

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

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.2918/Mum/2018
(Assessment Year :2013-14)**

M/s. Adhiraj Ventures Pvt. Ltd., 303, Sharda Chambers, 15 New Marine Lines Mumbai – 400 013	Vs.	Deputy Commissioner of Income Tax – 1(1)(1) Mumbai
PAN/GIR No. AAACA5217G		
(Appellant)	..	(Respondent)

Assessee by	Shri Gaurav Kabra
Revenue by	Ms. Samatha MullaMudi
Date of Hearing	24/09/2019
Date of Pronouncement	04/10/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.2918/Mum/2018 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Mumbai in appeal No.CIT(A)-2/IT/119/2016-17 dated 01/01/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/03/2016 by the Id. Dy. Commissioner of Income Tax – 1(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in restricting the disallowance made on account of

interest on borrowed funds on a proportionate basis in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is a private limited company engaged in the business of giving premises on leave and licence basis. The Id AO observed that the assessee had accumulated a total work in progress (WIP) of Rs 6,90,14,263/- as on 31.3.2013. The assessee submitted that the WIP appearing in the balance sheet represents purchase of materials for Ambey Valley bungalow at Lonavala and it is not for sale subsequent to its completion and thus the question of presumptive income on percentage of completion method does not arise for the same. The Id AO from the financial statements and details submitted by the assessee found that during the year , the assessee paid interest of Rs 25,00,000/- to Shri Abhishek Manu Singhvi which ought to have been capitalized to WIP but wrongly claimed as deduction by the assessee. The Id AO observed that as assessee had not offered any income from the operation of bungalow as rental income or not having any intention to sell it in future and thus entire finance cost paid towards the capital raised for carrying out the construction activity cannot be allowed to be debited to profit and loss account. Accordingly, the Id AO disallowed the entire interest of Rs 25,00,000/- and capitalized the same to be part of Capital WIP, ignoring the factual submissions of the assessee.

4. The assessee submitted that the Id AO erred in holding that the loan borrowed from Shri Abhishek Manu Singhvi was utilized for making investment in Ambey Valley Project. The assessee submitted that out of loan of Rs 5 crores borrowed, the assessee had utilized Rs 4.85 crores in the form of share application money with a view to acquire further share

capital in M/s Adhiraj Constructions Pvt Ltd , which was in construction business. The balance of Rs 15 lacs was utilized for working capital requirements in the business of the assessee. Therefore, interest expenditure incurred on loan taken to subscribe to shares of a company is incurred for one of the business purposes of the assessee and utilized for working capital requirements and hence the same cannot be subject matter of disallowance u/s 36(1)(iii) of the Act. The assessee also submitted the bank statement along with the relevant ledgers which showed that as soon as the amount was received from the lender, it got transferred to the sister concern M/s Adhiraj Constructions Pvt Ltd. It was submitted that the Id AO on the contrary had not brought on record anything to prove that the loan from Shri Abhishek Manu Singhvi was utilized for making investment in Aamby Valley Project. The assessee further submitted that the foremost purpose of making the share application money was to have controlling interest in the company for the purpose of normal business activities and commercial expediency is proved thereon as the same is linked with the business of the sister concern in which the assessee has deep controlling interest. It was submitted that if the subsidiary company expands and progresses, the assessee company would be benefitted by the same as the valuation and net worth of the assessee would also increase. The assessee placed reliance on the decision of Hon'ble Supreme Court in the case of S A Builders Ltd vs CIT reported in 288 ITR 1 (SC) among other decisions.

5. The Id CITA observed that during the appellate proceedings, the assessee had filed a copy of ledger account of Shri Abhishek Manu Singhvi. From the said ledger account and also from the bank statement of the assessee, the Id CITA observed that on 6.11.2009, the assessee received RTGS from HSBC account to the tune of Rs 5 crores and on

9.11.2009, the assessee company had transferred such amount to M/s Adhiraj Construction Pvt Ltd to the tune of Rs 4.85 crores towards investment in share application money for acquiring more controlling interest in the said sister concern. The Id CITA observed that only a sum of Rs 3,68,73,234/- was utilized by the assessee towards investment in share application money in M/s Adhiraj Construction Pvt Ltd as on 31.3.2013 and not Rs 4.85 crores. Accordingly, the Id CITA restricted the disallowance of interest u/s 36(1)(iii) of the Act on the proportionate loan amount diverted for non-business purposes of Rs 1,31,26,766/- (5,00,00,000- 3,68,73,234). Aggrieved, the assessee is in appeal before us.

6. We have heard the rival submissions. We find that the Id CITA had accepted the fact that the investment in share application money in M/s Adhiraj Construction Pvt Ltd is for business purposes of the assessee. From the perusal of the financial statements of the assessee for the years ended 31.3.2012 and 31.3.2013 , we find that the assessee company is having own funds as under:-

	31.3.2013	31.3.2012
Share capital	3,75,000	3,75,000
Reserves and Surplus	2,17,42,240	2,57,33,887
Share application money pending Allotment	3,68,73,234	3,25,21,834
Total	5,89,90,474	5,86,30,721

6.1. The Id AR placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd in Civil Appeal No. 10 of 2019 dated 2.1.2019. He however stated that the Id AO had completely proceeded on incorrect assumption of facts in the instant case and prayed for remanding this issue to the file of Id AO for denovo adjudication after

considering the actual facts. Per Contra, the Id DR vehemently relied on the order of the Id CITA. We find that the Id AO had proceeded on irrelevant assumption of facts by stating that the Aambey valley project is under construction and that it is not meant for sale , so on and so forth , without giving any factual finding that whether the borrowed funds were utilized by the assessee for its business purposes or not, which is relevant for allowability of interest u/s 36(1)(iii) of the Act. Hence we deem it fit and appropriate, in the interest of justice and fairplay, to remand this issue to the file of Id AO for denovo adjudication of the issue in accordance with law and in the light of various decisions that are relied upon by the Id AR. Accordingly, the ground raised by the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 04/10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 04/10
/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai