

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI RAVISH SOOD, JM AND SHRI N.K PRADHAN, AM**

ITA No(s). 317 to 320/Mum/2019
(निर्धारणवर्ष / Assessment Year(s): 2012-13 to 2015-16)

M/s Pawansut Dwellers Private Limited, Plot No. 54-B, 402 Sagar Avenue, Junction of S.V.Road & Lallu Bhai Park, Andheri(West), Mumbai-400058.	बनाम/ Vs.	Income Tax Office-10(3)(3), Mumbai.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAFCP3422R		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे / Appellant by	:	S/shri. Uttam Chand Bothra& Amit Bothra, A.Rs.
प्रत्यर्थीकीओरसे/Respondent by	:	Shri.Awungshi Gimson, C.I.T, D.R.

सुनवाईकीतारीख / Date of Hearing	:	20.09.2019
घोषणाकीतारीख / Date of Pronouncement	:	08.11.2019

आदेश / ORDER

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeals filed by the assessee are directed against the consolidated order passed by the CIT(Appeals)-17, Mumbai, dated 26.12.2018, which in turn arises from the respective assessment orders passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'I.T. Act') for A.Y. 2012-13 to A.Y. 2015-16. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall first advert to the appeal filed by assessee for A.Y. 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:-

- “1 That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the version of the Assessing Officer that your appellant is having project in hand.
2. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer for treating the whole interest income of Rs. 26,37,87,842/- as income of your appellant and without giving any deduction of the expenses incurred by your appellant for earning said interest.
3. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in capitalizing the whole expenditure as part of work-in-progress in spite of the fact that your appellant has no project in its hand and no expenditure which is required to be incurred for carrying out construction activities have been incurred till the date of filing of this appeal.
4. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in treating the entire interest income as income from other sources instead of income from business.
5. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in not allowing any expenditure as business expenditure including claim of payment of interest u/s. 36(1)(iii) or u/s. 37(1) of the Income Tax Act.
6. Without prejudice of above, the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in not allowing deduction u/s. 57(iii) of the Income Tax Act, 1961 in respect of expenditure incurred in earning the interest income.
7. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the evidences filed by way of affidavit along with necessary documentary proofs while deciding the above matter.
8. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the decision of the Hon'ble Supreme Court in the case of India Cement Ltd. 60 ITR 52 (SC) referred to by your appellant which held that interest on borrowed money be allowed on the basis of its usages and not on the basis of object for which the money is borrowed.”

2. Briefly stated, the assessee company had e-filed its return of income for A.Y. 2012-13 on 30.09.2012, declaring its total income at Rs. 23,68,010/-. The return of income filed by the

assessee was processed as such under Sec. 143(1) of the I.T. Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2).

BRIEF BACKGROUND :

- 3(i). The assessee company was incorporated on 11.01.2010 with the main object to carry on the business of a builder and a developer. Apart there from, the assessee amongst others inter alia had as its incidental objects viz. (i) to enter into joint ventures or reciprocal concessions with any person, firm or company carrying on or engaged in any business or transaction which the assessee was authorized to carry on; and (ii) to lend and advance money or give credit to such persons, firms, companies and other entities and on such terms and with or without security and/or interest as may be thought fit and particularly to customers or other persons or corporations having dealing with the company.
- (ii) The assessee company had in the month of February, 2011 raised a Project/Mortgage loan of Rs. 184 crores (spread over the period 07.02.2011 to 11.02.2011) from M/s Dewan Housing Finance Limited (for short 'DHFL'). As is prima facie discernible from the records, the aforesaid loan was raised by the assessee for a redevelopment project viz. project at Vile Parle, Premnagar CHS (Prop) located at Irla Tank Plot, S.V. Road, Vile Parle (West), Mumbai – 400 058. The loan was raised from DHFL against hypothecation of the aforesaid project property, which as stated by the assessee is owned by M/s Sigtia Construction Pvt. Ltd. Out of the loan of Rs. 184 crores raised by the assessee from DHFL, an amount aggregating to Rs. 183,81,00,000/- was advanced to two of its associate concerns viz. (i) M/s Sahana Construction Pvt. Ltd : Rs. 179,81,00,000/- ; and (ii) M/s Sigtia Construction Pvt. Ltd. : Rs. 4,00,00,000/-. As per the 'balance sheet' for the year ended 31.03.2011 the amount receivable by the assessee from the aforementioned two associate concerns was reflected in its 'books of accounts', as under:-

S.No.	Loans and Advances to Related parties	Amount
1.	M/s Sahana Construction Pvt. Ltd.	Rs. 183,64,70,757/- (Dr.)

2.	M/s Sigtia Construction Pvt. Ltd.	Rs. 4,08,26,126/- (Dr.)
	Total	Rs. 187,72,96,883/- (Dr.)

- (iii) Further, the assessee had as on 10.02.2011 entered into a “Memorandum of Understanding” (for short ‘MOU’) with M/s Sigtia Construction Pvt. Ltd. for jointly commencing the construction of the latter’s redevelopment project at Vile Parle, Premnagar CHS (Prop) at Irla Tank Plot, S.V. Road, Vile Parle (West), Mumbai – 400 058. As is discernible from the MOU, the assessee company had shown its interest to become a joint venture partner and therein participate in the construction of the aforesaid project of its associate concern. As per the terms of the ‘MOU’, in case the aforesaid associate concern failed to obtain the permissions including the commencement certificate for the buildings to be constructed on the said land before 30.04.2012, then the MOU could be rescinded by the assessee. Also, the associate concern i.e. M/s Sigtia Construction Pvt. Ltd. was to obtain the necessary permissions including the commencement certificate from the appropriate authorities before 30.04.2012. After the aforesaid permissions including the ‘Commencement certificate’ in respect of the buildings to be constructed in the said project would be obtained by the aforementioned associate concern, that a formal joint venture agreement was to be entered into by the assessee with it. As can be gathered from the ‘MOU’, it was only after the formal joint venture agreement would be entered into between the assessee and its aforementioned associate concern, that the terms and conditions as per which the business of development, construction and marketing of the buildings in the said project was to be undertaken were to be decided. Also the assessee prior to the execution of the formal ‘MOU’ was to pay to its associate concern i.e. M/s Sigtia Construction Pvt. Ltd. an amount upto Rs.50 crores over a period of time, as and when the same was required by the latter. In case of cancellation of ‘MOU’ because of failure on the part of M/s Sigtia Construction Pvt. Ltd. to obtain the requisite approvals within the agreed time frame, the assessee as per the terms of the ‘MOU’ was entitled to charge interest @16.25% from the date the money was advanced to M/s Sigtia Construction Pvt. Ltd.

- (iv) During the immediately preceding year i.e. A.Y. 2011-12 the assessee had earned interest aggregating to Rs. 4,35,52,093/- on the money advanced to the aforesaid two concerns viz. (i). M/s Sahana Construction Pvt. Ltd. : Rs. 4,26,34,175/-; and (ii). M/s Sigtia Construction Pvt. Ltd. : Rs. 9,17,918/- The assessee after 'setting off' the interest of Rs. 4,14,20,434/- that was paid to DHFL against the interest income of Rs. 4,35,52,093/- had filed its return of income for A.Y. 2011-12, declaring its total income at Rs. 64,355/- under the head "Income from business". Return of income filed by the assessee was summarily accepted, vide intimation under Sec. 143(1), dated 07.01.2012.
- 4(i) Further, the assessee during the year under consideration i.e A.Y. 2012-13 had on 13.10.2011 also entered into a MOU with its another associate concern i.e. M/s Sahana Builders and Developers Pvt. Ltd. for jointly commencing construction of the latter's SRA project at Sewree, Mumbai. As per the terms of the MOU, the associate concern i.e. M/s Sahana Builders and Developers Pvt. Ltd. was to obtain all permissions including the commencement certificate from the appropriate authorities before 30.06.2012. As is discernible from the MOU, after the aforesaid associate concern would obtain all permissions including the commencement certificate in respect of the buildings to be constructed in the said project, that a formal Joint Venture agreement was to be entered into by the assessee with it, as per which the terms and conditions of development, construction and marketing of the buildings in the said project were to be decided amongst them. Also, an amount of Rs.60 crores was to be paid by the assessee to its aforesaid associate concern prior to execution of a formal MOU. Further, in case the associate concern i.e. M/s Sahana Builders and Developers Pvt. Ltd. failed to obtain the permissions including the commencement certificate for the buildings to be constructed in the said project before 30.06.2012, then the assessee could cancel the MOU and would be entitled to seek refund of the amount advanced along with interest from the date the money was given by it to the said associate concern.
- (ii) As observed by us hereinabove, the assessee in F.Y 2011-12 had provided earnest money deposits against its capital assets commitment for entering into joint venture agreements for development of the respective projects of its associate concerns viz. (i)

M/s Sigtia Construction Pvt. Ltd. : Rs. 40,17,97,248/- ; and (ii) M/s Sahana Builders and Developers Pvt. Ltd. : Rs. 53,94,65,000/-. Further, the assessee had during the year under consideration also advanced interest bearing loans aggregating to Rs. 85,35,75,400/- to its associate concerns, as under:-

Sr. No.	Particulars	Amount
1.	M/s Darshan Developers Pvt. Ltd.	Rs. 3,30,00,000/-
2.	M/s One up Developers Pvt. Ltd.	Rs. 5,75,000/-
3.	M/s Sahana Dwellers Pvt. Ltd.	Rs. 75,00,00,000/-
4.	M/s Shree Vrunda Enterprise	Rs. 7,00,00,000/-
5.	M/s Pawansut Realtors Pvt. Ltd.	Rs. 400/-
	Total	Rs. 85,35,75,400/-

- (iii) The assessee had during the year i.e. F.Y. 2011-12 also raised an interest bearing loan of Rs.17,29,26,728/- from its associate concern i.e. M/s Skylark Buildcon Pvt. Ltd.
- (iv) That during the year under consideration i.e. F.Y. 2011-12 the assessee had paid interest aggregating to Rs. 30,47,50,567/- on the interest bearing loans raised by it from viz. (i). DHFL :Rs. 29,90,00,000/-; and (ii). M/s Skylark Buildcon Pvt. Ltd. : Rs. 57,50,567/-. Out of the aforesaid amount of interest expenditure, a sum of Rs. 4,34,10,584/- which was attributable to the amount given by the assessee by way of earnest money deposits towards its capital asset commitment to M/s Sahana Builders and Developers Pvt. Ltd. and M/s Sigtia Construction Pvt. Ltd. was capitalized. Insofar the balance interest of Rs. 26,13,39,983/- was concerned, the same was claimed by the assessee as an expenditure against the interest income of Rs. 26,37,87,842/- that was received on the aforesaid interest bearing loans which were advanced to its various associate concerns. Accordingly, the assessee after claiming "set off" of the interest expenditure of Rs. 26,13,39,383/- and certain 'other expenses' of Rs. 17,23,648/- and amortization expense of Rs. 1,640/- as against the interest income of Rs. 26,37,87,842/-, had filed its return of income for A.Y. 2012-13 on 30.09.2012, declaring an income of Rs. 23,68,010/- under the head "Income from business".

