

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 1465/DEL/2016 (A.Y. 2010-11)
I.T.A. No. 1464/DEL/2016 (A.Y. 2011-12)**

ACIT Circle-15(2) C.R.Building New Delhi (APPELLANT)	Vs.	Lucina Land Development Ltd. F-60, 2 nd Floor, Malhotra Building, Connaught Place New Delhi PAN : AABCL2130N (RESPONDENT)
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Appellant by	Sh. Gautam Jain, Adv. Sh. Lalit Mohan, CA
Respondent by	Smt. Rinku Singh, Sr.DR

Date of Hearing	01.08.2019
Date of Pronouncement	05.08.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 13.11.2014 passed by CIT(A)-VIII, New Delhi by the revenue for Assessment Year 2010-11 and 2011-12.

2. The grounds of appeal are as under :

ITA No. 1465/Del/2016

“1. That the order of the learned CIT(Appeals) is erroneous & contrary to facts & law.

2. That on the facts and circumstances of the case & Law, the Ld. CIT(A) erred in deleting the addition of Rs. 14,39,12,048/- made on account of

interest expense capitalized in real estate under development.

3. That on the facts and circumstances of the case & law, the Ld. CIT (A) erred in deleting the addition of Rs. 3,24,94,319/- made on account of all expenditure debited to profit and loss account.

4. That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of hearing.

ITA No. 1464/Del/2016

“1. That the order of the ld. CIT(A) is erroneous & contrary to facts & law.

2. That on the facts and circumstances of the case & law, the Ld. CIT(A) erred in deleting the addition of Rs. 6,90,77,783/- made on account of interest expense capitalized in real estate under development.

3. That the appellant craves leave to add, alter or amend any ground(s) of the appeal raised above at the time of hearing.”

3. Return of income was filed on 22.09.2010 declaring total loss of Rs. 30,16,861/-. In this case after recording reasons u/s 148(2) satisfactions was recorded by the Assessing Officer and notice u/s 148 was issued to the assessee company on 15.01.2013 requiring the assessee filed return of income for the assessment year 2010-11. The assessee filed reply and requested the revenue to treat the original return filed u/s 139(1) in response to notice u/s 148 of the Act. The advocate of the assessee attended the reassessment proceedings. The Assessing Officer made addition of Rs. 3,24,94,319/- in respect of disallowances on account of expenditure debited to profit and loss account as well as disallowed interest claimed of Rs. 14,39,12,048/- on the basis of percentage completion method in such subsequent assessment years.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in deleting the addition made on account of interest expense capitalizing realistic under development which was not at all disallowed to the assessee. As regards Ground no. 2, the Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs. 3,24,94,319/- made on account of all expenditure debited profit and loss account. As the Assessing Officer was wrongly mentioned that the benefits was not commenced. The Ld. DR relied upon the Hon'ble Apex Court order in case of Add.CIT vs. Tulip Star Hotels Ltd. (2012) 21 taxmann.com 97 (SC) and Hon'ble Delhi High Court decision in case of Punjab Stainless Steel Inds. Vs. CIT (2011) 196 Taxman 404 (Delhi).

6. The Ld. AR relied upon the assessment order as well as CIT(A) order.

7. We have heard both the parties and perused all the relevant material available on record. As regards Ground No. 1, the CIT(A) has deleted this addition on the basis of Hon'ble Supreme Court decision in case of SA Builders Ltd. 288 ITR 1. The Assessing Officer has given observation that this amount has to be disallowed in the assessment order itself. The CIT(A) held as under:

“GROUND NO. 2:-

Ground No. 2 of the appeal is against the disallowance of interest expenses of Rs. 143,912,048/-, capitalized in real estate project under development. The AO, in his assessment order, alleged that loans have been granted without any business exigency.

On the other hand, the appellant has argued that the assessee borrowed funds for the purpose of its business (particularly for its running project) and debited the interest cost in the project work-in-progress, amounting to Rs. 14.39 crs. As, such interest cost was not debited into P & L account, the assessee did not claim it in tax, during the year under consideration. In order to fruitfully use the available funds, following the principles of commercial expediency, the assessee partially gave such funds to its wholly-owned subsidiaries for their business purposes. The companies, to whom funds were

given, were 100% subsidiaries of the assessee (evidence filed with submission dt. 22.10.2014) and the assessee had full control over the management of those entities. In other words, businesses of the subsidiaries were actually the business of the assessee itself. The appellant has given reference to several case laws in support of its argument including SA Builders case of Hon'ble Supreme Court of India.

On considering the facts of the case and the arguments forwarded by the appellant, it is observed that there is no dispute as far as the allowability of interest expenses u/s 36(1)(iii) of the Act is concerned. The facts of the case of Malayalam Plantation Ltd. on which the AO has relied, are entirely different. The appellant has relied upon the decision of Hon'ble Supreme Court in the case of SA Builder Limited, it was held by the Hon'ble Court that the expression "for the purpose of business" occurring in Section 36(1)(iii) is wider in scope than the expression "for the purpose of earning profits". In order to claim a deduction, it is enough to show that the money is expended on ground of commercial expediency.

The AO has wrongly interpreted the fact of the case and mentioned in his assessment order that the above preposition is not applicable. Through, the preposition laid by the decision of Supreme Court is completely applicable in the instant case, as the loans given to its subsidiary companies in order to achieve its business objects and the assessee has a deep interest in the business of subsidiary companies. Thus the interest on loan taken being meant for the purpose of business is duly allowable as business expenditure.

These 2 case laws interpreted by AO are not proper. The first case law on SA Builders says that interest disallowance on loans and advances given to group concerns should not be disallowed on the basis of commercial expediency. If interest is disallowed in one company, then interest is to be added as income of the other company, then both transactions taken together will not add extra revenue to the department. The companies are assessed at a flat tax rate of 30% slab. Therefore, these 2 transactions make the ultimate analysis as tax neutral. Hence there is no need to disallowance of interest

when parent company has borrowed money from financial institution and given interest free loan to the subsidiaries. In this theory, the AO's finding of interest disallowance is not proper and justified. Hence, this ground of appeal is allowed.

The second case law of AO for the purpose of business which has been written in page no. 4 and 5 of his order. The AO had disallowed the explanation of the appellant on the ground that the appellant company is not engaged in the business of raising loans at concessional rate and extending them at higher rates. The appellant has failed to use the money of the purpose for which it has been raised, and by capitalized interest. The assessee has increased the cost of inventory was the comments of the AO. These views of the AO appear to be reverted and distorted. The appellant company and its parent company are into different businesses like appellant company doing real estate work and parent company is IndiaBulls Real Estate Ltd., a real estate company. Both the interest of the company are to earn profits but within the framework of corporate law and other allied laws. Therefore, I do not support the view of AO and advice AO to always apply fresh case laws of recent years as appearing in last 5 to 10 years by different High Courts and Supreme Court. With the change of time and advancement of science and technology and development of the country, the situation in which company run their business also differs. Therefore as officers of the department, we should be more practical and pragmatic while making assessment of the companies.

The facts being so and in view of the decisions of Hon'ble SC Court in case of SA Builders Limited 288 ITR 1 (SC) on the subject, the AO's action in disallowing the interest expenditure of 143,912,048/- is not justified and the same is directed to be deleted.

Having concluded that the interest paid by the assessee is duly allowable under Income Tax Act as the loan to the subsidiaries has been given for the purpose of its business, it is also directed that the disallowance of the interest cost, made in the AY 2011-12 amounting to Rs. 6,90,77,783/-, being 48% of

Rs. 143,912,048/- is also to be deleted. Ground No. 2 of the appeal is allowed.”

Thus the CIT(A) has rightly allowed this issue with a detailed finding as well as by discussing the case laws referred by the Assessing Officer. The reliance by the Ld. DR on the decisions of Tulip Star Hotels Ltd. (supra) and Punjab Stainless Steel Inds. (supra) are not at all relevant as the factual aspect in the present case is totally different. There is no need to interfere with the observations of the CIT(A). Ground no. 1 of the revenue's appeal is dismissed.

8. As regards ground no. 2 the assessee has commenced its business in 2006 itself and was filing return since Assessment Year 2007-08. The present assessment year is the fourth year of filing return of income. The CIT(A) held as under:

“GROUND NO. 3:-

The assessee is real estate developer/builder. The company was incorporated on 25.07.2006. The appellant had filed its income tax return for AY 2007-08 showing total loss of Rs. 32,619/-. The appellant had filed income tax return for AY 2008-09 showing loss of Rs. 64,074/- and also filed ITR for AY 2009-10 showing total loss of Rs. 62,220/-. In the FY 2009-10 i.e. AY 2010-11 which is under appeal, the project cost incurred was to the extent of Rs. 49.52 crs. There is payment of brokerage and commission for booking of flats to different brokers. In the next AY 2011-12, the appellant had shown total income of Rs. 209.92 crs. And paid taxes of Rs. 75.41 crs. Thus, we are in the 4th year of business of the appellant company and AO says that the appellant had not started its business on AY 2010-11 (4th year of filing return). The business of real estate takes time of 4 to 5 years in bringing a project from zero ground level to multi storied buildings where people used to stay. Hence in such type of business, the business has not started from the first year cannot be told or justified. There is common expenditure of running the company, giving employment to people for making the project viable and successful implementation of different tax laws and action plans by using

new managerial techniques like critical path methods (CPM), program evaluation techniques (PERT) and other managerial inputs so that the project can be completed successfully in a least time with less resources and more efficiently. Therefore the observation of the AO that the company has not started its business on 4th year of doing activities is not correct. This company is a group company of IndiaBulls Real Estate Ltd. In the initial 2-3 years the company had to obtain loan from financial institution or from group concerns or give loans and advance to sister concern for executing various activities of the objects. Therefore the AO's assumption that interest claimed by the appellant should be disallowed, as the company has not started its activities, is not correct.

The AO had relied on the decision of Hon'ble Supreme Court in the case of M/s Tuticorin Alkali Chemicals & Fertilizers Ltd. and had said in its order in page no. 6 that interest earned by the appellant company of Rs. 2,10,97,405/- earned during free commencement period is held as income from other sources by applying the above case law of Hon'ble Supreme Court. The Hon'ble Supreme Court case is different where FDR interest received from fixed deposit in banks was taxed as income from other sources in the pre-operational period of the company. In the present case of the real estate builders when the project construction activities are going on, and where in the 4th year of business, the expenditure claimed by the appellant in the P&L A/c cannot be summarily rejected on the ground that no sales activity or sale recognition have been made by the appellant company. Therefore, the observation of the AO in rejecting appellant's explanation and disallowing all the expenses claimed in P&L A/c of Rs.3,24,94,319/- in the P&L A/c is not justified. Hence, the ground no. 3 of the appeal is allowed, and addition of Rs. 3,24,94,319/- is deleted."

The Assessing Officer ignored the crucial fact that there is payment of brokerage and commission for booking of flats to different brokers and in the next AY 2011-12, the assessee had shown total income of Rs. 209.92 crs. on

which paid taxes of Rs. 75.41 crs. Thus, we are in the 4th year of business of the assessee company but the Assessing Officer wrongly mentioned that the assessee did not started its business on AY 2010-11 (4th year of filing return). Thus, the CIT(A) has rightly deleted this addition. There is no need to interfere with the findings of the CIT(A).

9. As regards appeal for assessment year 2011-12 filed by the revenue the issue is identical in respect of Ground no. 1 of assessment year 2010-11, therefore same is dismissed.

10. In result both the appeals are dismissed.

Order pronounced in the Open Court on 05th August, 2019.

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 05/08/2019

Binita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI