support of the decision rendered by Hon'ble Supreme Court in the case of SA Builders (supra). The learned CIT(A) also noticed that the Hon'ble Supreme Court has admitted a Special Leave Petition filed in the case of Additional CIT Vs.

Tulip Star Hotels Ltd., wherein the department has prayed that the decision rendered in the case of SA Builders (supra) needs reconsideration.

7. The learned CIT(A) took support of the decision rendered by Hon'ble Karnataka High Court in the case of Embassy Development Corporation Vs. ACIT (2015) 52 Taxmann.com 234, wherein disallowance of interest was confirmed. In the case before Hon'ble Karnataka High Court, the assessee who was engaged in the real estate business, had advanced borrowed money to its sister concern for acquiring personal property in a project to be developed by its sister concern. However, it was found that even after 3 years, the amount advanced to the sister concern was not utilized for the construction of the project and hence it was held that the amount advanced was not for any business expediency and it was a loan transaction. Accordingly, it was held by Ld CIT(A) that the assessee was not entitled for any deduction of interest attributable to such advance.

8. The learned CIT(A), while adjudicating identical addition made in AY 2006-07 and 2007-08, has also considered the position of own funds available with the assessee. He noticed that the own funds available with the assessee in the form of share capital and reserves and surplus were far less than the amount advanced to M/s. TIPL. Hence, the learned CIT(A) rejected the contentions of the assessee that the amount advanced to TIPL was given out of own interest free funds. Accordingly, the learned CIT(A) confirmed the contention of interest income made by the AO in all the 3 years. Aggrieved by the order passed by the learned CIT(A), the assessee filed these appeals before the Tribunal.

9. The Ld A.R submitted that the assessing officer in the assessment order passed for AY 2006-07 has tabulated the details of payment made to M/s TIPL. A perusal of the same would show that the assessee has transferred its rental income to M/s TIPL every month and hence it is not correct on the part of the Ld CIT(A) to

hold that the assessee has diverted loan funds to M/s TIPL. He submitted that the view so taken by Ld CIT(A) is contradictory to that mentioned by the AO in the assessment order. He further submitted that the impugned advances were given on commercial considerations, i.e., for purchase of land. He also furnished a copy of ledger account of M/s TIPL for the period from 25.09.2004 to 31.3.2005 in order to submit that there were commercial transactions between the assessee and M/s TIPL. He further submitted that the AO had made another addition of Rs.54,94 lakhs, being interest income in respect of another advance given to M/s TIPL. The Ld CIT(A) has deleted the same by holding that the AO is not entitled to make the addition of notional interest. However, in respect of the impugned additions made on the advances given to M/s TIPL, the Ld CIT(A) has taken different stand and confirmed the addition. He further submitted that the quantum of advance given was wrongly taken by the tax authorities. He reiterated that the advances were given towards business dealings only and further there was no agreement to charge interest on the above said advances. Accordingly he contended that the tax authorities are not justified in computing interest income, when there is no such agreement between the parties. Accordingly he contended that the Ld CIT(A) was not justified in confirming the addition made by the AO in all the three years under consideration.

10. The Ld D.R, on the contrary, submitted that the assessee did not have any interest bearing funds and hence the loan funds only has been diverted by the assessee to M/s TIPL. He further submitted that the assessee did not prove that the purpose of giving advances was for business purposes. He submitted that the Ld CIT(A) has examined the issue in proper perspective and accordingly confirmed the disallowance of interest expenditure.

11. We have heard rival contentions and perused the record. We notice that the Ld CIT(A) has taken support of the decision rendered by Hon'ble Karnataka High

Court in the case of Embassy Development Corporation (supra) to uphold the addition made by the AO, since, according to Ld CIT(A), the assessee has failed to prove commercial considerations involved in giving such advances. By analyzing the financial statements, the Ld CIT(A) has taken the view that the assessee has diverted interest bearing funds for giving the impugned advances to M/s TIPL. Hence he has held that the interest attributable to the advances so given is not allowable as deduction. Hence, in our view, it is not a case of addition of Notional interest income. Before us, the assessee has not furnished the copies of financial statements and hence we are unable to appreciate the contention of the assessee. In addition to the above, the assessee has also furnished a copy of ledger account to submit that there are business dealings between the assessee and M/s TIPL. A perusal of the same would show that the assessee appears to have sold some properties to M/s TIPL and received money in instalments, while the issue before us is with regard to the advances given by the assessee to M/s TIPL. In any case, this ledger account copy and the nature of business transactions have not been examined by Ld CIT(A).

12. We also notice that there is lack of clarity on the facts surrounding the issue. The assessee claims that it has not diverted any loan funds for giving impugned advances and it has used only its rental income proceeds for giving the advances. However, the Ld CIT(A), after analyzing the financial statements of the assessee, has given a finding that the assessee does not possess interest free funds equivalent to or in excess of the advance given. The Ld A.R also submitted that the quantum of advance mentioned by the tax authorities is not correct.

13. In view of the above, we are of the opinion that this issue requires fresh examination at the end of Ld CIT(A) by providing one more opportunity to the assessee to substantiate its case. Accordingly we set aside the orders passed by Ld CIT(A) on this issue in all the three years under consideration and restore the same

to the file of Ld CIT(A) for examining it afresh in accordance with law, after affording adequate opportunity of being heard to the assessee.

14. The assessee has also challenged the validity of reopening of assessment in AY 2006-07 and 2007-08. However no argument was advanced at the time of hearing by the assessee. Hence we decline to adjudicate the said ground in both the years.

15. In the result, all the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on this 15th day of February, 2019.

Sd/-

(N. V. VASUDEVAN)
Vice President

Sd/-

(B. R. BASKARAN)
Accountant Member

Bangalore.

Dated: 15th February, 2019.

/NS/*

Copy to:

- | | | |
|---------------|----|------------|
| 1. Appellants | 2. | Respondent |
| 3. CIT | 4. | CIT(A) |
| 5. DR | 6. | Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.