

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
and  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2618/Bang/2017  
(Assessment year: 2014-15)

M/s. Information Technology Park Ltd.  
1<sup>st</sup> Floor, Innovator Building,  
Whitefield Road, International Tech Park,  
Bengaluru-560066. ... Appellant  
*PAN:AAACI 7042 R*

Vs.

Asst. Commissioner of Income-tax,  
Circle 3(1)(1),  
Bengaluru. ... Respondent

Appellant by : Shri Padamchand Khincha, CA  
Respondent by : Shri C.H.Sundar Rao, CIT(DR)

Date of hearing: 9/05/2019  
Date of pronouncement: 12/06/2019

**O R D E R**

**Per PAVAN KUMAR GADALE, JM :**

The assessee has filed the appeal against the order of the CIT(A)-III, Bangalore passed u/s 143(3) and 250 of the Income Tax Act 1961(hereinafter referred to as 'the Act'). The assessee has raised the following grounds of appeal:

"The grounds stated hereunder are independent of and without prejudice to one another. The Appellant submits as under:

**1 Order is invalid, null and void**

On the facts and in the circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [Ld.CIT(A)] under section 250 of the Act, is invalid, void,

contrary to provisions of law and also contrary to facts and material evidence existing on records.

## 2 Allocation of interest incurred on Fully Convertible Cumulative Debentures ('FCCDs')

- 2.1 On the facts and in the circumstances of the case, the Ld. CIT(A), without taking cognisance of the submissions filed by the Appellant, erred in law and in facts in holding that the Learned Assessing Officer ('Ld. AO') was justified in allocating the interest on FCCDs between the SEZ undertaking and the non-SEZ undertaking, thereby reducing the deduction claimed under section 80-IAB of the Act from Rs. 182,938,431 to Rs. 92,103,102.
- 2.2 The Ld. CIT(A) erred in not admitting the additional evidence submitted by the Appellant to substantiate its claim that interest on FCCDs should not be allocated to SEZ undertaking.

## 3 Interest under section 234B of the Act

On the facts and circumstances of the case, the Ld. AO has erred in levying interest under section 234B of the Act.

## 4 Initiation of penalty proceedings

On the facts and in the circumstances of the case, the Ld. AO erred in initiating penalty proceedings and the Ld. CIT(A) erred in not directing the Ld. AO to drop the penalty proceedings.

## 5 Relief

- a) The Appellant prays that directions be given to grant all such relief arising from the above grounds and also all relief consequential thereto.
- b) The Appellant craves leave to add to or alter, by deletion, substitution, modification or otherwise, any or all of the above grounds of appeal, at any time before or during the hearing of the appeal.
- c) The Appellant submits that the above grounds are independent and without prejudice to one another.

2. The assessee also raised the following additional grounds of appeal:

1. "The learned CIT(A) has erred in applying provisions of section 80-IA(10) for allocation of interest expenditure of Rs. 22,64,70,998/- between SEZ and Non-SEZ units.
2. Even otherwise, the learned CIT(A) has erred in invoking the provisions of section 80-IA(10).
3. Without prejudice, the learned CIT(A) has not demonstrated the satisfaction of conditions outlined in section 80-IA(10)."

3. At the time of hearing, the learned AR argued only one disputed issue with respect to addition made by the AO on allocation of interest paid.

4. Briefly, the facts of the case are that the assessee-company is engaged in property development and filed the return of income for the assessment year 2014-15 on 26/11/2014 with total income of Rs.65,47,11,470/-. Subsequently the case was selected for scrutiny and notice u/s 143(2) of the Income-tax Act,1961 ['the Act' for short] was issued. In compliance, the learned AR appeared and filed information. The learned AR explained that the assessee is engaged in the business of estate development, management of Information Technology Park in India and declared receipts of Rs.3,20,46,64,298/- for the said assessment year. The AO found that the assessee has claimed deduction u/s 80-IAB of of the Act of Rs.18,29,38,431/- in respect of SEZ development unit. The assessee has disclosed income from three segments being ITPB Admin being operational receipts and non-SEZ unit and SEZ unit with income of lease rentals + operational facility and maintenance charges. The AO found that the assessee has claimed interest paid on debentures only against ITPB Admin revenue and non SEZ unit and no interest was claimed against SEZ unit whereas the assessee, at the time of obtaining loan

fully convertible cumulative debentures and there was no building under construction except Ascendas Park Square Mall. The assessee-company availed loan of Rs.100 crores from DBS bank and the said loan was obtained after August 2009 but before November 2010 and the proceeds of fully convertible cumulative debentures was used to repay the loan of DBS Bank. whereas the construction of the Park Square Mall was started in the year 2007-08 and completed in the financial year 2010-11, the AO is of the opinion that the mall was completed much before the loan in the form FCCD was obtained and in the said period investment in SEZ increased. Finally, the AO observed that funds were borrowed for the purpose of capital investment and not for the purpose of working capital and therefore, AO has allocated the interest based on the value of the building referred at page 3 of the order and deduction u/s 80-IAB of the Act is reduced to the extent of interest expenditure debited to SEZ unit and excess claim u/s 80-IAB of Rs.9,08,35,329/-was disallowed and assessed the total income of Rs.75, 55,46,802/- vide order dated 21/12/2016.

5. Aggrieved by the order, the assessee filed an appeal with the CIT(A). The CIT(A) having considered the findings of the AO and the submissions of the assessee and the grounds of

appeal has confirmed the addition and partly allowed the appeal.

6. Aggrieved by the order, the assessee filed an appeal with the Tribunal. Before us, the learned AR submitted that there is nexus between the construction of the building and loans. Whereas loan of Rs.135 crores was obtained in May 2011 and Rs.40 crores in October 2011. The learned AR filed additional evidences to substantiate the repayment of loan and prayed for an opportunity before the AO. Contra, the learned DR vehemently objected and submitted that these documents were filed for the first time before the Tribunal and the AO was deprived to verify and examine the material and prayed for dismissal of the appeal.

7. We heard the rival submissions and perused the material on record. We found that the learned AR has argued only in respect of disallowance of interest and has not argued other grounds of appeal. Therefore we restrict our decision to the extent of submissions made and material filed. The learned AR made his submissions supported by material papers in the paper book and also filed additional evidence as per the provisions of rule 29 of the ITAT Rules 1963. The additional evidences are pertaining to claims and the documents were not

produced before the assessing authority. At the time of hearing, the learned DR has highly objected to the admission of additional evidence as the assessee has not brought on record reasons for not filing in the course of assessment proceedings. Whereas the learned AR submitted that that documents are available now and filed as additional evidence as per rule 29 of the ITAT Rules 1963. Accordingly, we admit the additional evidence and restore the entire disputed issue for limited purpose to the file of the AO to verify and examine the documents filed as additional evidence and pass a speaking order. Further the assessee should be provided adequate opportunity of hearing and shall submit the information expeditiously. Hence, the grounds of appeal of the assessee are allowed for statistical purposes.

8. In the result, the assessee's appeal is allowed for statistical purposes.

*Order pronounced in the open court on 12<sup>th</sup> June, 2019.*

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru  
Date : 12/06/2019  
*srinivasulu, sps*

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore