

IN THE INCOME-TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT AND
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 2699/Mum/2016 (Assessment Year 2011-12)

ITA No. 5161/Mum/2016 (Assessment Year 2012-13)

Shree Ahuja Properties P. Ltd. A/201, Rajpipla, Linking Road, Opp. Standard Chartered Bank, Santacruz (W), Mumbai-400054. PAN: AAEC5561R	Vs.	ITO-9(3)(1) R.No. 227, 2 nd Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020.
Appellant		Respondent

ITA No. 4987/Mum/2016 (Assessment Year 2012-13)

Dy. CIT, CC-6(2) R.No. 1903, 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.	Vs.	Shree Ahuja Properties P. Ltd. A/1, Rajpipla, Linking Road, Opp. Standard Chartered Bank, Santacruz (W), Mumbai-400054. PAN: AAEC5561R
Appellant		Respondent

Appellant by : Shri Reepal Tralshawala (AR)
Respondent by : Shri Dharm Veer Singh (DR)

Date of Hearing : 11.09.2019
Date of Pronouncement : 01.11.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This set of three appeals out of which two cross appeals for Assessment Year 2012-13 and assessee's appeal for Assessment Year 2011-12 are directed against the order of Id. CIT(A)-21, Mumbai dated 16.05.2016 & 16.02.2016 respectively. The assessee has raised certain common grounds of appeal for both the Assessment Years. Therefore, all the appeals were

clubbed, heard and are decided by a consolidated order to avoid the conflicting decision. In appeal for Assessment Year 2011-12, the assessee has raised the following grounds of appeal:

A. Disallowance of business promotion expenses - Rs.9,59,300/-

1. The Ld. CIT(A) erred in confirming the disallowance made in respect of business promotion expenses aggregating to Rs.9,59,300/- without appreciating that the expenses were incurred wholly and exclusively for the purpose of business and hence, confirming the disallowance of the same is unjustified and liable to be deleted.

2. The Ld. CIT(A) failed to appreciate that expenses incurred were in the nature of business advertisement and not donation and the payment to MCA for corporate membership was incurred towards business prospects and growth of the company and hence, the disallowance of the entire amount aggregating to Rs.9,59,300/- is unjustified and liable to be deleted.

B. Disallowance of excessive interest u/s.40A(2)(a) - Rs.4,68,73,515/-

3. The Ld. CIT(A) erred in partly confirming the disallowance of Rs.4,68,73,515/- out of interest expenses applying the provisions of sec.40A(2)(a) of the Act without appreciating the fact that the entire funds borrowed from the sister concerns were utilized wholly and exclusively for the purpose of business and hence, the disallowance of part interest amounting to Rs.4,68,73,515/- is without any justification and liable to be deleted.

4. The Ld. CIT(A) failed to appreciate that as per the Group policy, the two sister concerns i.e. M/s. Ahuja Properties & M/s. Ahuja Properties & Associates shall borrow funds from outsiders and lend the same to any of the group concern requiring for their business and accordingly the interest was charged to all the group concerns availing funds from these two sister concerns at hands of the sister concerns was also high and hence, the rate of interest charged by the sister concerns could not be held to be excessive and thus, the part disallowance out of interest is without any justification and liable to be deleted.

5. The Ld. CIT(A) further failed to appreciate that apart from interest cost and brokerage cost [about 3% and not 1.50% or 0.50% as observed by CIT(A)], there were hardly any expenses claimed by the lender sister concerns and except for net profit earned and offered for tax and therefore, no part of interest paid to

sister concerns had actually benefited the sister concerns in any manner so as to apply provisions of section 40A(2)(a) of the Act and that the majority amount of interest paid to sister concerns has in turn been utilized by the sister concerns to make payment of interest and brokerage to outside third parties from whom the funds were borrowed and hence, there is no question of making any excessive payment of interest to sister concerns and the disallowance therefore made and partly confirmed by the Ld. CIT(A) may be deleted.

6. The Ld. CIT(A) further failed to appreciate that all the group concerns were filing return of income and paying taxes at the maximum marginal rates and in fact in the case of assessee, majority of interest expenses were capitalized as WIP [out of total disallowance of Rs.4,68,73,515/-, Rs.4,28,56,367/- is disallowed from WIP and only balance amount of Rs.40,17,148/- disallowance from profit and loss account] and hence, there was no benefit derived by paying interest at high rates and thus, the disallowance of part interest is without any justification and liable to be deleted.

2. Facts in brief are that the assessee is a Private Limited Company engaged in the business of Builders & Developers. For Assessment Year 2011-12, the assessee filed return of income on 28.09.2011 declaring total income of Rs. 26,31,392/-. The case was selected for scrutiny. The Assessing Officer while passing the assessment order made a disallowance of Business Promotion Expenses of Rs. 9,59,300/- and disallowance of excessive interest under section 40A(2)(a) of Rs. 5,95,43,939/-. On appeal before the Id. CIT(A), both the additions/disallowance were confirmed. Thus, further aggrieved, the assessee has filed the present appeal before this Tribunal.
3. We have heard the submission of both the parties and perused the record carefully.

4. Ground No.A relates to disallowance on account of Business Promotion Expenses. The Id. AR of the assessee submits that assessee is incurred these expenses for promotion of its business. The assessee incurred major expenses which consist of corporate membership of Mumbai Cricket Association, on social functions and donation. The AO has recorded the expenses in para of his order in the following manner:

Date	Name of recipient	Amount
15.06.2010	Mumbai Cricket Association	5,45,200/-
07.07.2010	Republican Party of India for distribution of notes to poor students	5000/-
19.07.2010	United association for social education and public Welfare (Dahihandi)	1,10,000/-
31.07.2010	ISCON	31,000/-
19.08.2010	S.V.S. Jain Sangh Lokhandwala	5,100/-
30.08.2010	Vishnu Narayan mahilaAdharManch	10,000/-
11.10.2010	Tukaram Mokal (donation)	75,500/-
11.10.2010	Surendra Pathare (donation)	75,500/-
01.02.2011	Unnati Seva Sangh	1,02,000/-
		9,59,300/-

5. The Id. AR of the assessee submits that the expenses were incurred for advertising of the business of the assessee and the major expenses which consist of membership to Mumbai Cricket Association were incurred on account of corporate membership to have a meeting with various clients. All the expenses were incurred for the purpose of business and rest of the expenses were incurred for donations. The Id AR for the assessee submits that the assessee explained the expenses to the lower authorities that payment made to Unnati Seva Sangh and United Association for social education and public Welfare (Dahihandi), it was incurred for putting hoarding for advertising of its upcoming projects. For the expenses

incurred on membership of Club, the Id. AR of the assessee relied upon the decision of Hon'ble Bombay High Court in case of Otis Elevator Co. (India) Ltd. Vs CIT (195 ITR 682 Bom).

6. On the other hand, the Id. Departmental Representative (DR) for the revenue relied upon the order of lower authorities. The Id. DR for the revenue further submits that the assessee failed to substantiate that assessee incurred expenses wholly and exclusively for the purpose of business.
7. We have considered the rival submission of the parties and gone through the orders of authorities below. The Assessing Officer during the assessment noted that the assessee has claimed expenses of Rs. 9,59,300/- which has been recorded by Assessing Officer in para-4 of his order. The assessee was asked to substantiate the expenses. The assessee furnished the copy of receipt of Rs. 545/- paid to Mumbai Cricket Association. For expenses incurred for Dahihandi, the assessee stated that expenses were incurred for the business purpose for putting hoarding of the assessee. For the expenses incurred on putting hoarding of Unnati Seva Sangh & United Association, it was explained that assessee incurred expenses on making hoarding for upcoming projects and rest of the amount which was paid on account of donation to various parties. The Id. CIT(A) confirmed the action of Assessing Officer on similar line. We have noted that the assessee is a corporate entity. The assessee claimed to have made the

expenses by putting hoarding for its advertisement, Rs. 5000/- were incurred for distribution of note books to the poor student, Rs. 1,10,000/- on social education and public welfare in Dahihandi function. The other major expenses consist of expenses incurred on hoarding and payment made to Unnati Seva Sangh and United Association of Rs. 1,02,222/- besides the membership expenses of Rs. 5,45,200/-. Rest of the amount are very meagre amount paid on account of donation either in the form of distribution of Notebook to poor student, donation to ISCON, JVS Jain Sangh Lokhandwala, Vishnu Narayan MahilaAdharManch, Tukaram Mokal nad Surendra Pathare.

8. The Hon'ble jurisdictional High Court in Otis Elevator (supra) held that when the assessee incurred expenses for promotion of club fees with a view to enable the assessee to improve its relation and prospects, the payment must be allowed as business expenditure. Similarly the other expenses, genuineness of which were not disputed by the lower authorities which mainly consist of either donation to various charitable organizations, distribution of Notebook to poor student and expenses incurred during the festival season for erecting hoarding are also allowable expenses. Therefore, considering the nature and expenses, the Assessing Officer is directed to allow all the expenses and delete the disallowance accordingly. In the result, Ground No.A of the appeal is allowed.

9. Ground No. B relates to disallowance of interest under section 40A(2)(a).

The Id. AR of the assessee submits that the assessee borrowed loan for the purpose of its business for construction of Building project. The assessee also borrowed funds from Bank, which is secured loan and that all securities could be given for the Bank borrowings exhausted.

10. The Id. AR of the assessee further submits that on same set of fact in assessee's group case in Puspanjali Realtors Pvt. Ltd. In ITA No. 483/Mum/2016 dated 17.01.2018, wherein the assessing officer treated similar rate interest paid by that assessee as unreasonable, however, on appeal, the Id. CIT(A) deleted the entire interest addition, on further appeal before the Tribunal the order of Id. CIT(A) was affirmed. The Id. AR of the assessee finally submits that this ground of appeal is covered in favour of assessee. In support of his submission, the Id. AR of the assessee also relied upon the decision of Hon'ble Bombay High Court in case of CIT vs. Indo-Saudi Services (Travel) P. Ltd. (310 ITR 306), wherein the Hon'ble High Court held that when the revenue was not in a position to point out how the assessee evaded payment of tax by alleged payment to higher commission to its sister concern, sister concern was also paid tax at higher rate, the disallowance of excess commission to sister concern was not justified. The Id. AR of the assessee vehemently submitted that there is no allegation of revenue that there is any evasion of payment of tax.

11. On the other hand, the Id. DR for the revenue supported the order of lower authorities. The Id. DR further submits that the assessee has paid the interest to its sister concern at unreasonable rate. The Id. CIT(A) after considering the submission of the assessee has reasonably granted relief to the assessee. The assessee is not entitled for any further relief.

12. We have considered the submission of both the parties and have gone through the orders of authorities below. We have further noted that in case of assessee's sister concern in Puspanjali Realtors Pvt. Ltd (supra), the similar disallowance was made for making payment of interest at similar rate of interest, however, on appeal before the Id. CIT(A), the addition/disallowance was deleted. On further appeal before the Tribunal, the action of Id. CIT(A) was affirmed vide order dated 17.01.2018 (Puspanjali Realtors Pvt. Ltd. In ITA No. 483/Mum/2016). We have further noted that the assessee has availed unsecured loan from its sister concern. The Id. AR of the assessee has filed a copy of assessment order of M/s Ahuja Properties and Associates (PAN No. AAHFA4921B), wherein the interest income from assessee-company for Assessment Year 2011-12 was accepted in the assessment order passed under section 143(3) dated 20.03.2014.

13. Therefore, considering the facts of the present case and the submission of Id. AR of the assessee, we have noted that neither the Assessing Officer has brought on record that the interest paid by the assessee is on higher

side as compared to the market rate for getting the unsecured loan for such business as undertaken by assessee. Nor the Assessing Officer has recorded that assessee made the payment to its sister concern for evasion of tax. Moreover, we have noted that on similar rate of interest, the addition was deleted in assessee's group case in Puspanjali Realtors (supra) and on appeal before the ITAT, the order of Id. CIT(A) was confirmed. In view of the above discussion, and respectfully following the order of the coordinate bench in Puspanjali Realtors Pvt. Ltd. In ITA No. 483/Mum/2016, (supra) the ground of appeal raised by the assessee is allowed.

14. In the result, appeal of the assessee is allowed.

ITA No. 5161/Mum/2016 A.Y. 2012-13 by assessee

19. We have noted that the assessee has raised identical Ground of appeal as raised in Ground No. B in appeal for Assessment Year 2011-12, which we have allowed by following the order of Tribunal in assessee's group case in Puspanjali Realtors Pvt. Ltd. In ITA No. 483/Mum/2016 dated 17.01.2018. No variation of facts for the year under consideration is brought to our notice. Therefore, following the principle of consistency, this Ground of appeal is allowed with similar direction.

20. In the result the appeal of the assessee is allowed.

ITA No. 4987/Mum/2016 A.Y. 2012-13 by revenue

21. The Id. AR of the assessee submits that the tax effect involved in the revenue's appeal is less than the monetary limit is less than Rs. 50,00,000/- as prescribed by CBDT Circular No.17/2019 dated 8th August 2019. Therefore, the present appeal is squarely covered by the CBDT Circular No. 17/2019 dated 8th August 2019. On the other hand the Id. DR for the revenue submits that in case at the later stage it is discovered that the tax effect is more than monetary limit the revenue be given liberty to get the appeal revive. Considering the facts that the tax effect in the present appeal is less than the monetary limit of Rs. 50 lakhs as prescribed by CBDT, hence the appeal filed by the revenue is dismissed.

22. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 01/11/2019.

Sd/-
PRAMOD KUMAR
VICE-PRESIDENT

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 01.11.2019

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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai