

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No. 3193/Del/2016
Assessment Year: 2010-11**

**ACIT, Circle 18(2),
New Delhi.**

(Appellant)

**vs. M/s. Nilgiri Infrastructure
Development Ltd., F-60,
Malhotra Building, 2nd Floor,
Connaught Place, New Delhi.
PAN: AACCN 3012E**

(Respondent)

**Appellant by : Ms. Nidhi Srivastava, CIT/DR
Department by: Sh. Gautam Jain, Advocate**

**Date of Hearing: 14/01/2020
Date of Pronouncement: 20/01/2020**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 18/03/2016 in appeal No. 359/2015-16 passed by the learned Commissioner of Income Tax (Appeals)-20, New Delhi ("Ld. CIT(A)"), for the assessment year 2010-11, in the case of M/s M/s. Nilgiri Infrastructure Development Ltd., ("the assessee"), Revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of property developers. For the assessment year 2010-11, it had filed its return of income on 22/9/2010 declaring a total loss of Rs.14,02,55,795/-. During the course of assessment proceedings, learned Assessing Officer noticed from the Profit and Loss Account (P&L Account)

that the assessee earned an income of Rs. 328/-and incurred administrative and other expenses to the tune of Rs.1,15,986/-and interest and finance charges to the tune of Rs.14,01,36,237/-. Learned Assessing Officer further noticed that the assessee invested a sum of Rs.50 crores in the shares of M/s Park View Promoters Private Limited besides advancing another Rs. 50 crores for land.

3. According to the learned Assessing Officer, there were no business activities undertaken by the assessee except the above investment and advancing of Rs. 50 crores each on the above activities, there was no need for the assessee to incur interest expense to the tune of Rs.14,01,36,183/-and therefore, he disallowed the same, thereby computing the total loss of the assessee at Rs.1,19,612/-by order dated 14/3/2013 under section 143(3) of the Income Tax Act, 1961 (for short "the Act").

4. Aggrieved by such an addition, assessee preferred appeal before the Ld. CIT(A) and contended that the business model of the assessee is not properly appreciated by the learned Assessing Officer; that the assessee being a real estate developer, there was necessity for the assessee to acquire an early breakthrough as well as good holding of the market and therefore it was necessary for the assessee to acquire substantial stake in the companies which are in the same line of business as that of the assessee and to capture the market; that the investment of Rs. 50 crores in M/s Park View Promoters Private Limited was pursuant to such an effort only; and that the advance of Rs. 50 crores for the land was also for the same purpose. Assessee further submitted that the finding of

the learned Assessing Officer that the interest-bearing funds were diverted for non-business purposes was without any basis.

5. Ld. CIT(A) considered the contentions of the assessee. Ld. CIT(A), as a matter of fact, found that the assessee had raised Rs. 171 crores of interest free funds from the sister concerns and had paid only a sum of Rs.12,24,35,074/-towards interest to M/s India Bulls Real Estate Ltd which is also a sister concern and engaged in the same line of business, and deducted TDS of Rs.1,40,38,591/-while paying the interest. Ld. CIT(A) further found that M/s India Bulls Real Estate Ltd is not a loss making company and had paid taxes on the interest income earned from the assessee at the maximum marginal rate during the year under consideration.

6. CIT(A) further found that M/s Parkview Promoters Ltd is a company in the same line of business as that of the assessee and the investment of Rs. 50 crores by the assessee company was in furtherance of the business objectives and come under commercial expediency. Ld. CIT(A) placed reliance on the decision of the Hon'ble Kolkata High Court in the case of CIT vs. Rajeeva Lochan Kanoria 208 ITR 616 (Cal) wherein the Hon'ble High Court held that though ordinarily capital expenditure may not be allowed as deduction under section 37 because the section specifically bars any deduction of expenditure of capital nature, section 37 is differently worded and there is no bar in section 36 (1)(iii) of the Act to allow the interest paid in respect of capital borrowed which has been utilised for purchase of capital asset. Ld. CIT(A) further referred to the decision of the Hon'ble Apex Court in the case of SA Builders Limited vs. CIT and reached a conclusion that the factual matrix of the case does not

justify the action of the Assessing Officer in disallowing the interest expenditure to the tune of Rs.14,01,36,183/-under section 37 and 36 (1)(iii) of the Act. Ld. CIT(A) accordingly by way of impugned order deleted this addition.

