



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

**BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.1985/Mum/2019

(निर्धारण वर्ष / Assessment Years: 2014-15)

|   |                     |  |
|---|---------------------|--|
| The Indian Film Combine Pvt. Ltd.<br>1 <sup>st</sup> Floor, Maker Tower 'F'<br>Cuffe-Parade, Mumbai-400005. | <b>बनाम/</b><br>Vs. | Principal Commissioner of Income-tax-16<br>Room No.442, Aayakar Bhawan, M.K. Road, Mumbai. |
| <b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACI3611E</b>   |                     |  |
| (अपीलार्थी /Appellant)  | ..                  | (प्रत्यर्थी / Respondent)  |

|              |                            |
|--------------|----------------------------|
| Assessee by: | Shri Prakash Jothwani (AR) |
| Revenue by:  | Shri Awungshi Gimson (DR)  |

सुनवाई की तारीख / Date of Hearing: 06/08/2019

घोषणा की तारीख /Date of Pronouncement: 13/09/2019

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 31.01.2019 passed by the Principal Commissioner of Income Tax, Mumbai [hereinafter referred to as the "PCIT"] relevant to the A.Y.2014-15 in which the Principal Commissioner of Income Tax has invoked the provisions u/s 263 of the I.T. Act, 1961.

2. The assessee has raised the following grounds: -

*"1. The Principal Commissioner of Income Tax -16 ("hereinafter referred to as the PCIT"), ignoring the relevant facts on record, has erred in passing order under section 263 of the Income Tax Act, 1961 by holding that the assessment order passed by the ITO 16(1)(5) ("hereinafter referred to as the learned AO") u/s 143(3) of the Act dated 26.12.2016 is erroneous so as to be prejudicial to the interest of the revenue and directing the AO to decide all the issues afresh.*

*The Appellant submits that the order u/s.263 of the Act for modifying the order u/s.143(3) of the Act is bad in law, illegal, ultra-virus, in excess of and/or in want of jurisdiction and otherwise void.*

*2. The PCIT failed to appreciate that the A.O. while passing order u/s 143(3) has considered the facts of the case and had taken the legally correct view. The PCIT erroneously observed that there is at least some*



part of the Interest income on Fixed Deposit from ICICI Bank (Rs.3,88,60,916) which is not attributable to the project under development and hence cannot be reduced from the Interest cost of the project.

3. The POT has failed to appreciate and ignore the fact that the amount of Rs.5,54,34,177 received on behalf of proposed body of purchasers is not the income of the assessee company.

4. The PCIT has failed to appreciate and ignore the fact that amount of Rs.1,82,196 reflected as rent on plant & machinery, received on behalf of proposed body of purchasers is not income of the assessee company and that these amounts have already been included in the amount of Rs.5,54,34,177 as per Ground No.3 above, hence reflected twice.

5. The PCIT has failed to appreciate and ignore the fact that amount of Rs.16,667/- reflected as profession Fees, received on behalf of proposed body of purchasers, is not income of the assessee company and these amounts have already been included in the amount of Rs.5,54,34,177 as per Ground No.3 above, hence reflected twice.

6. The PCIT has failed to appreciate and ignore the fact that in respect of License compensation as reflected in Form 26AS of Rs.1,58,05.468, only amount of Rs.93,65,940 is related to license compensation and the same has been offered for tax under the head income from house property. In respect of balance amount of Rs.64,39,528, these amounts have been received on behalf of proposed body of purchasers and the same is not income of the assessee company. These amounts have already been included in the amount of Rs.5,54,34,177 as per Ground No.3 above, hence reflected twice.

7. The PCIT has failed to appreciate and ignore the documentary evidence on record available with the learned AO, reply submitted by the learned AO during the 263 proceedings, explanations filed during 263 proceedings, with regard to additions in capital work in progress of Rs.98.82 crores during the year.

8. The PCIT has erred in restoring the matter relating to interest paid on term loan back to the file of the assessing officer to decide the issue afresh, without examining the documents and explanations filed during the course of 263 proceedings and ignoring the reply submitted by the learned AO.

9. The appellant submits that the order and direction given by PCIT are totally unwarranted and no interference is called for in the assessment order u/s 143(3) passed by the A.O.

10. Your appellant craves leave to add, alter, or amend any grounds of appeal on or before the date of the hearing.”

3. The brief facts of the case are that the assessee filed its return of income on 22.08.2014 declaring total income to the tune of Rs.76,72,340/- for the A.Y. 2014-15. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) &



142(1) of the Act were issued and served upon the assessee. Thereafter, the AO completed the assessment by assessing the income to the tune of Rs.76,77,339/-. Thereafter, the Principal CIT examined the order and found the same as erroneous and prejudicial to the interest of the revenue. The PCIT issued the show-cause notice u/s 263 of the Act dated 26.08.2018 on following points: -

- “1. You have invested part of loan amount raised in FDRs and earned interest on FDRs at c's 3,88,60,9161- during the year under consideration- The same was not offered as income being income from other sources. You have reduced this interest amount front interest paid on term loan and after netting off the same, included in WIP. Since the interest earned on FDRs is not at all related to the project the same needs to be taxed as income from other sources.
2. As per 26AS you have received an amount of Ps. 5,54,34,277/- from various entities on which TDS of Rs. 16,99,3881- was deducted and the you claimed the TDS in your return also. In the reply you said that it was collecting outgoings front various purchasers and has been incurring expenses towards the outgoing and maintenance of Phase-I. You have also submitted that deposits and outgoings have been deposited in two separate bank accounts and once the society will be formed the complete record be transferred to the society. Since, the TDS has been claimed by you, the corresponding receipts must be brought to the books of accounts. No documentary evidences are placed on record as to how this Rs.5,54,34,777/- has been brought to the books of account and how the same has been offered for the tax.
3. As per ITS you have received interest on income tax refund at Ps. 4,87,4431. whereas you have offered only a sum of Rs.2,48,595/- as interest received. The remaining No.2,38,848/-needs to be added to the income as income from other sources.
4. As per 26AS you have received Rs.1,82,196/- as rent on plant 86 Machinery however, the same has not been offered for tax by you.
5. As per 26AS you have received professional fees of Rs.16,667/- the same has not been offered for the tax by you.
6. In the P&L, account you have declared the receipts of Rs.93,65,940/- as being licenses compensation. In the computation after claiming deduction u/ s24 declared income of Rs.65,56,258/- as income from House Property. As per 26AS you have received rental income of Rs.1,58,05,468/, To claim the deduction u/ s. 24 of the 17' Act, you must be the owner of the property. No documentary evidences regarding ownership of the property, rent agreement, etc. from which rental income of Rs.1,58,05,468/- received are placed on record. For want of any



- documentary evidences, the entire receipts of Rs. 1,58,05,465/- is taxable under income from other sources.
7. You have deposited huge cash in ICICI Bank on various dates. As per 26AS you have deposited total cash of Rs.618.19 crore. During F. Y. 2013-14 you have submitted that those entries pertain to FDRs and no cash was deposited in its account. However, no third party evidences such as bank statement or confirmation from the bank are placed on record to substantiate the claim of the assessee that it has not deposited cash. Further, no communication was made with the concerned bank to either confirm or negate the reporting in ITS.
  8. You have raised loan of Rs.300 crores during the year under consideration. However, no documentary evidences such as loans sanction and disbursement letter, assets hypothecated against the same loan, how the loans were utilized for business purposes, etc. are placed on record.
  9. You are developing a property at BKC by name 'Maker Maxity. The WIP as on 31.03.2013 was Rs. 532.27 crore, whereas WIP as on 31.03.2014 was Rs.631.09 crore. No documentary evidences regarding additions in WIP of Rs.98.82 crore are placed on record.
  10. You have claimed to have paid interest of Rs.39.68 crore on term loan to ICICI Bank however, no documentary evidences placed on the record regarding payment of interest. Further, no documents are placed on records to establish as to how the loans were utilized for business purposes. You have included the interest payment to WIP, whereas after excluding the interest part from WIP only 63.03 crores were added to WIP. During the year consideration you obtained fresh loans of Rs.300 crores, whereas addition in WIP is only 63.03 crores which establish that the loans obtained were not fully utilized for developing of property. Accordingly, the corresponding interest payment needs to be reduced from WIP.
  11. As per schedule of 15 of Balance Sheet, interest of Rs. 25.14 lakh has been shown as receivable however, no documentary evidences were placed on records to establish as to how and when the same was offered for tax.....”

4. After the receipt of notice, the assessee filed the reply which is hereby reproduced as under: -



ITA No.1985/M/2019  
A.Y. 2014-15

Date 05.10.2018

To,  
Principal Commissioner of Income Tax -16  
Aayakar Bhawan,  
Mumbai-400020

Dear Sir,

Assessee: The Indian Film Combine Pvt. Ltd./PAN.AAACI36IIE  
Subject Proceeding u/s. 263 of the Income Tax Act for A.Y. 2014-15,  
Notice dated 28.6.18

With reference to the above and under the instructions from our above named client, we submit as under-

Return of Income for A.Y. 2014-15 was filed on 22.8.2014. Notice u/s.143(2) of the Income tax Act dated 28.8.20 15 was received by the Assessee Company, for selection of case for scrutiny, oil Subsequently During the course of scrutiny Assessment proceedings Details, Documents and clarifications were filed before the Assessing officer as required from time to time. Assessment was completed and Assessment order was passed on 26/12/2016 u/s. 143(3) of the Income Tax Act.

Assessee Company is executing a Project namely Maker Maxity on its leasehold land at I3andrakurla Complex. Project is being completed in Two phases.

Phase 1 comprise of construction of 5 office Buildings. Phase I of the project being office Buildings has been completed in A.Y. 2010-11 and all the units have been sold to various purchasers in A.Y. 2009-10 & A.Y. 2010-11.

The Phase II of the project consists of a Hospitality and Entertainment complex comprising of Hotels Club, Retail Mall and Multiplex to be held by the company as capital assets on completion of Project. Phase II of the project is still under construction. All the Expenses incurred in respect of the project are capitalized and shown as Capital Work in Progress, pending complain of the Project.

In respect of Phase I of the project, pending formation of society / Body of Purchasers, as per requirements of Maharashtra ownership of Flats Act, Developer is required to maintain office premises and common area, on behalf of Body of Purchasers, for which separate Bank Accounts are being maintained on behalf of Body of Purchasers. Collections taken from purchasers towards outgoings are deposited in these Bank Accounts and Expenses for maintenance of the office complex are incurred from these Bank Accounts on behalf of the Body of Purchasers. After formation of society / Body of Purchasers — complete account of Amounts received from Purchasers and Expenses incurred on behalf of Purchasers, will be handed over to the society / Body of Purchasers and remaining balance including various deposits collected will be handed over to Society / Body of Purchasers. Thus all the receipts received in these bank accounts maintained on behalf of the body of purchasers, belongs to purchasers and are not part of receipts of the company and hence does not form part of the accounts of the Assesses Company'.



As per clauses 12.3.3 and 12.7 of the Agreement for sale with purchasers it is clearly stated that on formation of the society/ Body of Purchasers complete account of Receipt & Payments on Accounts of outgoings will be handed over to the body of Purchasers and all the remaining Bank Balances will be handed over to Body of Purchasers. As per section 5 of the Maharashtra ownership Flats act 1963 it is a requirement that Developer will maintain separate Bank account in respect of Amounts collected from Purchasers towards outgoings, pending formation of Society and will be trustee on behalf of the Purchasers and will disburse Amounts collected for purposes for which these amounts have been taken.

Thus in respect of amounts collected from Purchasers towards outgoings, Developer being Assessee Company is acting as trustee and these amounts are received on behalf of proposed Body of Purchasers, receipts received does not belong to Assessee Company.

With reference to your notice dated 28/06/2018 our point wise reply is as under.

**I. Interest Income earned on FDRS ( Rs.3,88,60,916)**

Assessee Company is Developing a project in Bandra Kurla Complex, on its leasehold land known as Maker Maxity. Project comprises of Two Phases. Phase 1 of the project, being construction of 5 office Building has been completed in A.Y.2010-11. Phase 2 of the project comprises of construction of hotel, Shopping Centre, Club and Multiplexes. This Project is under construction. Pending completion of construction, All the direct & indirect expenses incurred for the project are capitalized and shown as capital work in progress.

For construction of the project company has Borrowed Funds from ICICI Bank led consortium. Total amount sanctioned as per sanction letter is Rs 1600 Crores. As per the Terms of Agreement with Banks, these funds are specific funds and cannot be utilized for purposes other than for which these were given, [Clause No.5.7 of the Facility Agreement Copy of Agreement attached.] so these Funds are inextricably and intrinsically linked with the construction of project at Maker Maxity as the same have been raised for that purpose alone.

As per the terms of Facility Agreement with Banks Company has to park Funds as required by the Facility Agreement with Banks in Debt service reserve Account [DSRA] for service of the Debts. [Clause No.40 of Facility Agreement] These funds are kept as Fixed deposits with Banks from whom funds have been Borrowed. Similarly Funds Borrowed from Banks which are not required immediately for construction activity are kept in Ultra short term Utilization Account Fixed Term Deposits [Clause No.5.7(b) and 5.8 of the Facility Agreement. On these Utilization Account Fixed Term Deposits interest is earned.

So the funds borrowed and interest earned are inextricably and intrinsically linked to the construction of the project.

In the notice it has been stated that interest earned on FDRs is not at all related to the project and the same needs to be taxed as income from other sources.



As stated above we submit that the funds borrowed and the interest earned are inextricably and intrinsically linked to the construction of the project.

We hereby submit that during the course of assessment proceedings in respect of query raised by the assessing officer in respect of interest income of Rs3,88,60,916/, reply given by the assessee company is as under.

"With reference to your query regarding High ratio of refund to TDS, we hereby submit that Reason for high ratio of refund to TDS is due to the fact that TDS has been deducted on interest from fixed deposits with Banks. These deposits have been made out of 7'erin loans received from Banks for Assesses ongoing project known as Maker MaxityBandra Kura Complex. Pending utilization of amounts these amounts have been kept as fixed deposits temporarily. This project consists of a hospitality and entertainment complex to be held by the company as capital assets. hence the expenditure incurred for the project has been accounted as capital work in progress till it is completed. Total interest expenditure incurred by the company on Term loans is Rs. 39684.1 Lacs. Total interest on fixed deposits earned is Rs. 38816 lacs. Net Interest Expenditure of Rs. 3579.80 lacs has been debited to capital work in progress. Thus Interest Expenses have been shown on net basis. So there is not any net income in respect of interest receipts, on which TDS of Rs.3886 Lacs has been deducted."

Accordingly, Interest income earned on Fixed deposits made with Banks on account of Debt Security Reserve Account and on account of ultra-short term bank deposits amounting to Rs. 3,88,60,916 has been correctly reduced from Interest paid on Borrowed Funds for the project and Net Interest Expenditure has been rightly capitalized and same is not taxable under the head income from other



sources.

Funds for the project and Net Interest Expenditure has been rightly capitalized and same is not taxable under the head income from other Sources.

2. Receipt of Rs, 5,54,34,177 as per 26AS – Break up of Amounts shown Rs. 5,54,34,177 as per 26AS is as under

|         |   |                |                   |
|---------|---|----------------|-------------------|
| (I)     | UBS SECURITIES INDIA PRIVATE LIMITED                    | 2,968,847      | Sr. No 19 of 26AS |
| (II)    | PAYAL JAIN  | 571,566        | Sr. No 3 of 26AS  |
| (III)   | RENU JAIN   | 136,647        | Sr. No 4 of 26AS  |
| (IV)    | ALPARI FINANCIAL SERVICES INDIA PRIVATE LIMITED         | 473,490        | Sr. No 6 of 26AS  |
| (V)     | SOPAIWALA EXPORTS                                       | 5,305,322      | Sr. No 15 of 26AS |
| (VI)    | PREMIUM ESTATES PRIVATE LIMITED                         | 1,461,435      | Sr. No 2 of 26AS  |
| (VII)   | UBS AG  | 3,470,681      | Sr. No 18 of 26AS |
| (VIII)  | MORPHOGENESIS REALTY PRIVATE LIMITED                    | 792,276        | Sr. No 1 of 26AS  |
| (IX)    | DOW JONES CONSULTING INDIA PRIVATE LIMITED              | 2,477,097      | Sr. No 10 of 26AS |
| (X)     | UNITED OVERSEAS BANK LIMITED                            | 396,717        | Sr. No 20 of 26AS |
| (XI)    | CRH INDIA MANAGEMENT SERVICES PRIVATE LIMITED           | 570,504        | Sr. No 9 of 26AS  |
| (XII)   | AJAY SINGHVI  | 529,332        | Sr. No 7 of 26AS  |
| (XIII)  | BNP PARIBAS(FORMERLY KNOWN AS BANQUE NATIONAL DE PARIS) | 13,593,817     | Sr. No 8 of 26AS  |
| (XIV)   | SHRINIWAS ELECTRO STEEL LTD                             | 633,458        | Sr. No 16 of 26AS |
| (XV)    | THE ROYAL BANK OF SCOTLAND N.V.                         | 20,641,033     | Sr. No 5 of 26AS  |
| (XVI)   | SHADOWBOX REALTY PRIVATE LIMITED                        | 443,907        | Sr. No 17 of 26AS |
| (XVII)  | NATIXIS   | 892,860        | Sr. No 13 of 26AS |
| (XVIII) | BHARTI AIRTEL LIMITED                                   | 75,188         | Sr. No 21 of 26AS |
| TOTAL   |   | 5,54,34,177.00 |                   |

**Amount relating to Natixis Rs. 8,92,860 Sr. XVII has already been shown as Rent and offered for taxation under the head income from house property.**

In respect of Balance amounts Rs 5,45,41,317/ (5,54,34,177-8,92,860 ), These amounts have been received pending formation of Body of Purchasers on behalf of Body of purchasers on account of collection of outgoing in respect of phase I of the project being office Building, which

does not represent income of the company. Some of the Purchasers who have made payments towards outgoing, have deducted TDS



u/s.194C, some have deducted u/s. 1941A, some u/s. 194J, but all relates to TDS on collection of outgoing.

These amounts have been received on account of outgoings by the Assessee Company on behalf of the proposed body of the purchasers. Hence these receipts do not belong to Assessee Company and hence is not part of the income of the company. After formation of Body of Purchasers a complete record of amounts received from purchasers and expenses incurred towards maintenance will be handed over to Body of Purchasers and all the bank balances relating to purchasers will be handed over to society I Body of Purchasers - Thus Rs. 5,45,41,317/- is not income of the Assessee Company. These have been received on behalf of body of purchasers. A complete account of receipts & payments received & paid will be handed over to Body of purchasers after formation. A note to that effect has been given in the financial statements of the company which is as under [Note no 19 of the Financial Statement]

1. pending formation of the Body of purchasers in respect of Phase I (comprising of office Building and the portion of the land in respect thereof along with their common facilities) Company has on behalf of the proposed Body of Purchasers been collecting outgoings from various purchasers and has been incurring expenses towards the outgoings and maintenance. Amounts collected from various purchasers towards outgoing and deposits have been deposited in two separate Bank Accounts, one for the deposits and one for the outgoing. In respect of collection of Outgoings, some of the purchasers have deducted tax at source amounting to Rs. 15.96 lacs, (previous year Rs.26.46. Lacs). Accordingly the accounts of the proposed Body of purchasers are not reflected in these Accounts."

In the Notice it has been stated that No Documentary evidences are placed on Record as to how This Rs 5,54,34,177/-has been brought to the Books of accounts and how the same has been offered for the Tax During the course of Assessment proceedings Assessee Company has explained about these credits in 26AS which is as under.