5. During the course of the assessment proceedings it was observed by the A.O, that the assessee had credited the interest income of Rs. 26,37,87,842/- in its profit and loss account for the year under consideration. It was observed by the A.O that out of the loan of Rs. 184 crores that was raised by the assessee from DHFL an amount of Rs. 94,12,62,248/- was advanced against capital asset commitment to two associate concerns viz. (i) M/s Sigtia Construction Pvt. Ltd. : Rs. 40,17,97,248/-; and (ii) M/s Sahana Builders and Developers Pvt. Ltd.: Rs. 53,94,65,000/-, while for out of the balance an amount of Rs. 85,35,75,400/- was given during the year as interest bearing loans and advances to its various associate concerns. Further, it was noticed by the A.O that the borrowing cost of Rs. 4,34,10,584/- i.e. interest expenditure attributable to the sum of Rs. 94,12,62,248/- that was given by the assessee to its associate concerns viz. (i). M/s Sahana Builders & developers Pvt. Ltd.; and (ii). M/s Sigtia Construction Pvt. Ltd., towards its capital asset commitment was capitalized. On a perusal of the documents and the copy of the application filed by the assessee with DHFL for sanctioning of the loan, it was observed by the A.O that the assessee had applied for a loan of Rs. 184 crores at an interest rate of 16.25% per annum for the residential cum commercial project at Vile Parle, Premnagar CHS Ltd. (proposed) at Irla Tank Plot, S.V. Road, Vile Parle (West), Mumbai – 400 058. Also, as observed by the A.O, the project property situated at S.V Road, Vile Parle (West), Mumbai-400 058 was furnished as the primary security for availing of the aforesaid loan by the assessee from DHFL. On being confronted with the aforesaid facts as were discernible from a perusal of the loan application form, it was submitted by the assessee that the interest expenditure pertaining to the amounts which were utilized for the respective projects was capitalized and not claimed as an expense in the return of income for the year under consideration. Apart there from, it was brought to the notice of the A.O that the loan was raised for the project of M/s Sigtia Construction Pvt. Ltd. and the said project property i.e land was given as a security for facilitating availing of the said loan. It was further clarified by the assessee that there were no projects in its hands till date.

6. The A.O after deliberating on the contentions advanced by the assessee in the backdrop of the material available on record ,was of the view, that as the loan was sanctioned by DHFL for its business purposes i.e. for the purpose of project construction, therefore, the deduction for the interest paid on such loan would be allowable under the head 'Profit and

Gains of business' in accordance with Sec. 36(1)(iii) of the Act, only upon starting of the business, and till such date it was to be capitalized as a pre-operative expense. Accordingly, the A.O called upon the assessee to explain as to why the interest income of Rs. 26,37,87,842/- may not be treated as its income from 'other sources' and the expenses including interest expenditure aggregating to an amount of Rs. 30,64,74,215/- be not treated as pre-operative expenses, and the 'set off' of the same be denied in accordance with the scheme of taxation provided by the Act. In reply, it was submitted by the assessee that it did not have any projects in hand till date and had only entered into agreements with two parties viz. (i) M/s Sigtia Construction Pvt. Ltd.; and (ii) M/s Sahana Builders and Developers Pvt. Ltd. for future projects which were also subsequently cancelled. It was further brought to the notice of the A.O, that the interest paid on the amount which was advanced to the aforementioned two parties was already capitalized. It was the claim of the assessee, that as the interest received was a part of its business, hence the same was to be treated as its 'business income' and the corresponding interest paid was to be allowed as a business expense under Sec. 36(1)(iii) of the Act. In support of its aforesaid contention, it was submitted by the assessee that a similar claim of "set off" of the interest expenses as against the interest received that was shown as its 'business income' was accepted by the revenue in its case for the immediately preceding year i.e. A.Y. 2011-12. Alternatively, it was submitted by the assessee, that if the interest income was to be considered as its income from 'other sources', then the interest paid on the borrowed funds was to be allowed under Sec. 57(iii) as an expenditure incurred for the purpose of earning of such interest income.

7. The A.O after perusing the reply of the assessee was however not persuaded to accept the claim of the assessee for multiple reasons viz. (i) that, as was discernible from the material available on record the assessee which was engaged in the business of construction was sanctioned a loan of Rs 184,01,00,000/- for the business purpose of redevelopment of its commercial-cum-residential project at Vile Parle, Mumbai; (ii) that, the interest on the aforesaid business loan advanced to the assessee by DHFL could only have been allowed as a deduction under Sec. 36(1)(iii) while computing the income of the assessee under the head 'Profit and Gains from business/profession' ;(iii) that, as the revenue earning from the project had yet not commenced, therefore, the expenses incurred by the assessee on the project were

to be capitalized as pre-operative expenses for which deduction would be allowed as per the I.T. Act, as and when income referred to in Sec. 28 was available for computation under the head 'Profit and Gains from business/profession', and till such time, the balance interest expenses of Rs. 26,13,39,983/- and other expenses were to be capitalized; (iv) that, as the assessee which was engaged in the business of construction was not into the business of money lending or financing business, therefore, the interest income of Rs. 26,37,87,842/- earned on the amount given as loan and advance by the assessee to its associate concerns was taxable under the residuary head i.e. income from 'other sources'; (v) that, the advancing of the business loan raised by the assessee to its associate concerns was akin to parking the surplus funds temporarily in short term deposits for earning interest income, which was thus taxable under the residuary head i.e. income from 'other sources'; (vi) that, the interest expenditure and other expenses aggregating to Rs. 26,30,65,271/- were business expenses which were required to be capitalized as pre-operative expenses till the income starts coming from the project; (vii) that, as the business of the assessee had yet not started, therefore, there could be no computation of business income or loss in the hands of the assessee during the year under consideration; (viii) that, interest earned by an assessee before production or commencement would be assessed separately under the head income from 'other sources'; (ix) that, as the case of the assessee for the immediately preceding year i.e. A.Y. 2011-12 was not subjected to scrutiny assessment, hence its claim that in the said year the "set off" of interest expenditure against the interest income was allowed had no weightage and did not merit acceptance; and (x) that, the alternative claim of the assessee for deduction of the interest expenditure under Sec. 57(iii) could not be accepted, as the same pertained to a loan which having been raised for a business purpose could only be allowed as a deduction under Sec. 36(1)(iii), which however would be available only after the business has commenced and some income as referred to in Sec. 28 was available. Accordingly, the A.O on the basis of his aforesaid deliberations, observed, that the interest income of Rs. 26,37,87,842/- earned by the assessee from its non-business advances was taxable under the head income from 'other sources'. Insofar the interest expenses and other expense/amortisation expenses that were charged by the assessee to its 'profit and loss account' for the year under consideration were concerned, it was observed by the A.O, that the same as per the scheme of taxation would be allowable as a deduction as and when the income from the project would be available for

computation under the head 'Profit and Gains from Business or Profession'. On the basis of his aforesaid observations the A.O assessed the entire interest income of Rs. 26,37,87,842/- as the income of the assessee from 'Other sources'.

8. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee did not find favour with the same. It was observed by the CIT(A), that the loan of Rs. 184 crores raised by the assessee from DHFL was mainly advanced by it to its associate concern viz. M/s Sahana Construction Pvt. Ltd. in the immediately preceding year i.e. A.Y. 2011-12. Accordingly, it was observed by the CIT(A), that the loan received by the assessee from DHFL for undertaking the construction activity of its project was not utilized for its business purpose and was rather diverted by way of loans and advances to its associate concern viz. M/s Sahana Construction Pvt. Ltd. It was further observed by the CIT(A), that as the assessee was not engaged in the business of money lending or financing, therefore, its claim that the interest received on the loans/advances given to its associate concerns was in the normal course of its business could not be accepted. As such, the CIT(A) concurred with the view taken by the A.O that the interest income was liable to be assessed in the hands of the assessee under the head income from 'other sources'. Insofar the claim of the assessee for allowing of deduction of the interest expenditure of Rs. 26,13,39,983/- under Sec. 36(1)(iii) was concerned, it was observed by the CIT(A) that as the loan that was raised by the assessee from DHFL was not utilized for its business purpose, hence the interest paid on such loan was rightly held by the A.O as not deductible under Sec. 36(1)(iii). Further, it was observed by the CIT(A), that as the assessee had not commenced the construction activity during the year, therefore, till the completion of the project, may be partially, the interest paid could not be held as deductible under Sec. 36(1)(iii). In fact, it was observed by him, that as the assessee had not made the interest payment on capital borrowing for the purpose of its business, therefore, the interest paid on the same would not be deductible under Sec. 36(1)(iii). Further, it was observed by the CIT(A), that as per the proviso to Sec. 36(1)(iii) as the interest paid in respect of capital borrowed for acquiring an asset, whether capitalized in 'books of account' or not, was not to be allowed as a deduction for the period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, therefore, the interest on the loan of Rs. 184

crores borrowed by the assessee from DHFL for undertaking the construction activities would not be eligible for deduction under Sec. 36(1)(iii) till the construction activity of the project was completed. It was observed by the CIT(A), that as the assessee was not engaged in the business of money lending or financing, therefore, its claim that interest paid and received on the loans and advances given to the associate concerns was in the normal course of its business did not merit acceptance. As such, it was observed by the CIT(A), that though the assessee had earned interest income, however, as the receipt of the same was neither in conformity with its nature of business nor the purpose for which it had raised the loan from DHFL, therefore, the interest income of Rs. 26,37,87,842/- could not be held to be the 'business income' of the assessee. As regards the alternative claim of the assessee for allowability of deduction of the interest expenditure of Rs. 26,13,39,983/- under Sec. 57(iii) against the interest income of Rs. 26,37,87,842/- assessed under the head 'Income from other sources', it was observed by the CIT(A), that only those expenditures which were laid out or expended wholly and exclusively for the purpose of making or earning such income were to be allowed as a deduction. Accordingly, it was observed by him, that the scope for allowability of expenses as a deduction under Sec. 57(iii) was very narrow in comparison to the deductions eligible under Sec. 37(1). It was observed by the CIT(A) that as the assessee after raising the loan of Rs. 184 crores from DHFL for undertaking the construction activities of its business as a builder and developer, had however, utilized the said borrowed funds for providing interest bearing loans and advances to its associate concerns, therefore, the interest paid on the loan raised from DHFL could not be held to have been laid out or expended for earning the interest income. Accordingly, it was observed by the CIT(A) that as there was no direct nexus between the amounts borrowed by the assessee from DHFL and the sum advanced to the associate concerns, therefore, the interest paid to DHFL was not eligible for deduction under Sec. 57(iii) for earning of interest income on the loans and advances that were given by the assessee to its associate concerns. In fact, it was observed by the CIT(A), that as a scrutiny of the movement of funds revealed that there was only a rotation of the funds from one associate company to another, which included the interest bearing loans given and also non-interest bearing loans/advances/capital advances, therefore, the interest paid on the loan raised by the assessee from DHFL could not be held as having a nexus with the loans/advances on which interest income had been earned. It was observed by the CIT(A), that the interest of

Rs.26,13,39,983/- paid by the assessee to DHFL could not be held as laid out or expended for the purpose of earning the interest income. Further, it was observed by the CIT(A), that though the assessee had claimed to have capitalized interest of Rs. 4.34 crores which was around 4.61% per annum on the amount of Rs. 94.12 crores that was given by the assessee to two of its associate concerns towards capital commitment, however, the interest that was paid on the loan raised from DHFL was @ 16.25% per annum. Accordingly, it was observed by the CIT(A), that the disparity in the interest that was capitalized and that which was paid by the assessee to DHFL revealed that the assessee had also not correctly capitalized the interest expenditure in its 'books of accounts'. It was also observed by the CIT(A), that as the assessee had not furnished the party wise details of the interest income, therefore, it was not proved as to whether the interest had been received by the assessee against the entire loan fund of Rs. 184 crores that was borrowed from DHFL. Accordingly, the CIT(A) on the basis of his aforesaid observations had concluded that the interest of Rs. 26,13,39,983/- paid by the assessee was not eligible for deduction under Sec. 36(1)(iii) and also Sec. 57(iii) of the Act. Apart there from, the CIT(A) also upheld the view taken by the A.O in treating the interest income of Rs. 26,37,87,842/- as the income of the assessee from 'other sources'. Resultantly, the appeal filed by the assessee was dismissed.

9. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The learned Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case. It was submitted by the Ld. A.R, that the assessee had entered into a MOU, dated 10.02.2011 and 13.10.2011 with M/s Sigitia Construction Pvt. Ltd. and M/s Sahana Builders and Developers Pvt. Ltd., respectively, wherein it had expressed its interest to become a joint venture partner in the respective redevelopment projects of the said associate concerns. It was submitted by the Ld. A.R that as the requisite approvals from the appropriate authorities could not be obtained by the aforementioned associate concerns, therefore, the said respective MOU's were thereafter cancelled at the instance of the assessee, vide its respective letters dated 03.05.2012 and 05.07.2012, and the refund of the amounts advanced to the said respective concerns was sought by it. The Ld. A.R taking us through Page 10 of the assesses paper book (for short 'APB') submitted, that the associate concern of the assessee viz. M/s Sigitia Construction Pvt. Ltd. was the 'developer' of the redevelopment

project at Vile Parle, Prem Nagar CHS (prop). It was submitted by the Ld. A.R, that the assessee had during the year under consideration given an amount aggregating to Rs. 94,12,62,248/- towards its capital assets commitment to the aforementioned parties viz.(i) M/s Sigtia Construction Pvt. Ltd. : Rs. 40,17,97,248/-; and (ii) M/s Sahana Builders and Developers Pvt. Ltd. : Rs. 53,94,65,000/-, while for the balance amount was given as interest bearing loans and advances to its various other associate concerns. It was submitted by the Ld. A.R, that total income of the assessee company was from the interest received on the amounts advanced to its associate concerns. Apart there from, it was submitted by the Ld. A.R that 90 percent of the assets of the assessee company were advanced as loans and advances to the associate concerns. The Ld. A.R in order to fortify his claim that the redevelopment project at Vile Parle, Prem Nagar CHS (prop) for which loan was raised by the assessee from DHFL against the hypothecation of the project property belonged to its associate concern i.e. M/s Sigtia Construction Pvt. Ltd., had drawn our attention to the loan application form that was filed with DHFL (Page 10 of APB). Further, the Ld. A.R also drew our attention towards the respective "affidavits" of Sh. Dinesh Naik, director of the assessee company (Page 33 of APB) and that of Sh. Shiv Kumar Singh, director of M/s Sigtia Construction Pvt. Ltd. (Page 36 of APB), wherein the said respective persons had duly deposed that M/s Sigtia Construction Pvt. Ltd. was the developer of the aforesaid redevelopment project at Vile Parle, Prem Nagar CHS (prop), and the assessee company had neither carried out any project since its incorporation nor was having any project in hand till date. In the backdrop of the aforesaid facts, it was vehemently submitted by the Ld. A.R, that now when the aforementioned redevelopment project at Vile Parle, Prem Nagar CHS (prop) did not belong to the assessee, thus, it was beyond comprehension as to how the lower authorities had observed that the interest expenditure incurred on the loan raised by the assessee from DHFL was to be capitalized as a pre-operative expense, which thereafter, was to be allowed as a deduction under Sec. 36(1)(iii) after there was inflow of revenue from the said project. The Ld. A.R in order to impress upon us that the interest income was rightly claimed by the assessee as its 'business income', therein took us thorough the 'Memorandum of Association' (for short 'MOA') of the assessee company. The Ld. A.R taking us through Clause 11, Clause 30 and Clause 31 of the 'MOA', submitted, that the assessee as per its objects could enter into any arrangement for sharing profits, union of interest, co-operation, joint venture or reciprocal concession with any person, firm or

company carrying on or engaged in any business or transaction which the company is authorized to carry on. Further, the Ld. A.R took us through Clause 21 and Clause 22 of the 'MOA', as per which the assessee as per the said objects could negotiate loans and lend and advance money or give credit to such persons, firms, companies and other entities and on such terms, with or without security and/or interest, as may be thought fit, and particularly to customers or other persons or corporation having dealing with the company. In the backdrop of the aforesaid objects of the assessee company, it was submitted by the Ld. A.R that the assessee in the course of its business was vested with a right to enter into a joint venture and also advance interest bearing funds to third parties. Apart there from, it was submitted by the Ld. A.R, that on the basis of the fact that more than 90 percent of the assets of the assessee company were advanced as loans and advances and 100 percent of its income was from the interest received on the amounts advanced to its associate concerns, therefore, the said systematic and organized activity carried out by the assessee for earning interest income from its various associate concerns, as authorised by its MOA, did clearly fall within the realm of its business activities. In support of his aforesaid contention the Ld. A.R relied on the order of the ITAT, Mumbai, "C" Bench in the case Preimus Investments and Finance Ltd. Vs. DCIT-3(2), Mumbai (ITA No. 4879/Mum/2012, dated 13.05.2015). The Ld. A.R further drawing support from the order of the ITAT, Bengaluru "B" Bench in the case of ITO Vs. Bank Note Paper Mill India (P) Ltd. (2016) 56 ITR (Trib) 266 (Bang) submitted, that the Tribunal relying on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Bokaro Steel Ltd. (1999) 236 ITR 315 (SC) and CIT Vs. Karnal Co-operative Sugar Mills Ltd. (2000) 243 ITR 2 (SC), had observed, that as the interest income earned by the assessee by temporarily parking the share capital meant for meeting the capital expenses in bank deposits was inextricably linked to its capital expenditure, therefore, it was proper to reduce such income from the pre-operative expenses rather than treating it as an item of revenue. The Ld. A.R drawing support from the aforesaid judicial pronouncements submitted, that in case the redevelopment project at Vile Parle, Prem Nagar CHS (prop) was to be held as the project of the assessee, then the interest income received on the amounts advanced to the associate concerns being inextricably linked to the capital expenditure was thus liable to be reduced from the pre-operative expenses, rather than treating the same as an item of revenue in the hands of the assessee. At the same time, it was submitted by the Ld. A.R, that the fact as it so remained was that there was no capital