7. Revenue is therefore, aggrieved by the impugned order and filed this appeal stating that since section 37 (1) of the Act stipulates that an expenditure allowable under section 36 (1)(iii) of the Act could not be allowed under section 37(1) of the Act and where the assessee failed to furnish any details or supporting evidence of the transaction relating to the utilisation of the interest-bearing funds to the tune of Rs. 50 crores for purchase of land, there was no justification for the Ld. CIT(A) to delete the disallowance of interest expense. So also, it is further contended that there was no business necessity or purpose for the assessee to purchase shares of another company to the tune of Rs. 50 crores so as to take shelter of section 36 (1)(iii) of the Act. Ld. DR further submitted that in the absence of any concrete proof to support the version of the assessee that there was business necessity or expediency for the assessee to invest hundred crores in the shares or towards advance for land, the addition made by the learned Assessing Officer is justifiable.

8. Per contra, it is the submission of the Ld. AR that the assessee provided all sorts of information sought by the learned Assessing Officer and there is no question of non-furnishing of any evidence or material, whatsoever, as required by the learned Assessing Officer. He further submitted that investment of Rs. 50 crores in the shares of M/s Parkview Promoters Private Limited was a business expediency. So also the payment of another Rs. 50 crores for land. He submitted that the

Memorandum and articles of Association of the assessee support the activities of the assessee both in the investment and also paying advance of Rs. 50 crores for acquisition of land. He submitted that the findings of the Ld. CIT(A) that the assessee had interest free funds to the tune of Rs. 171 crores and the investment in shares and payment of advance to the tune of Rs. 100 crores was met out of such funds and therefore there is no point in saying that interest-bearing funds were diverted and therefore the interest is to be disallowed. Lastly he submitted that the assessee has been in the business as supported by the activities of the assessee noticed by the learned Assessing Officer and therefore learned Assessing Officer cannot disallow the interest on the ground of no business activity during the year. Earning of income is not the sole criteria of being in business, he submits.

9. We have gone through the record in the light of the submissions made on either side. Revenue cannot controvert the observations of the Ld. CIT(A) that the assessee raised interest free funds to the tune of Rs. 171 crores from sister concerns, which is sufficient for purchase of shares of Mrs Parkview Promoters Private Limited and payment of advance of Rs. 50 crores. Further on a perusal of the Memorandum of Association of the assessee we find that the main objects to be pursued by the assessee include to be interested in or take or otherwise acquire, hold, sell or otherwise dispose of shares, stock, debentures and such other securities of all types and shares of any such company, subsidiary or otherwise for all or any of the objects mentioned in the Memorandum of Association.

10. From the assessment order dated 18/11/2011 for the assessment year 2009-10, we noticed that the Revenue admits that the assessee has

been engaged in the business of property developers. In such an event we fail to understand how the payment of advance of Rs. 50 crores for land is not for business purpose. So also, it is not the case of the Revenue that M/s Parkview Promoters Private Limited is not in the same line of business as that of the assessee. We therefore do not find anything wrong in the finding of the Ld. CIT(A) that the investment of Rs. 50 crores by the assessee in the shares of M/s Parkview Promoters Ltd was for furtherance of the business objectives of the assessee and, under commercial expediency. We are in agreement with the Ld. AR that earning income is not the sole criteria to reach a conclusion as to the conduct of business.

11. For the reasons set forth in the preceding paragraphs, we are of the considered opinion that the assessee had sufficient interest free funds to invest in the activities of investment in M/s Parkview Promoters Private Limited and to pay advance for land and it does not amount to diversion of interest-bearing funds. The activities of the assessee show the commercial expediency. Further there is no cessation of business which was admitted to have been in current and the immediately preceding assessment year as revealed by the assessment order and merely because the income was Rs. 328 only in this assessment year, it cannot be said that there was no business during the year. Further the assessment order reveals that in response to the statutory notices, the authorised representatives of the assessee appeared before the Assessing Officer and filed various details/documents as called for from time to time and such details were examined on test-check basis and placed on record wherever felt necessary. It rules out the allegation that

the assessee failed to furnish any information required by the Assessing Officer to support their contentions as to the interest free funds, interest-bearing funds and there are activities.

12. In the circumstances, we are inclined to agree with the findings of the Ld. CIT(A) and, consequently, find the grounds of appeal as devoid of merits. Appeal of the Revenue is consequently liable to be dismissed. We order so.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 20th January, 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 20/01/2020.
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