"Similarly Assessee Company had earlier constructed 5 office buildings phase) on the portion of the land at BKC. Pending formation of the body of the purchaser's company has, on behalf of the proposed body of purchasers, been collecting outgoing from various purchasers and has been incurring expenses towards the outgoing & maintenance of phase I. Amounts collected from purchasers towards deposits and outgoings have been deposited in two separate bank accounts one for deposit and other for the outgoing. In respect of collection of outgoings some of the purchasers have deducted tax at source amounting to Rs 15.96 lacs. After formation of the society A complete record of amounts received from purchasers and expenses incurred towards maintenance will be handed over to society and all the bank balances relating to purchasers on account of society will be transferred to society. Outgoing collected from purchasers is not income of the Assessee Company as these have been collected on behalf of the proposed body of purchasers. After formation of society a



complete record of all receipts received and expenses incurred will be handed over to society."

Since these collections of outgoings from purchasers has been made on behalf of Body of purchasers, and assessee company is acting as Trustee, these amounts does not belong to Assessee company and hence does not form part of the accounts of the company hence not reflected in company's financials.

We submit that Accounts Relating to amounts Received and Expenses incurred on behalf of Proposed Body of Purchasers are being separately maintained as accounts of Proposed body of Purchasers as Required by Provisions of Maharashtra Ownership flats act,1963. As per Provisions of Maharashtra Ownership Flats act, Till the Body of Purchasers is formed Developer is required to Maintain the Building premises by way of collecting outgoings from purchasers. As per section 5 of the Maharashtra Ownership Flats act 1963, Developer has to maintain separate bank account in respect of amount collected from purchasers towards, Deposits, outgoings etc received from purchasers and shall hold the money as Trustee for the purpose for which they were given and shall disburse the moneys for those purposes for which given.

Accordingly, these Receipts are not part of the books of the accounts of the assessee company and hence not income of the assessee company. Since money has been collected in the name of assessee company on behalf of the body of purchasers, some of the purchasers have wrongly deducted tax at source which is reflected in 26AS

3. Interest on Income Tax Refund - As per ITS / 26AS The Assessee received Interest on Income Tax Refund amounting to Rs. 4,87,443 These amounts have been offered for tax in the return of income filed by the Assessee Company. Rs. 2,38,848 has been reflected as interest on income tax refund under the heading other income (schedule 17 of the financials). Balance amount of Rs.2,48,595 has been offered for tax in the computation of income separately under the heading — amounts not credited to profit & loss A/c but taxable, amounting to Rs. 2,48,595 Thus income of interest on income tax refund Rs.4,87,443 has been taxed correctly.

4. Rent on plant & machinery (Rs.1,82,196) As per 26AS amounts shown as received under section 194IA is as follows

United Overseas Bank Limited Sr. No 20(5)& 20(6) of 26AS

1,82,196

These amounts have already been Reflected in Point No 2 As part of Total Receipts of Rs 5,54,34,177/, These amounts are included in Sr No X as per Break up given in point no 2 and explanation in respect of the same has been given in Point No 2.Thus these amounts have been mentioned twice in the notice.

5. Professional Fees(Rs.16,667) — As per 26AS amounts shown as received under section1941 is as follows.

BNP PARIBAS Sr.No.8(11) of 26AS 16,667

These amounts have already been Reflected in Point No 2 As part of Total Receipts of Rs5,54,34,177/, These amounts are included in Sr No XIII as per Break up given in point no 2 and explanation in respect



of the same has been given in Point No 2. Thus these amounts have been mentioned twice in the notice

6. License Compensation (Rs. 1,58,05,468) As per 26AS amounts shown as received under section 1941B is as follows

|  |             |
|--|-------------|
| (i) GEF Advisors India Pvt. Ltd (S.No.11) of 26A5    | 84,73,080   |
| (ii) NATIXIS — S. No. 13 of 26AS                     | 8,92,860    |
|  | 93,65,940   |
| (iii) UBS AG S. No. 18 of 26AS                       | 34,70,681   |
| (iv) UBS Securities India Pvt. Ltd (S.No.19) of 26AS | 29,68,847   |
|  | 64,39,528   |
| Total  | 1,58,05,468 |

5. After the reply of the assessee, the PCIT was of the view that the reason served through notice u/s 263 of the Act dated 26.08.2018 were sufficient to invoke the provisions u/s 263 of the Act being the order was erroneous and prejudicial to the interest of the revenue. Feeling aggrieved, the assessee has filed an appeal before us.

6. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. It is to be seen whether the PCIT has invoked the provision u/s 263 of the I.T. Act, 1961 justifiably and legally. The first reason which has been raised to be invoked the provisions u/s 263 of the Act is that the assessee had invested part of loan amount raised in FDRs and earned interest on FDRs at Rs.3,88,60,916/- during the year under consideration. The interest was not offered as income from other sources. The interest was also net off from the interest which was paid to the bank. Since the interest was liable to be taxable, therefore, the PCIT invoked the provisions u/s 263 of the Act on these grounds. The contention of the assessee is that the assessee borrowed from ICIC, & Consortium about 1600 Cr. App. 7-8 lakhs sq.ft. @ 14% interest per annum. The whole money did not come to the bank-account. Whenever the assessee required the money then the same was taken from ICICI. The loan was not required to be used for any other purpose except for the project. If the money was not required immediately then the same was kept deposited for the period of



7 days or for a few months in the Account. The contention of the assessee is that the said interest is capital receipt and to be set off against the preoperative expenses. However, in this regard, the Ld. Representative of the assessee has relied upon the decision of the **Indian Oil Panipat Power Const. Ltd. (315 ITR 255)(Del)**, **Bokaro Steel Ltd. (236 ITR 315) (SC)**, **Karnal Co-op. Sugar Ltd. (243 ITR 2)(SC) & Gujarat Power Corpn. Ltd. (354 ITR 201)(Guj)**. The legal proposition is not in dispute. But this fact came into notice that the issue has been examined by AO while passing the order u/s 143(3) of the Act. The reply was given vide letter dated 16.08.2016, 30.11.2016 & 09.12.2016 lies at page no. 52 to 59 of the paper book. The specific reply to the query is hereby reproduced as under: -

Date:16/08/2016

**To,**  
Assistant Commissioner of Income Tax  
**Circle-16(1), Aayakar Bhawan,**  
Mumbai-400 020

**Dear Sir,**

Assessee; M/s. The Indian Film Combine Pvt. Ltd./PAN AAACI3611E A.Y. 2014-15,

With reference to the above and under the instruction from our above mentioned client we submit as under-

1. Copy of Return of Income for A.Y,2014-15 is attached along with this letter.
2. Computation of total income for A Y.2014-15 is attached along with this letter
3. Copy of audited Balance Sheet, Profit & Loss Account is attached along with this letter.
4. Details of Bank Accounts is attached along with this letter.
5. letter of Authority is attached along with letter.

**Thanking You,**

**Date:17/11/2016**

**To,**  
Income Tax officer,  
16(1)(5),Mumbai-400020

**Dear Sir,**

Assesses: M/s, The Indian Film Combine Pvt. Ltd./PANAAACI3611E  
Subject: Assessment proceeding for the A-Y. 2014-15.

With reference to the above, we submit as under-

- 1. Point No 1 submitted Letter dated 16/08/2016\***
2. Point No 2 submitted letter dated 16/08/2016.
3. Point No 3 submitted letter dated 16/08/2016,



4. Point No 4 Assesses company is in the business of development of Real Estate and of hospitality Retail, entertainment etc.
5. Point No 5 attached
6. Point No 6 attached
7. Point No 7 NA.
8. Point No 8 attached
9. Point No 9 N.A,
10. Point No 10 NA.
11. Point No 11 No unsecured loans have been taken by the company.
12. Point No 12 attached
13. Point No 13 attached
14. Point No 14 N A.
15. Point No 15 Details attached
16. Point No 16 Details 10 be submitted
- 17. Point No. 17 NA.**

18. Point No 1 with reference to your query regarding disallowance u/s 14A we hereby submit that Assessee company has Investment in shares amounting to Rs. 10 lacs which has been made out of interest free funds available with the company in earlier years, Assessee company has not received any dividend income which has been claimed as exempt in further we hereby submit that no other expenses have been incurred towards these investments. In view of this we hereby submit that no disallowance is required u/s 14A of the income tax act.

19. Point No 19 N.A.

**20. Point No 20 Copy of TDS return is attached** herewith.

**21. Point No 21 Details to be submitted.**

**22. Point No 22 N.A,**

Thanking You,

Date 30.11.2016

**To,**  
Income Tax officer,  
Mumbai-400020  
Dear Sir,

Assessee: M/s. The Indian Film Combine Pvt. Ltd/PAN.AAACI361

1H Subject: Assessment proceeding for the A. Y, 2014-15.

With reference to the above and under the instructions from our above named client we submit as under-

1. Reconciliation of Income as per 26AS 15 attached herewith.
2. In respect of transactions mentioned in GIB compulsory code transactions and CIB old code transactions, we hereby submit that these transactions relates to fixed deposits made by the company with the ICICI Bank and Electricity Bills. We hereby submit that Assesses company has not made any deposits in cash with Bank. There seems to be wrong reporting in AIR, all the deposal have been made by cheque transactions only. Assessee company has taken term loans from ICICI Bank and other Banks. Pending utilization of money borrowed for projects these amounts have been kept in fixed deposits with Banks. In respect of Electricity Bills, wherever these bills relates to company



these are paid by assessee company. In respect of offices sold to third parties, wherever Electricity meters have still not been changed in the name of unit purchasers, electricity bills are raised in the name of assessee company, however the relevant payment is made by respective purchasers. We are attaching along with this letter, details of fixed deposits made with ICICI Bank and details of Electricity Bills above 20000. As on 31.03,2014 total amount of fixed deposits with Bank were -Rs.16777.80 lacs.