asset in the hands of the assessee company. Further, the Ld. A.R relied on the judgment of the Hon'ble Supreme Court in the case of India Cement Ltd. Vs. CIT (1966) 60 ITR 52 (SC). The Ld. A.R taking us through the aforesaid judgment submitted, that the Hon'ble Apex Court had observed that the purpose for which the loan was raised by an assessee would be irrelevant for deciding the allowability of payment of interest on such loan, which would in fact be dependent on its actual usage during the year. On the basis of the aforesaid observations of the Hon'ble Apex Court, it was submitted by the Ld. A.R that though the assessee company had raised the loan of Rs. 184 crores from DHFL for construction of the redevelopment project of M/s Sigtia Construction Pvt. Ltd. at Vile Parle, Prem Nagar CHS (prop), however, the said purpose of loan was irrelevant for deciding the allowability of deduction of the interest paid on the said loan which was utilized for advancing interest bearing loans and advances to the associate concerns. The Ld. A.R also in support of his contention that the purpose for which loan was raised is irrelevant, and all that the assessee has to show is that the borrowed funds were used for its business purpose in the relevant year, therein relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Srishti Securities Pvt. Ltd. (2010) 321 ITR 498 (Bom). Also, reliance was placed by the Ld. A.R on the order of the ITAT, Mumbai "C" Bench in the case of Chhaganlal Khimji & Co. Pvt. Ltd. Vs. ACIT (ITA No. 7629/Mum/2013, dated 23.09.2015). Further, the Ld. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Lok Holdings (2009) 308 ITR 356 (Bom). The Ld. A.R taking us through the aforesaid judgment submitted, that it was observed by the Hon'ble High Court that where the assessee company which was engaged in a construction business had deposited money received in the course of such business with the bank, the interest income earned on such bank deposits or amounts given by way of temporary loans for the time being the same were not required for construction purpose would be the business income of the assessee and cannot be assessed as its income from other sources. The Ld. A.R also relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. PHIL Corporation Ltd. & Anr (2011) 202 Taxman 368 (Bom). It was submitted by the Ld. A.R that in the aforesaid case the interest paid on the overdraft account in respect of the funds which were utilized for making investment in shares of a subsidiary company to acquire control over the said subsidiary was held as allowable under Sec. 36(1)(iii) of the Act. It was submitted by the Ld. A.R, that now when 100 percent of the income of the assessee company was from the interest received on the loans

and advances given to its associate concerns and 90 percent of the total funds had been ploughed in such advancing of interest bearing loans, therefore, it could safely be concluded that the assessee was involved in money lending business. In support of his aforesaid contention the Ld. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Jayant H. Modi (2015) 232 Taxman 337 (Bom). The Ld. A.R taking us through the facts of the aforementioned case submitted, that in the case before the Hon'ble High Court 70 percent of the income of the company was derived from interest on loans advanced and 32 percent of its total funds were ploughed in the money lending business. It was submitted by the Ld. A.R that the Hon'ble High Court in the backdrop of the aforesaid facts, had observed, that though the main object of the assessee before them was to carry on the business of a share and stock broker but its 'memorandum of association' allowed it to inter alia carry on the business of lending or advancing of money. Accordingly, it was submitted by the Ld. A.R, that as substantial part of the companies business consisted of money lending, thus, despite the fact that the main object of the assessee before them was to carry on the business as that of a share and stock broker, the Hon'ble High Court in the aforesaid case had observed, that it could safely be concluded that the substantial part of the companies business consisted of money lending business. It was submitted by the Ld. A.R, that on the aforesaid basis the Hon'ble High Court had concluded that as the assessee before them was carrying on money lending business, therefore, the loan advanced by the company to its shareholder could not be taxed as deemed dividend under Sec. 2(22)(e). Also, reliance was placed by the Ld. A.R on the judgment of the Hon'ble High Court of Bombay in the case of CIT Vs. Parle Plastics Ltd. & Anr. (2011) 332 ITR 63 (Bom). The Ld. A.R taking us through the facts involved in the case before the Hon'ble High Court submitted, that as 42 percent of the total assets of the company as on 31.03.1996 and 39 percent of its total assets on 31.03.1997 were deployed in loans and advances, and the assessee company except for interest income had suffered losses, therefore, in the backdrop of the said facts it was concluded by the Hon'ble High Court that the company was substantially involved in money lending business.

10. Per contra, the Learned Departmental Representative (for short 'D.R') submitted, that a perusal of the financial statement of the assessee for the year under consideration revealed that the assessee had itself capitalized a sum of Rs. 4,34,10,584/- towards its capital assets

commitment. It was submitted by the Ld. D.R that as the business of the assessee had yet not commenced during the year under consideration, therefore, the lower authorities had rightly concluded that the claim for deduction of interest of Rs. 26,13,39,983/- paid by the assessee to DHFL and its associate concern viz. M/s Skylark Buildcom Pvt. Ltd. was not allowable as a deduction under Sec. 36(1)(iii). The Ld. D.R relied on the orders of the lower authorities. The Ld. D.R further relied on the judgment of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (1997) 227 ITR 172 (SC). It was submitted by the Ld. D.R, that in the absence of a direct nexus between the interest received and the amounts borrowed by the assessee from DHFL, it was rightly held by the lower authorities that the assessee would also not be eligible for claim of deduction of the interest paid on the aforesaid loans under Sec. 57(iii) of the Act.

11. The Ld. A.R rebutting the contentions advanced by the counsel for the revenue submitted, that as the paid up capital of the assessee company was only Rs.1 lac, and the only source of funds were the "borrowed funds" that were raised from DHFL and its associate concern viz. M/s Skylark Buildcon P. Ltd., therefore, it was incorrect on the part of the revenue to claim that no nexus between the interest bearing loans raised by the assessee and the interest bearing loans advanced to its associate concerns was established. It was submitted by the Ld. A.R, that the amount of interest expenditure of Rs. 4,34,10,584/- pertaining to the amounts which were given by the assessee towards its capital asset commitments to its associate concerns viz. (i) M/s Sigtia Construction Pvt. Ltd.: Rs. 40,17,97,248/-; and (ii) M/s Sahana Builders and Developers Pvt. Ltd. : Rs. 53,94,65,000/-, was already capitalized in its financial statements for the year under consideration. Also, it was averred by the Id. A.R tat as the assessee had rightly capitalised the interest expenditure pertaining to the amount of Rs. 94,12,62,248/- that was advanced to its associate concerns towards its capital asset commitment i.e for the period for which the said amount was advanced during the year, therefore, the CIT() was in error in observing that the quantification of such interest expenditure was not properly done by the assessee @16.25% p.a i.e the rate of interest at which funds were borrowed from DHFL. Also, it was submitted by the Id. A.R that the aforesaid observations as regards infirmity in interest attributable to the funds given to the associate concerns towards

capital asset commitment were drawn by the CIT(A) without affording any opportunity of being heard to the assessee.

12. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought by the assessee for adjudicating three issues viz. (i) that, as to whether the interest income received by the assessee on the amounts advanced to its associate concerns is to be assessed as its 'business income' or as its income under the head 'other sources'; (ii) that, as to whether the assessee was eligible for claim of deduction of the interest paid on the amounts borrowed from DHFL and its associate concern viz. M/s Skylark Buildcon Pvt. Ltd. as per Sec. 36(1)(iii) under the head 'income from business'; and (iii) alternatively, in case the interest income received on the amounts advanced to the associate concerns was to be assessed under the head 'income from other sources', then whether the assessee was eligible for claim of deduction of the interest paid to DHFL and its associate concern on such borrowed funds which were invested with its associate concerns under Sec. 57(iii) of the Act.

13. As is discernible from the 'Memorandum of Association' (for short 'MOA'), the assessee company was incorporated on 11.01.2010. The main object of the assessee company was to carry on the business of a builder, developer and trading in residential, commercial and industrial properties in India and abroad. As can be gathered from the records, the assessee had not set up its business either during the year under consideration or in the subsequent years as are there before us. We shall first deal with the contentions of the Id. A.R on the basis of which he had tried to impress upon us that the assessee had commenced its business during the year under consideration. It is averred by the Id. A.R that as the assessee in pursuance of its 'Objects' had provided interest bearing loans to its associate concerns, therefore, it can safely be concluded that it had commenced its business during the year under consideration. We are unable to persuade ourselves to subscribe to the said claim of the Id. A.R. As observed by us hereinabove, the main object of the assessee company was to carry on the business of a builder, developer and trading in residential, commercial and industrial properties in India and abroad. Admittedly, as per the 'Incidental Objects' envisaged in Clause 21 and Clause 22 of the 'MOA', the assessee could negotiate loans and lend and advance money or give credit to such

persons, firms, companies and other entities on such terms with or without security and/or interest, as may be thought fit, and particularly to customers or other persons or corporations having dealing with the assessee company. In our considered view, the incidental objects of a company would come into play only for the purpose of attainment of its main object and cannot exist on a standalone basis. In other words, incidental objects cannot be divorced from the main object of the company and considered in isolation. As in the case before us, the assessee company had not yet commenced its business of a builder, developer and trading in residential, commercial and industrial properties as provided in its main object, therefore, we are not inclined to accept the claim of the Id. A.R that the business of the assessee was to be taken as having been commenced. Accordingly, we reject the claim of the Id. A.R that the business of the assessee had commenced during the year under consideration.

14. We shall now advert to the reliance placed by the Id. A.R on the judgments of the **Hon'ble High Court of Bombay** in the case of **CIT vs. Jayanth H. Modi (2015) 232 Taxman 337 (Bom)** and **CIT vs. Parle Plastics Ltd. & Anr. (2011) 332 ITR 63 (Bom)**. Id. A.R by drawing support from the aforesaid judicial pronouncements had tried to impress upon us that as the total income of the assessee during the year comprised of the 'interest income' received from its associate concerns and 90% of its total funds had been utilised for providing interest bearing advances to its associate concerns, therefore, without prejudice to the fact that the 'main object' of the assessee was to carry on the business of a builder, developer and trading in residential, commercial and industrial properties, keeping in view the fact that the 'MOA' allowed the assessee to inter alia carry on the business of lending or advancing of money, it could safely be concluded that the substantial part of the assessee's business consisted of money lending business. In sum and substance, it is the claim of the Id. A.R that pursuant to assessing of the 'Interest income' as the assessee's income from the business of 'money lending', the 'interest paid' on the borrowed funds would be allowed as a business expenditure in its hands. We are unable to persuade ourselves to subscribe to the aforesaid claim of the Id. A.R. As observed by us hereinabove, now when the assessee had not yet commenced its business of a builder, developer and trading in residential, commercial and industrial properties, as provided in its main object, therefore, its claim that the business of the assessee was to be taken as having been commenced, for the reason, that it had embarked upon certain incidental

objects on a standalone basis de hors its main object, does not merit acceptance. Insofar the aforesaid judicial pronouncements relied upon by the Id. A.R are concerned, we find, that the same are distinguishable on facts. As is discernible from a perusal of the respective judicial pronouncements, those were rendered in respect of concerns which had already commenced their business, unlike the case before us wherein the business had not yet commenced. Accordingly, we are of the considered view that as the facts involved in the aforesaid case laws before the Hon'ble High Court are distinguishable on facts, therefore, the same would not assist the case of the assessee before us.

15. We shall now advert to the claim of the Id. A.R that the 'Interest income' received by the assessee on the interest bearing funds advanced to its associate concerns was liable to be reduced from the capitalized amount of pre-operative expenses (including interest paid). In order to drive home his aforesaid contention, the Id. A.R had drawn support from the judgment of the **Hon'ble Supreme Court** in the case of **CIT vs. Bokaro Steel Ltd. (1999) 236 ITR 315 (SC)**. We have given a thoughtful consideration to the aforesaid claim of the Id. A.R and find the same to be absolutely misconceived and misplaced. In the case before the Hon'ble Apex Court in Bokaro Steel Ltd. (supra), it was observed, that as the amounts received by the assessee company prior to its commencement of business from viz. letting out quarters to employees of contractors who were engaged in construction of assessee's plant, hire charges for letting out plant and machinery to contractors, interest on amounts advanced to them and royalty received from them for allowing excavation of stones etc. were all intrinsically connected with the construction activity, therefore, the same were in the nature of 'capital receipts' which had gone to reduce the cost of construction of the project and were to be adjusted against the charges payable to the contractors that were capitalized as pre-operative expenses. Now, in the case of the assessee before us, as the interest income received by the assessee from its associate concerns is in no way linked with any project of the assessee, therefore, the said judgment would not assist its case. Accordingly, the aforesaid claim of the assessee is rejected.

16. In the backdrop of the fact that the business of the assessee had not commenced during the year under consideration, we shall now advert to the observations of the lower authorities viz. (i) that, the interest income received by the assessee on the amounts advanced to its associate concerns is liable to be assessed as its income from 'other sources' and not as

'business income'; and (ii) that, as the business of the assessee had not commenced, therefore, the interest paid by the assessee to DHFL and M/s Skylark Buildcon Private Limited would not be eligible for claim of deduction under Sec. 36(1)(iii) of the Act. As the business of the assessee had not commenced during the year, therefore, in our considered view the interest income received by the assessee from its associate concerns has rightly been held to be liable to be assessed under the head 'other sources'. Before adverting any further and answering the second issue, we may herein observe that certain issues having a strong bearing on the adjudication of the same would require to be addressed first. As is discernible from the orders of the lower authorities, they had proceeded with an observation that the assessee had raised the loan from DHFL for its project viz. redevelopment of Vile Parle, Premnagar CHS Ltd. (proposed) at Irla Tank plot, S.V Road, Vile Parle (West), Mumbai. In fact, we find, that in the course of the assessment proceedings the A.O had u/s 133(6) procured the "loan application form" from DHFL. On a perusal of the loan application form, it was observed by the A.O that the assessee applicant had applied for a project/mortgage loan of Rs. 184 crores at the interest rate of 16.25% per annum for the project i.e, redevelopment of Vile Parle Premnagar CHS Ltd. (proposed) at Irla Tank Plot, S.V Road, Vile Parle (west), Mumbai 400 058. Also, the CIT(A) in his order had endorsed the view taken by the A.O and had observed that the loan was obtained for the aforesaid project of the appellant comprising redevelopment project at Vile Parle, Mumbai. In fact, the CIT(A) while declining to accept the claim of the assessee that it had not acquired any asset, had observed, that the said claim was not acceptable since the asset can be in form of tangible and intangible nature and the right to sell is also to be held as an asset. Accordingly, in the backdrop of the observation that the assessee company had raised a loan from DHFL for its project, that the lower authorities had thereafter concluded that the interest paid on the said loan was to be treated as a pre-operative expense which was to be capitalized and was to be allowed as a deduction under Sec. 36(1)(iii) after there was inflow of revenue from the said project. As observed by us herein above, it was the claim of the assessee before the lower authorities that the loan was raised for the redevelopment project at Vile Parle, Prem Nagar CHS (proposed) which belonged to its associate concern i.e. M/s Sigitia Construction Pvt. Ltd. In other words, it has been the claim of the assessee that M/s Sigitia Construction Pvt. Ltd. was the developer of the aforesaid redevelopment project at Vile Parle, Prem Nagar CHS (prop), and the assessee company had neither carried out any project since its incorporation

nor was having any project in hand till date. In the course of hearing of the appeal, the Id. A.R had drawn our attention to the fact that it was specifically claimed by the assessee before the lower authorities viz. (i). that, the loan was taken by the assessee for the project of its associate concern M/s Sigtia Construction Pvt. Ltd. i.e redevelopment project at Vile Parle, Prem Nagar CHS (prop); (ii). that, the loan was taken against the security of the aforesaid project property of M/s Sigtia Construction Pvt. Ltd; (iii). that, the assessee company had no interest as a developer and/or contractor till date; and (iv). that, the assessee company had not taken and/or commenced any project till date. In order to substantiate his aforesaid claim, the Id. A.R had drawn our attention to Page 259 - 299 of the assessee's 'Paper book' (for short 'APB') i.e a letter dated 01.07.2015 that was addressed by the assessee to the CIT(A). The Id. A.R took us through the relevant extract of the aforesaid letter at Page 260 of the 'APB', wherein the aforesaid fact was categorically stated by the assessee. Also, the Id. A.R had taken us through a letter dated 04.01.2016 that was filed with the CIT(A) (Page 300-301 of 'APB') wherein the aforesaid fact was reiterated. Id. A.R had also drawn our attention to a similar claim that was raised by the assessee vide its letters/submissions filed before the A.O and the CIT(A) in the course of the respective proceedings for A.Y 2013-14 to A.Y 2015-16 before them. We also find that in order to substantiate the fact viz. (i). that, M/s Sigtia Construction Pvt. Ltd. was the developer of the aforesaid redevelopment project at Vile Parle, Prem Nagar CHS (prop); and (ii). that, that the assessee company had neither carried out any project since its incorporation, an "affidavit" of Sh. Dinesh Naik, director of the assessee company, dated 17.11.2017 (Page 254 of APB) was also furnished with the A.O. Further, in order to dispel any doubt as regards its aforesaid claim, the assessee has also filed before us a copy of the "affidavit" of Sh. Dinesh Naik, director of the assessee company, dated 27.11.2018 (Page 33-35 of 'APB'). Also, an "affidavit" of Sh. Shiv Kumar Singh, director of M/s Sigtia Construction Pvt. Ltd., dated 30.11.2018 (Page 36 -38 of APB) has been filed with us, wherein it is deposed by him that M/s Sigtia Construction Pvt. Ltd. was the developer of the aforesaid redevelopment project at Vile Parle, Prem Nagar CHS (prop). As can be gathered from a perusal of the 'loan application form', it is an admitted fact that the loan was raised by the assessee from DHFL for the redevelopment project at Vile Parle, Prem Nagar CHS (proposed) (against the hypothecation of the land of the said project). (Page 10 of 'APB'). Apart there from, the letter dated 25.01.2017 of the Deputy Chief Engineer, Slum Rehabilitation Authority, Mumbai (Page 10-23 of APB), which

is addressed to the 'developer' of redevelopment project at Vile Parle, Prem Nagar CHS (prop.) viz. M/s Sigitia Construction Pvt. Ltd. also inspires some confidence as regards the claim of the assessee that the redevelopment project at Vile Parle, Prem Nagar CHS (prop) belonged to M/s Sigitia Construction Pvt. Ltd.

17. As observed by us hereinabove, in case if the redevelopment project at Vile Parle, Prem Nagar CHS (prop) belongs to M/s Sigitia Construction Pvt. Ltd., then, in our considered view, the observations of the lower authorities that the interest paid by the assessee on the loan raised for the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) was to be treated as pre-operative expense which was to be capitalized and thereafter to be allowed as a deduction under Sec. 36(1)(iii) after there was inflow of revenue from the said project in the hands of the assessee would sound absolutely illogical. In case, the project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) does not belong to the assessee, then it is beyond comprehension to treat the interest expenditure as a pre-operative expense which is thereafter to be allowed as a deduction u/s 36(1)(iii) to the assessee after there was inflow of revenue from the said project. At the same time, we are of the considered view, that the claim of the assessee that it has no interest in the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) cannot be summarily accepted and would require to be verified by the A.O. At this stage, we may herein observe, that though the aforesaid claim of the assessee was raised before the lower authorities, however, they had failed to address the issue in the right perspective. As observed by us hereinabove, the A.O after procuring the "loan application form" from DHFL u/s 133(6) of the Act, had observed, that the assessee applicant had applied for a loan of Rs. 184 crores at an interest rate of 16.25% per annum for their project i.e. redevelopment of Vile Parle Prem Nagar CHS Ltd.(proposed) at Irla Tank Plot, S.V Road, Vile Parle (west), Mumbai – 400 058. Also, the CIT(A) in his order had endorsed the view taken by the A.O and had observed that the loan was obtained for the project of the appellant comprising redevelopment project at Vile Parle, Mumbai. In fact, the CIT(A) while declining to accept the claim of the assessee that it had not acquired any asset, had observed, that the said claim was not acceptable since the asset can be in form of tangible and intangible nature and the right to sell is also to be held as an asset. We are not impressed with the manner in which the specific claim of the assessee that the project, viz. redevelopment project

at Vile Parle, Prem Nagar CHS (prop) for which loan was raised by the assessee belonged to its associate concern viz. M/s Sigtia Construction Pvt. Ltd., had been addressed by both the lower authorities. We would not hesitate to observe that both the lower authorities had adopted an evasive approach in respect of the aforesaid claim of the assessee, as a result whereof, the said aspect which has a material bearing on the adjudication of the core issue had not been appreciated and therein adjudicated in the right perspective. As a matter of fact, the conclusion drawn by the lower authorities that the interest expenditure was to be capitalized as a pre-operative expense which would thereafter be allowed as a deduction u/s 36(1)(iii) to the assessee after there was inflow of revenue from the said project, would be beyond comprehension if it is established that the project for which loan was raised by the assessee viz. redevelopment of Vile Parle Premnagar CHS Ltd.(proposed) at Irla Tank Plot, S.V Road, Vile Parle (west), Mumbai, belonged to M/s Sigtia Construction Pvt. Ltd. i.e an associate concern of the assessee and not to the assessee. We are afraid that as the view arrived at by the lower authorities is apparently nothing short of being based on incomplete and distorted facts, therefore, we are unable to persuade ourselves to subscribe to the same.

