

THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 2065/Mum/2018 (Assessment Year 2012-13)

M/s. Bidco Studs Pvt. Ltd. 203, Capri, Opposite HDIL Towers, Anant Kanekar Marg Bandra East, Mumbai-51.	Vs.	ITO Ward 4(1) Room No. 3, 6 th Floor A-Wing, Ashar IT Park Road No. 16-Z, Wagle Industrial Estate Thane-400 604.
PAN : AAACB7122M		
(Appellant)		(Respondent)

Assessee by	Shri Nimesh Thar
Department by	Shri Chaitanya Anjaria
Date of Hearing	15.7.2019
Date of Pronouncement	9.10.2019

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 1.12.2017 and pertains to A.Y. 2012-13.

2. The ground of appeal is that :

“Learned CIT(A) has erred in law and on facts in upholding the Assessing Officer’s action of disallowing interest expenses to the tune of Rs. 1,37,45,184/-u/s. 36(1)(iii) of the I.T. Act, 1961 which is bad in law”.

3. Brief facts of the case are that :

Return of income declaring loss of Rs. 1,34,45,184/-appellant on 1,34,45,184/- was filed by the assessee on 1,34,45,184/-. During the course of assessment proceedings, the AO noticed that the assessee has claimed expenditure such as interest of Rs.1,37,08,728/- and has shown other income at Rs.3,00,000/- which has resulted in loss. In reply, the assessee submitted details on 25.2.2015 stating that MOU was entered into with M/s. Sapphire Land Development Pvt. Ltd. for purchase of TDR for a consideration of Rs.60,00,00,000/- and as a part of advance payment the company has paid Rs.30,00,00,000/- to Sapphire Land Development Pvt. Ltd. on various dates by

obtaining overdraft facility from Punjab and Maharashtra Co-op. Bank Ltd. However and amount of Rs.1,37,08,728/- was refunded back to the assessee 18.07.2011. The AO, however, rejected the explanation of the assessee as the claim of the assessee was not supported by the documentary evidence and also copy of Memorandum of Association was not provided by the assessee during assessment proceedings. Therefore, the AO added back the amount of Rs.1,37,08,728/- by rejecting the loss claimed by the assessee and adding back the differential amount of Rs.3,00,000/- to the total income of the assessee.

4. Upon assessee's appeal learned CIT(A) confirmed the action of the Assessing Officer by holding as under :-

"I have carefully considered the submissions of observations of the appellant, the AO in the assessment order; case laws relied upon by the appellant and the facts of the case.

- (i) The AO has disallowed the claim of interest on the following Appellant's contention of advancing Rs.30 crores to M/s. Sapphire Land Development Pvt. Ltd. as a part consideration for the purchase of TDR is not supported by any documentary evidence. b) Appellant has failed to produce the Memorandum of Understanding entered with M/s. Sapphire Land Development Pvt. Ltd. and failed to prove that the money advanced was for business purpose c) Since the time the money was advanced, the appellant has not taken any action to recover the money advanced or made an attempt to acquire the property in question. No legal action has been initiated. Therefore, the AO concluded that the advance amount of Rs. 30 crores is not related to the business of the appellant and hence the claim of interest amounting to Rs.1,37,08,728/- is disallowed u/s.37(1) of the Act.
- (ii) On the other hand, the AR of the appellant has relied upon the decision of the Hon'ble ITAT Mumbai Bench 'G' in appellant's own case in ITA No.1504/Mum/201i A.Y.2003-04 wherein the ITAT has set aside and restore back to the file of the AO. Further, without prejudice, the AR of the appellant has stated that to direct the AO to allow capitalizing interest expenses.

After considering the totality of the case, I am of the view that the Assessing Officer has rightly disallowed the claim of interest of Rs.1,37,08,728/- u/s. 37(1) of the Act on the following grounds a) as already discussed by the Assessing Officer in para 7 in the assessment order b) appellant's main income is from other sources, therefore, there is no evidence to proof that that the appellant is in the business of builders and developers c) the

money advanced to M/s. Sapphire Land Development Pvt. Ltd. is not supported by Memorandum of understanding that the advance is for, acquiring TDR for appellant's business purpose. In fact, the appellant is just acting as conduit of M/s. Sapphire Land Development Pvt. Ltd. as no efforts were made to recover the money or acquire the property even after a lapse of some years. In view of the above stated facts, the appeal of the appellant is dismissed and the disallowance made u/s.37(l) by the AO is sustained".

5. Against the above order assessee is in appeal before the ITAT. I have heard both the counsel and perused the records. Learned counsel reiterated the submission made before the authorities before. He submitted that the assessee has entered into a MOU with M/s. Sapphire Land Development Pvt. Ltd. for purchase of TDR for consideration of Rs. 60 cores and as a part of advance payment the assessee has paid Rs.30,00,00,000/- to Sapphire Land Development Pvt. Ltd. on various dates during A.Ys. 2010-11 & 2011-12 by obtaining overdraft facility from Punjab and Maharashtra Co-op. Bank Ltd. However, the deal could not be materialized and assessee-company received back the advance amount and closed overdraft facility on 18.7.2011. Hence it has been pleaded that interest expenses should be allowed Rs. 1,37,08,728/-. It has been contended that it is very much for the purpose of business and assessee-company is legally bound to honor its commitment. It has been claimed that reliance placed upon ITAT decision in assessee's own case vide order dated 18.11.2015.

6. As regards learned CIT(A)'s contention that money advanced to M/s. Sapphire Land Development Pvt. Ltd. is not supported by the MOU it has been claimed that there was fire in the office premises of HDIL (HDIL towers) in which entire records, data documents were burnt/destroyed. In this regard learned counsel placed reliance upon the decision of Hon'ble Bombay High Court decision in the case of Pr.CIT, Panjaji Vs. Milroc Good Earth Property & Developers LLP (93 Taxmann.com 484). Learned counsel placed reliance on several other decisions in this regard.

7. Per contra, learned Departmental Representative submitted that the assessee is making a self serving statement without any documentation. The

assessee has diverted the loan taken to M/s. Sapphire Land Development Pvt. Limited. Without any income or any corresponding receipt, it is claiming expenses of Rs. 1,37,08,728/- as expenses, which is not at all permissible.

8. Upon careful consideration, I note that as pointed out by learned CIT(A) the assessee's submissions are self serving statement. There is no documentation to support that advances of Rs. 30 crores given to M/s. Sapphire Land Development Pvt. Ltd. was part of consideration for purchase of TDR. The assessee has given a story that documents got destroyed in fire in HDIL. It was also similarly pleaded before the ITAT in assessee's own case in earlier. This conduct of the assessee shows that the assessee is in habit of not showing documents on a plea of its documents having got burnt in its group company HDIL Tower. In assessee's own case in earlier year also the Tribunal has remitted the matter on the ground that no document was shown on the plea that documents were got burnt in fire. In my considered opinion assessee has no documents and the claim is that the same have got burnt in a fire. Assessee's claim is not bonafide. Facts of the case clearly indicate that the assessee has diverted funds for no benefit. In this view of the matter I do not find any cogency in the order of learned CIT(A). The case laws relied upon are not at all applicable on the facts of the case. In this case it is amply clear that the HDIL group company has diverted funds to other HDIL group company without any benefit and has incurred interest expenditure which cannot be allowed as business expenditure. In this view of the matter, I do not find any infirmity in the orders of the authorities below. Accordingly, I uphold the same.

9. In the result, this appeal filed by the assessee stands dismissed.

Order has been pronounced in the Court on 09.10.2019.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 9 /10/2019

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai