

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1082 & 1083/Bang/2019
Assessment years : 2013 – 14 & 2014 – 15

DCIT Central Circle 2 (2), Bengaluru	Vs.	M/s Cornerstone Property Investment (P) Ltd., No. 583, 9 th Main Road, Off CMH Road, Indiranagar Road, Bengaluru - 560038 PAN : AACCC8744Q
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Sreenivasan, Advocate
Revenue by	:	Ms. Neera Malhotra. CIT DR
Date of hearing	:	30.07.2020
Date of Pronouncement	:	14.08.2020

ORDER

PER ARUN KUMAR GARODIA, A. M.:

Both these appeals are filed by the revenue and these are directed against two separate orders of learned CIT (A) – 2, Bengaluru both dated 31.01.2019. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the revenue in both years are identical and the same read as under:-

ITA No.1082/Bang/2019

1. *Whether in facts and in law, the CIT(A) was justified in holding that interest expenditure should be allowed even in the back ground that assessee had not offered any income from the project.*
2. *Whether on facts and in law, the CIT(A) was justified in holding that interest expenditure should be allowed by allowing a fresh plea not raised before AO, thereby, violating Rule 46A.*
3. *Whether on facts and in law, the CIT(A) was right in deleting the disallowance u/s.14A even in the back ground that AO had followed due procedure as per law.*

ITA No.1083/Bang/2019

1. *Whether in facts and in law, the CIT(A) was justified in holding that interest expenditure should be allowed even in the back ground that assessee had not offered any income from the project.*
 2. *Whether on facts and in law, the CIT(A) was justified in holding that *. interest expenditure should be allowed by allowing a fresh plea not raised before AO, thereby, violating Rule 46A.*
 3. *Whether on facts and in law, the CIT(A) was right in deleting the disallowance u/s.14A even in the back ground that AO had followed due procedure as per law.*
3. Regarding the deletion of the interest by CIT (A), learned DR of the revenue supported the assessment order and in this regard, she also submitted that in Para 4.7 of his order, learned CIT (A) has noted about two judgments of Hon'ble apex court rendered in the case of India Cements Ltd. vs. CIT as reported in 60 ITR 52 and in the case of Jeewanlal (1929) Ltd. vs. CIT as reported in 74 ITR 753 and also noted about a judgment of Hon'ble Rajasthan High Court rendered in the case of CIT Vs. Secure Meters Ltd. Ltd. as reported in 175 Taxman 567 and deleted the disallowance of interest made by the AO by following these three judgments but this was her argument that in

the facts of the present case, these judgments are not applicable and therefore, the order of CIT (A) on this issue should be reversed and that of the AO should be restored. Regarding the next issue i.e. deletion of the disallowance made by the AO under section 14A, she supported the assessment order.

4. As against this, learned AR of the assessee supported the order of CIT (A) on both issues. He also drawn our attention to various pages of the paper book i. e. pages 50 to 54, 69 and 94 to 107 etc. and pointed out that all details and evidences were submitted before the AO also and nothing new was submitted before CIT (A) and therefore, there is no violation of Rule 46A as alleged by the revenue in Ground No. 2 in both years. He also submitted that in addition to various judgments followed by CIT (A) which are squarely applicable in the facts of the present case, as per the tribunal order rendered in the case of DLF Limited vs. Addl. CIT as reported in TS 5387 ITAT 2016 (Delhi) copy available on pages 1 to 9 of the Compendium of Case laws filed by the assessee also, the issue involved in the present case is squarely covered in favour of the assessee. He pointed out that as per Para 10 of the assessment order for A. Y. 2013 – 14, the AO has stated that there is no dispute on the fact that the lands are held as inventory by the assessee. He further pointed out that in Para 14 of the same assessment order also, the AO has observed that the assessee utilised the proceeds from issue of debentures for lands and for making advances for purchase of lands and repayment of loans borrowed earlier. He also pointed out that in the same para of the assessment order, the AO has observed this also that in the earlier year also, the borrowed loans were utilised for purchase of lands and has given a finding that interest expenditure of Rs.16,39,35,373/- being interest on ICDs, interest on NCDs and other ancillary borrowings are directly attributable to the purchase of lands. He submitted that therefore, there is no dispute about user of the

borrowed funds for which the entire interest expenditure Rs. 16,39,35,373/- was incurred. He submitted that as per this tribunal order, this entire interest expenditure Rs. 16,39,35,373/- is allowable but the assessee has claimed only a part of it i.e. only Rs. 6,81,01,384/- which was disallowed by the AO and learned CIT (A) has only deleted the disallowance made by the AO and as per this tribunal order and various judgments followed by CIT (A), the order of CIT (A) has no infirmity and it should be confirmed. Regarding the second issue i.e. deletion of the disallowance made by the AO u/s 14A, he supported the order of CIT (A). He pointed out that in Para 5.12 of his order, learned CIT (A) has noted that it is logical that unless there is exempt income, section 14A should not trigger and he noted about the decision of the special bench of the tribunal rendered in the case of Chemiinvest Ltd. Vs. ITO, 121 ITD 318 as per which, the issue was decided against the assessee but he followed various judgments of various High Courts noted by him in the same para and deleted the disallowance by following those judgments of various High Courts. He submitted that the order of the special bench of the tribunal is later reversed by Hon'ble Delhi High Court in the case of Chemiinvest Ltd. Vs. ITO as reported in 378 ITR 33. Both sides agreed that in the next year i.e. A. Y. 2014 – 15, the facts and the issues in dispute are same and in that year, it can be decided on similar line.

5. We have considered the rival submissions. We find that even as per the AO, the borrowed funds were used for acquisition of land which is inventory in the present case. The AO has referred to AS – 2 and AS – 16 issued by The Institute of Chartered Accountants of India (ICAI) and concluded that interest cost is not allowable and it should be added with cost of inventory. On the factual aspect that borrowed funds were used for inventory, there is no

dispute. In course of hearing, it was submitted by the learned AR of the assessee that as per the tribunal order rendered in the case of DLF Limited vs. Addl. CIT (Supra), entire amount of interest expenditure is allowable but the assessee has added a part of interest cost to inventory and claimed only a part of interest expenditure which is disallowed by the AO but allowed by the learned CIT (A). He submitted that the order of CIT (A) should be confirmed in view of this tribunal order rendered in the case of DLF Limited vs. Addl. CIT (Supra). He also submitted that as per the details available on page 176 of the paper book, out of total interest cost of Rs. 16,39,35,373/-, an amount of Rs. 490,80,176/- was incurred on account of ancillary borrowing cost being amount paid to Karvy as brokerage for arranging the NCDs and expenses like processing charges, Registration and Stamp Duty Charges and other charges and as per the judgment of Hon'ble apex court rendered in the case of India Cement Limited, 60 ITR 52, it was held that such expenses are revenue expenses incurred for business purposes and allowable irrespective of the purpose of borrowings and on this aspect, we hold that such expenses are allowable by respectfully following this judgment of Hon'ble Apex Court. The remaining amount of interest expenditure on ICDs and NCDs etc., we find that such expenditure is interest on borrowing for acquiring or carrying the inventory and therefore, Para 49 of the tribunal order rendered in the case of DLF Ltd. (Supra) available on pages 7 to 9 of Compendium of Case laws

is relevant and it is reproduced herein below for ready reference. This para reads as under:-

“49. We have carefully considered the rival contentions. It appears that the AO has made this addition mainly because of note mentioned by assessee in its accounting policies with respect to borrowing costs according to Accounting Standard 16 issued by ICAI. We have perused notes attached to financial statements and we are of opinion that these notes have arisen in the financial statement of the assessee because of the issue of applicability of Accounting Standard 16 issued by the ICAI. According to Accounting Standard 1 i.e. disclosure of accounting policies, each and every company is required to disclose the accounting policy with respect to various significant income, expenditure and assets and liabilities etc. applicable to it. Borrowing cost is also one of them. ICAI has issued Accounting Standard 16 Accounting for Borrowing Cost wherein it is provided that in case of interest expenditure incurred by the company, it is required to be capitalized if the borrowing is related to the qualifying assets. In this case the inventory is a qualifying asset as it is held for more than 12 months and therefore interest attributable to it is required to be capitalised in the books of accounts as per AS -16. Therefore we do not agree with the arguments of AR that AS -16 does not apply to inventory. However, those are the provisions which are applicable for the maintenance of the accounts of the company and interest is allowable according to provisions of section 36(1) (iii) of the act. Further according to us, the provisions of Accounting Standards and provisions of the Act are two different set of regulations and while deciding this issue, it is well settled judicial precedent that if there is a contradiction between the two, the provisions of the Act shall prevail. Provisions of section 36(1)(iii) provides that the amount of interest paid in respect of capital borrowed for the purposes of the business or profession deduction is required to be allowed. Proviso inserted w.e.f. 01.04.2004 is the only restriction if condition laid down u/s 36(1) (iii) are satisfied by the assessee. The proviso says that any amount of the interest paid in respect of capital borrowed for acquisition of an asset whether capitalized in books of accounts or not for any period beginning from the date on which the capital asset was borrowed for acquisition of the asset till the date on which such asset was put to use shall not be allowed as deduction. The deduction is to be disallowed even if the interest is capitalized in the books of accounts or not. Hon'ble Supreme Court in the case of Core Healthcare [298 ITR 1941 has held that provisions of section 36(1)(iii) is a code in itself. In the present case,

the interest paid by the assessee is not for the purpose of acquisition of any capital asset but for its inventory. We do not find any restriction in provisions contained u/s 36(1)(iii) which provides that the interest can be disallowed if incurred for the purpose of inventory as provided under Accounting Standard 16. Apparently, in this case, there is no allegation that interest is not paid on capital borrowed for the purpose of the business. Hon'ble Mumbai High Court in the case of CIT vs. Lokhandwala Constructions Industries Ltd. [131 taxman 810] has held as under :-

"4. From the facts found by the Tribunal on record, it is clear that assessee undertook two-fold activities. It bought and sold flats. Secondly, the assessee was also engaged in the business of construction of buildings. The profits from both the activities were assessed under section 28 of the Income-tax Act. In this case, we are concerned with the second activity (hereinafter referred to, for the sake of brevity, as "Kandivali Project"). According to the Commissioner, loan was raised for securing land/development rights from the Mandal. That, the loan was utilised for purchasing the development rights, which, according to the Commissioner, constituted a capital asset. According to the Commissioner, since the loan was raised for securing capital asset, the interest incurred thereon constituted part of capital expenditure. This finding of the Commissioner was erroneous. In the case of India Cements Ltd. v. CIT [1966] 60 ITR 52, it was held by the Supreme Court that in cases where the act of borrowing was incidental to carrying on of business, the loan obtained was not an asset. That, for the purposes of deciding the claim of deduction under section 10(2)

(iii) of the Income-tax Act, 1922 [section 36(1)(iii) of the present Income-tax Act], it was irrelevant to consider the purpose for which the loan was obtained. In the present case, the assessee was a builder. In the present case, the assessee had undertaken the Project of construction of flats under the Kandivali Project. Therefore, the loan was for obtaining stock-in-trade. That, the Kandivali Project constituted the stock-in-trade of the assessee. That, the Project did not constitute a fixed asset of the assessee. In this case, we are concerned with deduction under section 36(1)(iii). Since the assessee had received loan for obtaining stock-in-trade (Kandivali Project), the assessee was entitled to deduction under section 36(1)(iii) of the Act. That, while adjudicating the claim for deduction under section 36(1)(iii) of the Act, the nature of the expense - whether the expense was on capital account or revenue account - was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That, the

utilization of the capital was irrelevant for the purposes of adjudicating the claim for deduction under section 36(1)(iii) of the Act - Calico Dyeing & Printing Works v. CIT [1958] 34 ITR 265 (Born.). In that judgment, it has been laid down that where an assessee claims deduction of interest paid on capital borrowed, all that the assessee had to show was that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether the capital was borrowed in order to acquire a revenue asset or a capital asset. The said judgment of the Bombay High Court applies to the facts of this case."

Further, in the following decisions of various coordinate Benches, the deduction of interest has been allowed u/s 36(1)(iii) even where the assessee has followed the projection completion method :-

(i) ACIT vs. Tata Housing Development Company Ltd. - 45 SOT 9 (Born.);

(ii) DCIT vs. Thakar Developers - 115 TTJ 841 (Pune);

(iii) DCIT vs. K. Raheja Pvt. Ltd. - 2006-TIOL-220-ITAT-MUM;

(iv) K. Raheja Development Corporation vs. DCIT in ITA No.240/Bang./97 dated 22.09.1997 - In this case, reference application filed by the Department has also been rejected by the Hon'ble Karnataka High Court vide its order dated 08.11.2000 in Civil Petition No.832/2000 (IT).

Before us, Id. DR could not cite any decision against the claim of the assessee, therefore, respectfully following the decision of Hon'ble Bombay High Court and as well as various coordinate Benches, cited above, we do not concur with the view of CIT (A) on disallowance of interest of Rs. 24.75 crores u/s 36(1) (iii) of the Act. The alternative argument of the assessee regarding adoption of 'any artificial formula for the purpose of computing interest disallowance. Ld. CIT (A) has presumed proportion of utilisation of funds in absence of the nexus holding that assessee has used mixed funds. Honourable Bombay High court in case of CIT V Reliance Utilities & Power limited 313 ITR 340 has held that

"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the

company, if the interest-free funds were sufficient to meet the investments."

Therefore we are of the view that presumption is to be assumed in favour of the assessee and not against assessee. Hence, we reject the formulae adopted by CIT (A) of working out proportionate disallowance by adopting artificial formulae. Therefore respectfully following decisions of Honourable Bombay High court in CIT vs. Lokhandwala Constructions Industries Ltd. [131 taxman 810] and CIT V Reliance Utilities & Power limited [313 ITR 340]. We reverse the order of the CIT (A) confirming the disallowance of expenditure of Rs. 27.40 crores and direct the AO to allow this interest expenditure u/s 36(1) (iii) of the Act."

6. From the above para of this tribunal order, it comes out that in that case, the tribunal has duly considered AS – 16 and held that provisions of Accounting Standards and Provisions of Act are two different set of regulations and while deciding this issue, it is well settled judicial precedent that is if there is a contradiction between the two, the provisions of Act shall prevail. In the present case, the AO has also referred to AS 2 in addition to AS 16 and in our considered opinion, when the provisions of the Act are in contradiction of Accounting Standard whether AS 16 or AS 2 or any other AS, the provisions of Act will apply and not the provisions of AS. The tribunal considered in that case the provisions of section 36 (1) (iii) and its proviso and held that this proviso is the only restriction if conditions of section 36 (1) (iii) are satisfied and the proviso is applicable only when the borrowing is made in respect of acquisition of a capital asset for the period up to user of the asset and inventory is not a capital asset and therefore, interest on borrowing used

for inventory is allowable u/s 36 (1) (iii). Before us, the learned DR of the revenue has argued that the judgments followed by CIT (A) are not applicable but in reply to the argument of the learned AR of the assessee as per which, he placed reliance on this tribunal order rendered in the case of DLF Limited vs. ACIT (Supra), she could not point out any judgment of any Hon'ble High Court or Hon'ble apex court where a contrary view is taken. Hence, we respectfully follow this tribunal order and decline to interfere in the order of CIT (A) on this issue in both years because facts are admittedly similar in both years.

7. Now we decide the second issue i.e. the deletion of disallowance u/s 14A. We find that on this issue, this is the argument of the learned AR of the assessee that there is no exempt income in these two years and this is the decision of the learned CIT (A) that in the absence of exempt income, section 14A is not triggered. We find that the P & L Account for the year ended as on 31.03.2013 is available on page 39 of the paper book and as per the same, other income is Rs. 55,31,681/- and as per Note No. 18 on page 50 of the paper book, this income is on account of interest on fixed deposit and therefore, it is seen that there is no exempt income. There is no dispute that facts are not different in A. Y. 2014 – 15. As per the judgment of Hon'ble Delhi High Court rendered in the case of Chemiinvest Limited (Supra), section 14A cannot be invoked in the facts of the present case. Hence,

respectfully following this judgment, we decline to interfere in the order of CIT (A) on this issue also in both years.

8. In the result, both the appeals of the revenue are dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 14th August, 2020.

/NS/*

Copy to:

- | | | |
|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.