18. It is in the backdrop of the aforesaid facts, that we shall now deliberate on the reliance placed by the lower authorities on the judgment of the **Hon'ble Supreme Court** in the case of **Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT (1997) 227 ITR 172(SC)**. We may herein observe, that the way the lower authorities had projected the facts of the case, it appeared at the first blush that the issue therein involved was squarely covered by the aforesaid judgment of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra). For a fair appreciation, we shall briefly cull out the facts involved in the case before the Hon'ble Ape Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra). In the case before the Hon'ble Apex Court, the assessee which was engaged in the business of inter alia manufacturing heavy chemicals, had for the purpose of setting up its factories taken certain loans from various banks and financial institutions. Some part of the surplus funds (out of the borrowed funds) which were not immediately required by the company were invested in short term deposits with banks. Interest amounting to Rs. 2,92,440/- was received by the assessee on the deposits lying with the bank. As the company had incurred a sum of Rs. 1,13,06,068/- as and by way of interest and finance charges, the same were

capitalised along with other pre-production expenses. It was the claim of the assessee that the interest income (on bank deposits) of Rs. 2,92,440/- should go to reduce the pre-production expenses (including interest and finance charges). It is in the backdrop of the aforesaid facts that the Hon'ble Apex Court had observed viz. (i). that, the question of adjustment of interest payable by the company against the interest earned by it will depend upon the provisions of the Act; (ii). that, the expenditure would have been deductible as incurred for the purpose of business if the assessee's business had commenced, which however was not so in the case before them; (iii). that, the assessee would be entitled to capitalise the interest payable by it; (iv). that, the assessee could not claim the adjustment of the interest expenditure against interest income assessable under Sec. 56 and Sec. 57 of the Act; (v). that, since the business of the assessee had not commenced, therefore, in such a situation the expenditure incurred by the assessee for setting up its business cannot be allowed as deduction under Sec. 70, nor could it be adjusted under Sec. 71 against any income under any other head; and (vi). that, any income from non-business source cannot be 'set off' against the liability to pay interest on funds borrowed for the purpose of purchase of plants and machineries even before the commencement of the business of the assessee. Accordingly, it was in the backdrop of the aforesaid facts, wherein the assessee who had raised 'term loans' from bank for setting up its factories, and had thereafter earned interest on the surplus amount (out of the borrowed funds) that were not immediately required by it and had been deposited with the banks, that the Hon'ble Apex Court had concluded that the 'Interest received' was to be assessed under the head 'other sources' and the 'interest paid' on the borrowed funds was to be capitalised as pre-operative expense. Now, in the case of the assessee before us, in case the project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) for which loan was raised from DHFL belongs to the assessee, then it would stand squarely covered by the aforesaid judgment of the Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra). But as observed by us hereinabove, it is the claim of the assessee that the aforesaid project belongs to its associate concern viz. M/s Sigitia Construction Pvt. Ltd. If that be so, then we are afraid, that the facts of the case would be distinguishable as against those which were involved in the aforesaid case before the Hon'ble Supreme Court. As observed by us hereinabove, for the purpose of making necessary verification as to whether the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) belongs to M/s Sigitia

Construction Pvt. Ltd., or not, we are of the considered view that the matter requires to be restored to the file of the A.O. Accordingly, the matter is set aside to the file of the A.O who is directed to verify as to whether the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) belongs to M/s Sigitia Construction Pvt. Ltd., or to the assessee. In order to make necessary verifications the A.O shall call for the records of the assessee and M/s Sigitia Construction Pvt. Ltd. Also, necessary verifications may be carried out by the A.O from DHFL; Slum Rehabilitation Authority, Mumbai; Municipal Authority of Greater Mumbai etc.. Apart therefrom, the A.O in the course of the 'set aside' proceedings would remain at a liberty to make any such other verifications as he may deem fit.

19. We shall now advert to the observations of the lower authorities as regards the maintainability of the alternative claim of the assessee, that in case the 'Interest received' from the associate concerns was to be assessed as its income under the head "Other sources", then deduction of the interest paid to DHFL and its associate concern viz. M/s Skylark Buildcon Pvt. Ltd., on the interest bearing funds borrowed from them was to be allowed as a deduction under Sec. 57(iii) of the Act. To sum up, it is the claim of the assessee that the 'Interest paid' on the borrowed funds has to be adjusted against the 'Interest received' on the interest bearing funds which were advanced out of the borrowed funds to its associate concerns. On a perusal of the orders of the lower authorities, we find, that the said alternative claim of the assessee had been rejected by them. As is discernible from the order of the CIT(A), the alternative claim for deduction u/s 57(iii) was declined by him, for the reason, viz. (i). that, only those expenditure, not being in the nature of capital expenditure laid out or expended wholly and exclusively for the purpose of making or earning of such income would be allowed as a deductible expense.; (ii). that, the expense should have been incurred for the purpose of making or earning such income; (iii). that, as the assessee had raised the loan from DHFL for undertaking the construction activities of its business as builders and developers, therefore, the interest paid on such loan funds which had been utilised by the assessee for advancing interest bearing loans to its associate concerns cannot be 'set off' against the interest income received therefrom; and (iv). that, the assessee had failed to prove a direct nexus between the borrowings and the amounts advanced to the associate concerns. Also, the CIT(A) after deliberating on the facts of the case, was of the view, that as there was only a rotation of funds from one associate company to

another which includes the interest bearing loans given and non-interest bearing loans/advances/capital advances, therefore, the interest paid on loan to DHFL cannot be held as having a nexus with the loans/advances on which interest income had been earned by the assessee company. Accordingly, the CIT(A) was of the view that as the assessee had failed to establish a nexus between the interest bearing borrowed funds with the interest bearing loans and advances given to the associate concerns, therefore, for the said reason the interest paid by the assessee to DHFL of Rs. 26,13,39,983/- could not be allowed as a deduction u/s 57(iii) of the Act. Apart therefrom, it was observed by the CIT(A) that the amount of interest of Rs. 4,34,10,584/- pertaining to the amounts which were given by the assessee towards its capital asset commitment to two of its associate concerns viz. (i). M/s Sigitia Construction Pvt. Ltd : Rs. 40,17,97,428/-; and (ii). M/s Sahana Builders and Developers Pvt. Ltd.: Rs. 53,94,65,000/- and was capitalized in its 'books of accounts' worked out to 4.61% p.a, whereas the amount was borrowed by the assessee from DHFL at 16.25% p.a. On the basis of his aforesaid observations, it was concluded by the CIT(A) that the assessee had suppressed the amount of interest relating to the amount given to its associate concerns towards its capital asset commitment.

20. We have given a thoughtful consideration to the issue pertaining to the entitlement of the assessee towards its alternative claim of deduction of 'Interest paid' to DHFL and its associate concern viz. M/s Skylark Buildcom Pvt. Ltd. as against the 'Interest received' on the amounts advanced to its associate concerns. For a fair appreciation of our observations, the same are being segregated into two parts, as under:

(A). SITUATION 1 :

If on the basis of verifications carried out by the A.O in the course of the 'set aside' proceedings, it emerges, that the project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) belongs to the assessee, then the 'Interest paid' on the loan raised from DHFL for the said project would be capitalised as a pre-operative expense, which would thereafter be allowed as a deduction u/s 36(1)(iii) to the assessee after there is inflow of revenue from the said project. Also, as the business of the assessee had not commenced, therefore, the 'Interest received' on the amounts advanced to the associate concerns (out of the borrowed funds) would be assessed as the income of the assessee under the head 'other sources'. Accordingly,

the view taken by the lower authorities as regards capitalising of the interest paid on the loans raised by the assessee from DHFL would continue to hold the ground in the aforesaid situation. In fact, our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT (1997) 227 ITR 172(SC)**.

(B). SITUATION 2 :

If pursuant to the verifications carried out by the A.O in the course of the 'set aside' proceedings, it emerges, that the claim of the assessee is found to be in order and the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) belongs to M/s Sigitia Construction Pvt. Ltd., then in the absence of any such project in the hands of the assessee, the 'Interest paid' by the assessee on the loan raised from DHFL cannot be capitalised as a pre-operative expense for being allowed as a deduction u/s 36(1)(iii) to the assessee after there is inflow of revenue from the said project. It is in context of this situation, that we shall now deliberate on the allowability of the assessee's alternative claim for deduction u/s 57(iii) of the 'Interest paid' to DHFL as against the 'Interest received' from the associate concerns on the amounts advanced to them.