3, Interest on **income tax** refund as per AIR amounting to Rs. 4,87,443 has been offered for taxation. **An amount of Rs 2,38,849** has been **shown in profit & loss A/c** under the heading **other income** and an **additional amount of Rs. 2,48,595** has offered for tax **in computation of total income**.

Thanking.

Date:09.12.2016

To,  
Income Tax officer,  
**16(1)(5),Mumbai**

Dear Sir,

Assessee M/s. The Indian Film Combine Pvt. Ltd./PAN.AAAC13611E

Subject; Assessment proceeding for the A/Y. 2014-15.

With reference to the above, we submit as under.

1. With reference to your query regarding mismatch between income credited in profit & loss A/c considered under other heads of income, we hereby submit that Assessee Company has earned Rental Income in respect of office premises (shown as investments ), Given on rent which is taxable under the head income from house property. After claiming permissible deduction under the head income from house property balance amount has been offered for tax under the head income from house property.

2. In respect of your query regarding mismatch between income declared by remitted in ITR and amount of remittance received as per Form 15CA. we hereby submit that assessee Company has not received any remittance during the year. Hence there is not any question of any income. In fact Assessee Company has remitted amounts during the year as per Form 15CA to various entities from whom Assessee company has received various services like Architect Services, etc for its ongoing project at Bandra.

3. In respect of your query regarding Receipts u/s 194C and 194J (as per 26AS) ate more than receipts shown in ITR. we have filed reconciliation of income statement with 26AS. Copy of Reconciliation of Receipts as per 26AS with explanatory notes is attached herewith.

4. With reference to your query regarding High ratio of refund to TDS, we hereby submit that Reason for high ratio of refund to TDS is due to the fact that TDS has been deducted

on interest from fixed deposits with Banks. These deposits have been made out of Term loans received from Banks for Assessee ongoing project known as Maker Maxity at Bandra Kurla Complex. Pending utilization of amounts These amounts have been kept as fixed deposits temporarily. This project consists of a hospitality and entertainment



complex to be held by the company as capital assets. Hence the expenditure incurred for the project has been amounted as capital work in progress till it is completed. Total interest expenditure incurred by the company on Term loans is Rs. 3968.41 Lacs. Total interest on fixed deposits earned is Rs.388.6 lacs. Net Interest Expenditure of Rs.3579,80 lacs has been debited to capital work in progress. Thus Interest Expenses have been shown on net bails. So there is not any net income in respect of interest receipts, on which TDS of Rs.38.86 Lacs has been deducted.

Similarly Assessee Company had earlier constructed 5 office buildings (phase) on the portion of the land at 13KC. Pending formation of the body of the purchasers company has, on behalf of the proposed body of purchasers, been collecting outgoing from various purchasers and has been incurring expenses towards the outgoing & maintenance of phase 1. Amounts collected from purchasers towards deposits and outgoings have been deposited in two separate bank accounts one for deposit and other for the outgoing. In respect of collection of outgoings some of the purchasers have deducted tax at source amounting to Rs 16,99,388. After formation of the society a complete record of amounts received from purchasers and expenses incurred towards maintenance will be handed over to society and all the bank balances relating to purchasers on account of society will be transferred to society. Outgoing collected from purchasers is not income of the Assessee Company as these have been collected on behalf of the proposed body of purchasers. After formation of society a complete record of all receipts received and expenses incurred will be handed over to society.

Thus reason for high ratio of refund to TDS is due TO above explained reasons.

5. Higher turnover reported in service tax return compared to ITR.

In the Service tax Return following two amounts have been reported,

Account head Amount

|          |   |              |
|----------|---|--------------|
| 00440245 | Maintenance & Repair Service<br>(Outgoing collection) | 17,71,59,919 |
| 00440406 | Rental Income.  | 93,65,940    |

In respect of Rental Income Rs.91,65.940 these Amounts are reflected in profit & loss

A/c under the head license compensation.

In respect of collection of outgoing shown under the code maintenance & repair service. Company has on behalf of the proposed body of purchasers been collecting outgoings from various purchasers and has been incurring expenses towards the outgoing and maintenance of Phase I, Hence the maintenance outgoing amount received has been deposited in separate Bank Accounts payable to proposed society after deducting expenses incurred. Thus outgoing amount received is not the income of the Assessee Company. After formation of the society complete record of statement of Receipts & Payments will be handed over to society. Due to provisions of Service tax: act. Service Tax has



been paid on these amounts after collecting the same from purchasers, but it is no part of Income of the Assessee Company.

**Thanking You,**

**Yours Faithfully,**

7. In view of this fact that the interest earned on account of related short term bank deposited amount of Rs.3,88,60,916/- was reduced from the interest paid from the borrowed funds for the project and net interest expenditure which was capitalized. At the time of proceeding u/s 263 of the Act, the CIT sought the remand report and the AO submitted the remand report enclosed at page no.315 of the paper book in which he substantiated the version of the assessee. In the said remand report, the AO specifically gave a categorical finding that borrowed funds from ICICI Bank Ltd. Consortium were linked with the construction of project at Maker Maxity as the same have been raised for that purpose alone and are not surplus funds in the hands of the company. The AO further said that on verification of facility agreement with Banks, it was found that company has to park funds as required by the Facility Agreement with the banks in Debt Service Reserve Account (DSRA) for service of the Debts as per clause 40 of Facility Agreement. These funds are kept as Fixed Deposits with banks from whom funds have been borrowed. Similarly funds borrowed from banks which are not required immediately for construction activity are kept in Ultra Short Term Utilisation Account Fixed Term Deposits as per clause 5-7(b) and 5.6. of Facility Agreement. On these Utilization Account Fixed term Deposits, interest is earned. We find that the Ld. CIT ignoring these findings given by Ld. AO in the remand report had merely stated that he is fully convinced and satisfied that there is at least some part of the interest which is not attributable to the project and hence the same requires to be examined by Ld. AO. From the perusal of the findings given by the Ld. AO in the remand report, as reproduced above, we are of the considered opinion



that the interest was earned on fixed deposit which are inextricably linked with the business of the assessee and hence the interest earned there on could not be brought the tax as income from other sources and had to be reduced from the cost of project. This issue is fully settled by decision of Hon'ble Supreme Court in the case of Karnal reported in 243 ITR 2, Hon'ble Delhi High Court in the case of Indian Oil Panipat reported in 315 ITR 244, Hon'ble Gujarat High Court in the case of Gujarat Power Corporation Ltd. reported in 354 ITR 201 and Hon'ble Karnataka High Court in the case of CIT Vs. Karnataka State Agricultural Produced Processing and Export Corporation Ltd. reported in 377 ITR 496. All the decisions were rendered prior to the framing of assessment by Ld. AO and were very much in the public domain. Hence it has to be presumed that the Ld. AO had indeed considered those decisions and had taken a possible view while framing the assessment. Once a possible view has been taken, the same cannot be subjected to review by Ld. CIT u/s 263 of the Act. Hence we hold that the action of Ld. CIT invoking his revisionary jurisdiction in respect of taxability of interest on deposit deserves to be dismissed. Now coming to the other reason on account of receipt of Rs.5,54,34,177/- as per 26AS break up of amount. We find that the AO has already examined the details and the assessee filed the details by virtue of letter dated 30.11.2016 to the AO which lies at page no.55 of the paper book. The details are mentioned at page no. 65 to 67 of the paper book. The AO also confirmed this fact that the assessee has filed the relevant reply in his remand report lies at page no.318 to 319 of the paper book. It is also apparent on record that the issue has been examined by AO while passing the order u/s 143(3) of the Act, therefore, invoking the provisions u/s 263 of the Act by CIT nowhere seems justifiable. Now coming to the third ground for invoking the provisions u/s 263 of the Act by CIT is concerned, the



same is in connections with the rent which has already been reflected in the return of income which lies at page no. 65 of the paper book and the said income has already offered as income and income as house property. So It can not be the ground to invoke the provision u/s 263 of the Act. So far as the payment of professional fees is concerned, the detail has been reflected at page no. 65 of the paper book. The AO has also submitted the remand report which lies at page no.319 to 320 of the paper book and accordingly, this amount has already been reflected which has also been examined by AO. Accordingly, the possible view has already been taken. So far as the licence compensation in sum of Rs.1,58,05,468/- is concerned the same has been reflected at page no.60 of the paper book. The amount received from the GEF Advisors India Pvt. Ltd. and from Natixis is totalling to the tune of Rs.93,65,940/- relates to rental income received for office premises let out by assessee company. The said amount has already been reflected in profit & loss account and offered to the tax. When the tax has already been offered, therefore, there is no reason to invoke the provisions u/s 263 of the Act. So far as the addition of CWIP is concerned, the details and breakup of the same has been given during the course of assessment proceeding which were properly verified. The remand report also affirmed the said contention, hence, it cannot be the reason to invoke the provisions u/s 263 of the Act being the AO has already been taken the possible view in this regard. The interest paid on the loan has also been examined by AO and in this regard the remand report filed by AO clarify the same. The papers of loan taken has already been filed which lies at page no. 321 to 322 of the paper book. The interest receivable on FDR has already been discussed and decided while deciding the first reason for reopening the case u/s 263 of the Act by PCIT. So in the said circumstances, there is no lack of enquiry. CIT in other words proposed to conduct a fresh assessment in the garb of 263 of the Act



proceedings which is not justifiable in view of the law relied by the Assessee below :

i) **Gabriel India Ltd. 203 ITR 108 (Bom)** (ii) **Dharam Pal 181 TTJ 40 1 (Asr)**. (iii) **Vardhman International Ltd. 181 TTJ (40) 17 (Chd) & (iv) Vegisina Kamala 157 ITD 457 (Vishaka)**, In view of the above said facts and circumstances, we nowhere found any reason to sustain the order passed by the PCIT in question, therefore, we set aside order passed by the PCIT in question.

**5. In the result, the appeal of the assessee is hereby ordered to be allowed.**

Order pronounced in the open court on this 13/09/2019

Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Sd/-

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 13/09/2019  
Vijay/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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**