21. We shall now proceed with our observations, which as stated by us hereinabove would be applicable only if the case of the assessee falls within the realm of the aforementioned 'Situation 2'. As observed hereinabove, the assessee's claim for deduction u/s 57(iii) had been declined by the CIT(A) for two main reasons, viz. (i). that, as the assessee had raised the loan from DHFL for undertaking the construction activities of its business as builders and developers, therefore, the interest paid on such loan funds which had been utilised by the assessee for advancing interest bearing loans to its associate concerns cannot be 'set off' against the interest income received therefrom; and (ii). that, the assessee had failed to prove a direct nexus between the borrowings and the amounts advanced to the associate concerns. Insofar, the view taken by the CIT(A), that the assessee had raised the loan from DHFL for undertaking the construction activities of its business as builders and developers is concerned, we may herein observe, that the said observation is prima facie misconceived and misplaced. A perusal of the DHFL loan application, letter of the Slum Rehabilitation Authority dated 25.01.2011 and also other documents to which our attention has been drawn by the Id. A.R in the course of hearing of the appeal, though not conclusively, but prima facie reveals that the

aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) for which loan was raised by the assessee from DHFL belongs to M/s Sigitia Construction Pvt. Ltd. and not to the assessee. Be that as it may, for verifying the factual position the matter has been restored to the file of the A.O. As observed by us hereinabove, we may herein reiterate for the sake of clarity and to dispel any doubt, that in case it emerges that the project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) belongs to the assessee, then the view taken by the lower authorities that the 'Interest paid' to DHFL on the loan raised would have to be capitalised as a pre-operative expense for being allowed as a deduction u/s 36(1)(iii) to the assessee after there is inflow of revenue from the said project would hold the ground. But if in case, it emerges, that the project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop), belongs to M/s Sigitia Construction Pvt. Ltd., then the observation of the CIT(A) that the assessee had raised the loan from DHFL for undertaking the construction activities of its business as builders and developers cannot be sustained.

22. We may herein observe that for allowability of an assessee's claim for deduction of an expenditure u/s 57(iii) what would be relevant is not the purpose of which the loan was raised, but in fact, if the incurring of the expenditure can be related to the purpose of making or earning of such income then the expenditure so incurred would be allowable as a deduction while computing the income of the assessee under the head "Other sources". An analogy can be drawn from the judgment of the **Hon'ble Supreme Court** in the case of **India Cement Ltd. Vs. CIT (1966) 60 ITR 52 (SC)** for supporting our aforesaid view, that the purpose for which a loan is raised would not be relevant but it is the purpose for which the loan has actually been utilised that would be relevant. Now, this takes us to the second aspect i.e. as to whether there is a nexus existing between the interest bearing borrowed funds raised by the assessee from DHFL and the interest bearing amounts advanced to the associate concerns. We may herein observe that a perusal of the 'balance sheet' of the assessee company for the immediately preceding year i.e. F.Y. 2010-11 (Page 87 of 'APB') reveals that the assessee as on 31.03.2011 had a paid up 'Share Capital' of Rs. 1,00,000/- only. Rather, the assessee during the said preceding year i.e. F.Y. 2010-11 had out of the loan of Rs. 184 crores that was raised from DHFL, therein advanced an amount aggregating to Rs. 183,81,00,000/- to two of its associate concerns viz. (i) M/s Sahana Construction Pvt. Ltd: Rs. 179,81,00,000/-; and (ii) M/s Sigitia Construction Pvt.

Ltd. :Rs. 4,00,00,000/-. As per the 'balance sheet' of the assessee on 31.03.2012 the entire amount of loan of Rs. 184 crore raised by the assessee from DHFL, which in turn in the preceding year was mainly advanced to M/s Sahana Construction Pvt. Ltd., was disclosed as repaid. During the year under consideration the assessee had given/advanced an amount aggregating to Rs. 179.47 crores, viz. (i). advance against capital asset commitment : Rs.94.12 crores; and (ii). interest bearing loans and advances to associate concerns: Rs. 85.35 crores. As observed by us hereinabove, the interest expenditure correlating to amount of Rs. 94.12 crores viz. given towards capital asset commitment to associate concerns viz. (i). M/s Sigitia Construction Pvt. Ltd : Rs. 40,17,97,428/-; and (ii). M/s Sahana Builders and Developers Pvt. Ltd.: Rs. 53,94,65,000/- was capitalized by the assessee. As against the interest bearing loans of Rs. 85,35,75,400/- advanced to its associate concerns the assessee had received 'Interest income' of Rs. 26,37,87,842/-. In our considered view, as long as it is established that the 'Interest paid' by the assessee on the loans raised from DHFL as per the mandate of Sec. 57(iii) was an expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning of the 'Interest income' from the associate concerns to whom interest bearing loans were given, then such 'Interest paid' would be eligible for deduction against the 'Interest received' by the assessee company. As the factual position as to whether the assessee satisfies the requisite conditions envisaged in Sec. 57(iii), therein making it eligible to claim deduction of the 'Interest paid' on the loans raised from to DHFL against the 'Interest income' received from the associate concerns to whom interest bearing loans were given cannot be safely gathered from the records before us, and would require verification, therefore, the matter in all fairness is restored to the file of the A.O. As observed by us hereinabove, if in the course of the 'set aside' proceedings, it emerges, that the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) for which loan was raised by the assessee from DHFL belongs to M/s Sigitia Construction Pvt. Ltd. and not to the assessee, then the A.O shall verify as to whether the requisite conditions envisaged in Sec. 57(iii), therein making the assessee eligible to claim deduction of the 'Interest paid' on the loans raised from to DHFL against the 'Interest income' received from the associate concerns are satisfied or not. Needless to say, the A.O shall in the course of the 'set aside' proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate its claim as regards its eligibility towards claim deduction under Sec.

57(iii) of the Act. Also, we may herein observe, that as the view taken by the CIT(A) that the assessee had suppressed the quantum of interest paid that was relatable to the amount of Rs. 94,12,62,248/- given by the assessee towards its capital asset commitment to its associate concerns viz.(i) M/s Sigtia Construction Pvt. Ltd. : Rs. 40,17,97,248/-; and (ii) M/s Sahana Builders and Developers Pvt. Ltd. : Rs. 53,94,65,000/-, had been arrived at by the CIT(A) without affording any opportunity to the assessee to rebut the same, therefore, the said issue is also in all fairness restored to the file of the A.O for fresh adjudication after affording an opportunity of being heard to the assessee.

23. We shall now advert to the entitlement of the assessee towards claim of deduction of 'interest paid' on the loan raised from its associate concern viz. M/s Skylark Buildcom Private Limited. The Ld. A.R has filed before us a 'Chart', wherein it is claimed that the interest bearing loan aggregating to Rs. 17,29,27,728/- received from M/s Skylark Buildcom Private Limited was advanced by way of interest bearing loans to its associate concerns during the year under consideration. As the claim of the assessee requires to be verified in the backdrop of the facts projected in the 'Chart' filed by the assessee before us, therefore, in all fairness we restore the matter to the file of the A.O. The A.O is directed to verify the veracity of the claim of the assessee that the amount received by it as interest bearing loans from M/s Skylark Buildcom Private Limited was utilised for providing interest bearing advances to its associate concerns. In case the aforesaid claim of the assessee is found to be in order and as per the mandate of Sec. 57(iii), then the A.O shall allow deduction of the 'Interest paid' by the assessee to M/s Skylark Buildcom Private Limited against the correlating 'Interest income' received by it from its associate concerns. Needless to say, the assessee in support of his aforesaid claim shall provide the requisite documents as would be called for by the A.O in the course of the 'set aside' proceedings.

24. We shall now take up the claim of the assessee that the CIT(A) has erred in not allowing the assessee's claim of expenses viz. (i). other expenses: Rs. 17,23,648/-; and (ii). amortization expenses: Rs. 1,640/-, against the 'Interest received'. As observed by us hereinabove, as the said expenses had not been incurred by the assessee for earning of 'Interest income', therefore, the same would not fall within the realm of the deductions

envisaged in Sec. 57(iii) of the Act. Accordingly, finding no infirmity in the order of the CIT(A), we uphold the disallowance of the aforesaid expenses.

25. Resultantly, in terms of our aforesaid observations the matter is restored to the file of the A.O. As observed by us hereinabove, the A.O shall in the course of the 'set aside' proceedings, after making necessary verifications, as he may deem fit, therein adjudicate upon four issues viz. (i). that, as to whether the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) belongs to M/s Sigitia Construction Pvt. Ltd. or to the assessee; (ii). that, if in the course of the 'set aside' proceedings, it emerges, that the aforesaid project viz. redevelopment project at Vile Parle, Prem Nagar CHS (prop) for which loan was raised by the assessee from DHFL belongs to M/s Sigitia Construction Pvt. Ltd. and not to the assessee, then the A.O shall verify as to whether the conditions envisaged in Sec. 57(iii) making the assessee eligible to claim deduction of the 'Interest paid' on the loans raised from to DHFL against the 'Interest income' received from the associate concerns are satisfied, or not; (iii). that, the A.O shall verify as to whether the assessee had rightly quantified and therein capitalised the correlating interest relatable to the amount of Rs. 94,12,62,248/- that was given towards its capital asset commitment to its associate concerns i.e M/s Sigitia Construction Pvt. Ltd. (Rs. 40,17,97,248/-) and M/s Sahana Builders and Developers Pvt. Ltd. (Rs. 53,94,65,000/-); and (iv). that, the A.O shall verify the veracity of the claim of the assessee that the amount of Rs. 17,29,27,728/- received by it as interest bearing loans from M/s Skylark Buildcom Private Limited was utilised for providing interest bearing advances to its associate concerns, and thus it was eligible for claim of deduction under Sec. 57(iii) of the 'Interest paid' on the said loan as against the 'interest received' from the associate concerns, or not. Accordingly, in terms of our aforesaid observations the matter is restored to the file of the A.O for fresh adjudication.

26. The appeal of the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

A.Y. 2013-14

Appeal No. 318/Mum/2019

27. We shall now advert to the appeal filed by the assessee for A.Y. 2013-14. The assessee has assailed the order of the CIT(A) for A.Y. 2013-14 by raising the following grounds of appeal before us :

- “1 That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the version of the Assessing Officer that your appellant is having project in hand.
2. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer for treating the whole interest income of Rs. 29,92,92,585/- as income of your appellant and without giving any deduction of the expenses incurred by your appellant for earning said interest.
3. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in capitalizing the whole expenditure as part of work-in-progress in spite of the fact that your appellant has no project in its hand and no expenditure which is required to be incurred for carrying out construction activities have been incurred till the date of filing of this appeal.
4. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in treating the entire interest income as income from other sources instead of income from business.
5. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in not allowing any expenditure as business expenditure including claim of payment of interest u/s. 36(1)(iii) or u/s. 37(1) of the Income Tax Act.
6. Without prejudice of above, the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in not allowing deduction u/s. 57(iii) of the Income Tax Act, 1961 in respect of expenditure incurred in earning the interest income.
7. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the evidences filed by way of affidavit along with necessary documentary proofs while deciding the above matter.
8. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the decision of the Hon'ble Supreme Court in the case of India Cement Ltd. 60 ITR 52 (SC) referred to by your appellant which held that interest on borrowed money be allowed on the basis of its usages and not on the basis of object for which the money is borrowed.”

The assessee company had filed its return of income for A.Y. 2013-14 on 30.09.2013, declaring its income at Rs. 78,010/-. Assessee during the year under consideration had earned interest income aggregating to Rs. 29,92,92,585/- on the interest bearing loans which were advanced by it to its various associate concerns. Further, during the year under consideration the assessee had paid interest amounting to Rs. 30,32,32,756/- on the interest bearing loans which were raised by it from DHFL and its associate concern i.e. M/s Skylark Buildcon (Pvt.) Ltd. As the assessee during the year had utilized part of the interest bearing funds amounting to Rs. 15,42,00,000/- for purchase of shares of M/s Mythili Properties Pvt. Ltd., therefore, interest expenditure of Rs. 42,00,000/- attributable to the amount utilized for making investment in purchase of shares was capitalized by the assessee. Accordingly, the balance amount of interest paid amounting to Rs. 29,90,32,756/- was claimed by the assessee as an expense against the interest income earned by it on the loans which were advanced to its associate concerns.

28. The A.O while framing the assessment, being of the view, that the interest expenditure of Rs. 29,90,94,952/- and other expenses of Rs. 1,17,988/- incurred by the assessee formed part of the cost of its project which had yet not commenced, therefore, capitalized the same as a part of the project cost. As such, the A.O assessed the interest received by the assessee amounting to Rs. 29,92,92,585/- as its income from 'Other sources' and declined the claim of deduction of the interest paid on loans amounting to Rs. 29,90,94,952/- and other expenses of Rs. 1,17,988/- that was raised against the interest income of Rs. 29,92,92,585/- received by the assessee. Accordingly, the A.O assessed the income of the assessee at Rs. 29,92,92,585/- as against its returned income of Rs. 78,010/-.

29. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) observing that the facts and the issue involved in the appeal remained the same as were there before him in the case of the assessee for the immediately preceding year i.e. A.Y. 2012-13, upheld the order of the A.O and dismissed the appeal.

30. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal

remains the same as were there before us in the appeal of the assessee for the immediately preceding year i.e. A.Y. 2012-13 in ITA No. 317/Mum/2019, therefore, our order therein passed shall apply *mutatis mutandis* for disposal of the present appeal of the assessee for A.Y. 2013-14 in ITA No. 318/Mum/2019.

31. The appeal of the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

A.Y. 2014-15

Appeal No. 319/Mum/2019

32. We shall now advert to the appeal filed by the assessee for A.Y. 2014-15. The assessee has assailed the order of the CIT(A) for A.Y. 2014-15 by raising the following grounds of appeal before us :

- “1 That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the version of the Assessing Officer that your appellant is having project in hand.
2. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer for treating the whole interest income of Rs. 26,87,37,245/- as income of your appellant and without giving any deduction of the expenses incurred by your appellant for earning said interest.
3. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in capitalizing the whole expenditure as part of work-in-progress in spite of the fact that your appellant has no project in its hand and no expenditure which is required to be incurred for carrying out construction activities have been incurred till the date of filing of this appeal.
4. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in treating the entire interest income as income from other sources instead of income from business.
5. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in not allowing any expenditure as business expenditure including claim of payment of interest u/s. 36(1)(iii) or u/s. 37(1) of the Income Tax Act.
6. Without prejudice of above, the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the

order of the Assessing Officer in not allowing deduction u/s. 57(iii) of the Income Tax Act, 1961 in respect of expenditure incurred in earning the interest income.

7. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the evidences filed by way of affidavit along with necessary documentary proofs while deciding the above matter.
8. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the decision of the Hon'ble Supreme Court in the case of India Cement Ltd. 60 ITR 52 (SC) referred to by your appellant which held that interest on borrowed money be allowed on the basis of its usages and not on the basis of object for which the money is borrowed."

The assessee company had filed its return of income for A.Y. 2014-15 on 30.09.2014, declaring a loss of Rs. 1,51,050/-. Assessee during the year under consideration had earned interest income aggregating to Rs. 26,84,76,642/- on the interest bearing loans which were advanced by it to its various associate concerns. Further, during the year under consideration, the assessee had paid interest amounting to Rs. 26,87,26,798/- on the interest bearing loans which were raised by it from DHFL and its associate concern i.e. M/s Skylark Buildcon (P.) Ltd. Accordingly, the interest of Rs. 26,87,26,798/- paid by the assessee was claimed as an expense against the interest income of Rs. 26,84,76,642/- earned by it on the loans which were advanced to its associate concerns.

33. The A.O while framing the assessment was of the view that as the interest expenditure of Rs. 26,87,26,798/- and other expenses of Rs. 1,62,548/- incurred by the assessee formed part of the cost of its project which had yet not commenced, therefore, he capitalized the same as a part of the project cost. As such, the A.O assessed the interest received by the assessee amounting to Rs. 26,84,76,642/- as its income from 'Other sources' and declined the claim of deduction raised by the assessee of the interest paid on loans amounting to Rs. 26,87,26,798/- and other expenses of Rs. 1,62,548/- against the interest income of Rs. 26,84,76,642/- that was received by the assessee. Accordingly, the A.O assessed the income of the assessee at Rs. 26,84,76,642/- as against its returned loss of Rs. 1,51,050/.

34. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) observing that the facts and the issue involved in the present appeal remained the

same, as were there before him in the case of the assessee for the A.Y. 2012-13, thus he upheld the order of the A.O and dismissed the appeal.

35. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same as were there before us in the appeal of the assessee for A.Y. 2012-13 in ITA No. 317/Mum/2019, therefore, our order therein passed shall apply *mutatis mutandis* for disposal of the present appeal of the assessee for A.Y. 2014-15 in ITA No. 319/Mum/2019.

36. The appeal of the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

A.Y. 2015-16

Appeal No. 320/Mum/2019

37. We shall now advert to the appeal filed by the assessee for A.Y. 2015-16. The assessee has assailed the order of the CIT(A) for A.Y. 2015-16 by raising the following grounds of appeal before us:

- “1 That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the version of the Assessing Officer that your appellant is having project in hand.
2. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer for treating the whole interest income of Rs. 29,92,92,585/- as income of your appellant and without giving any deduction of the expenses incurred by your appellant for earning said interest.
3. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in capitalizing the whole expenditure as part of work-in-progress in spite of the fact that your appellant has no project in its hand and no expenditure which is required to be incurred for carrying out construction activities have been incurred till the date of filing of this appeal.
4. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in treating the entire interest income as income from other sources instead of income from business.
5. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing

Officer in not allowing any expenditure as business expenditure including claim of payment of interest u/s. 36(1)(iii) or u/s. 37(1) of the Income Tax Act.

6. Without prejudice of above, the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in confirming the order of the Assessing Officer in not allowing deduction u/s. 57(iii) of the Income Tax Act, 1961 in respect of expenditure incurred in earning the interest income.
7. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the evidences filed by way of affidavit along with necessary documentary proofs while deciding the above matter.
8. That the Commissioner of Income Tax (Appeals) has erred in law as well as under the circumstances of the case in not considering the decision of the Hon'ble Supreme Court in the case of India Cement Ltd. 60 ITR 52 (SC) referred to by your appellant which held that interest on borrowed money be allowed on the basis of its usages and not on the basis of object for which the money is borrowed.”

The assessee company had filed its return of income for A.Y. 2015-16 on 30.09.2015, declaring a loss of Rs. 1,35,11,379/-. The assessee during the year under consideration had earned interest aggregating to Rs. 28,54,71,491/- on the interest bearing loans which were advanced by it to its various associate concerns. Further, during the year under consideration, the assessee had paid interest amounting to Rs. 29,85,08,798/- on the interest bearing loans which were raised by it from DHFL and its associate concern i.e. M/s Skylark Buildcon (Pvt.) Ltd. Accordingly, the interest of Rs. 29,85,08,798/- paid by the assessee was claimed as an expense against the interest income of Rs. 28,54,71,491/- that was earned by it on the loans which were advanced to its associate concerns.

38. The A.O while framing the assessment was of the view that as the interest expenditure of Rs. 29,85,08,798/- and other expenses of Rs. 31,70,760/- incurred by the assessee formed part of the cost of its project which had yet not commenced, therefore, he capitalized the same as a part of the project cost. As such, the A.O assessed the interest received by the assessee amounting to Rs. 28,54,71,491/- as its income from 'Other sources', and declined its claim of deduction of the interest paid on loans amounting to Rs. 29,85,08,798/- and other expenses of Rs. 31,70,760/- against the aforesaid interest income of Rs. 28,54,71,491/-. Accordingly, the

A.O assessed the income of the assessee at Rs. 28,54,71,491/- as against its returned loss of Rs. 1,35,11,379/-

39. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, the CIT(A) observing that the facts and the issue involved in the present appeal remained the same, as were there before him in the case of the assessee for A.Y. 2012-13, upheld the order of the A.O and dismissed the appeal.

40. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same, as were there before us in the appeal of the assessee for A.Y. 2012-13 in ITA No. 317/Mum/2019, therefore, our order therein passed shall apply *mutatis mutandis* for disposal of the present appeal of the assessee for A.Y. 2015-16 viz. ITA No. 320/Mum/2019.

41. The appeal of the assessee is partly allowed for statistical purposes in terms of our aforesaid observations.

42. The appeals of the assessee for A.Y(s) 2012-13 to 2015-16 i.e. ITA No. 317 to 320/Mum/2019 are partly allowed for statistical purposes in terms of our aforesaid observations

Order pronounced in the open court on 08/11/2019

Sd/-

(N. K. Pradhan)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 08.11.2019

Ps. Rohit Kumar

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,
उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai