

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
(THROUGH VIRTUAL COURT)**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA No. 6244/MUM/2018 (A.Y: 2010-11)

M/s. N.G. GROUP Plot No. 8, Sector 11, Opp. Juinagar Railway Station Sanpada, Navi Mumbai - 400 709 PAN: AAFFN9159E	v.	Income Tax Officer Ward-28(2)(3) [Erstwhile Ward-22(3)(3)] 3 rd Floor, Room No. 317, Tower No. 6, Vashi Railway Station Complex Vashi, Navi Mumbai - 400 705
(Appellant)		(Respondent)

***Assessee by* : Shri Rohan Ochani**
***Department by* : Mrs. Kavita P. Kaushik**

***Date of Hearing* : 19.10.2020**
***Date of Pronouncement* : 09.11.2020**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 26, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 04.09.2018 for the A.Y: 2010-11.

2. Assessee has raised following grounds in its appeal: -

"1. BECAUSE, Ld. CIT(A) has erred in law and on facts in upholding the unsecured loans of Rs. 48,94,662/- as unexplained cash credit u/s. 68 of the Act by ignoring the plethora of evidence placed on record.

2. BECAUSE, Ld. CIT(A) has erred in law and on facts in upholding the disallowance of interest expenses amounting to Rs. 3,71,809/- paid on unsecured loans of Rs.48,94,662/-.

3. BECAUSE, Ld. CIT(A) has erred in law and on facts in treating interest from partners amounting to Rs.52,22,821/- as "income from other sources" instead of income earned in the course of construction of project Ellora Olearies."

3. Ground Nos. 1 and 2 relates to addition of ₹.48,94,662/- made u/s.68 of the Act on account of unexplained cash credits and consequential disallowance of interest expenses of ₹.3,71,809/- on unsecured loans.

4. The Assessing Officer while completing the assessment noticed that assessee received unsecured loans of ₹.88,55,181/- from various parties during the assessment year under consideration. The assessee was required to furnish details of such unsecured loans received during the year. Assessee furnished certain details in respect of these unsecured creditors. The Assessing Officer noticed that assessee could not furnish any details in respect of 11 parties from whom unsecured loans of ₹.33,55,628/- was received by the assessee and in respect of 15 parties

from whom the assessee received unsecured loans of ₹.54,99,553/- assessee furnished only confirmations. Since the assessee could not furnish bank statements and other details of unsecured loans he concluded that the assessee has not discharged its onus by establishing identity, genuineness and creditworthiness of the creditors. Thus, entire unsecured loans of ₹.88,55,181/- were treated as unexplained cash credits u/s. 68 of the Act. Assessee carried the matter before the Ld.CIT(A) and the Ld.CIT(A) after considering the evidences furnished before him deleted the addition made in respect of 11 creditors and sustained the addition made towards unsecured loans from the following creditors: -

Sl.No.	Name of the Creditor
1.	Dayaram Jayarom Bhanushali HUF
2.	Devi Bhoja Patel
3.	Hansa Umed Savia
4.	Hansraj D. Bhanushali
5.	Hasmukh K. Kapasi
6.	Hirabai Virji Bhanushali
7.	Hirji Ravji Patel
8.	Mitesh Navin Mage HUF
9.	Sunil Y. Landge
10.	Vijay M. Bhanushali
11.	Atmaram R. Landge
12.	BecharaGokar Patel
13.	Ketan Patel
14.	Mohan Murji Bhanushali
15.	Nilesh Patel
16.	Ratanshi V. Dedhia

5. Ld. Counsel for the assessee referring to Page Nos. 71 to 128 of the Paper Book submitted that assessee furnished additional evidences before the Tribunal giving all the necessary details in respect of the above 16 creditors as the information could not be obtained in the course of assessment proceedings or before appellate proceedings and therefore since all these information were collected subsequently and are going to the root of the matter the additional evidences furnished may be admitted for adjudication.

6. Learned Counsel for the assessee submitted that these additional evidences furnished are in the form of PAN, Addresses, bank statement evidencing cheque receipt details, confirmations of loan creditors, Income Tax Returns of the creditors, Form - 15G for non-deduction of TDS from creditors, loan repayment details along with bank statement of the assessee highlighting relevant entries. Therefore, Ld. Counsel for the assessee submitted that all these details will go to establish the identity, genuineness and creditworthiness of the creditors and all these details could not be collected in the course of the assessment or in the appellate stage for various reasons as the creditors were not cooperating. Therefore, in the interest of justice the said additional evidences be considered while disposing of the appeal.

7. On the other hand, Ld. DR vehemently opposed for admission of additional evidences at this stage.

8. On hearing both the parties and perusing the additional evidences furnished by the assessee, we are of the view that all these additional evidences furnished by the assessee in respect of the 16 creditors would go to the root of the matter of the addition made in respect of these unsecured loan creditors. Thus, in the interest of justice we admit these additional evidences and restore them to the file of the Assessing Officer for denovo adjudication of the addition made in respect of these creditors as these evidences were not produced before the Assessing Officer. Thus, this issue of addition towards unsecured loans and the disallowance of consequential interest thereon is restored to the file of the Assessing Officer for deciding afresh in accordance with law after providing adequate opportunity of being heard to the assessee. Needless to say that the assessee shall cooperate with the proceedings before the Assessing Officer by filing all these additional evidences before the Assessing Officer. Thus, Ground No. 1 and 2 are allowed for statistical purpose.

9. Coming to Ground No. 3 of grounds of appeal which relates to interest received from partners amounting to ₹.52,22,821/- which is

treated as "income from other sources" instead of income earned in the course of the "business" of the assessee.

10. Briefly stated the facts are that, the Assessing Officer while completing the assessment noticed that assessee has received ₹.52,22,821/- towards interest from its partners and credited to its Profit and Loss Account and at the same time it was reduced from the closing work in progress. The Assessing Officer was of the view that the interest received from partners is taxable under the head "income from other sources". The Assessing Officer also observed that since the assessee following the project completion method which effectively means that the business of the assessee is in pre-production stage for the current year, no expenditure that may have been incurred by it during the year is connected to the earning of interest. Referring to the decision of the Hon'ble Supreme Court in the case of M/s. Tuticorin Alkali Chemicals and Fertilizers Limited [227 ITR 172], Assessing Officer observed that an amount of ₹.52,27,162/- received by the assessee on account of interest charged to partners is an independent source not connected with construction activities. Accordingly, he brought to tax the said income under the head "income from other sources". Before the Ld.CIT(A) the assessee contended that interest received from partners goes to reduce

capital expenses during pre-construction period and the business expenses are to be set off against the said business income. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT v. Bokaro Steel Ltd., [236 ITR 315]. However, the contentions of the assessee were rejected by the Ld.CIT(A) and sustained the order of the Assessing Officer in bringing to tax such receipts under the head "income from other sources".

11. Before us, Ld. Counsel for the assessee reiterated the submissions made before lower authorities. It is further submitted that, assessee whenever interest is paid the same was added to the capital work in progress and whenever the interest is received from the partners the same is treated as income from business and reduced from capital work in progress. Referring to Page No. 157 of the Paper Book Ld. Counsel for the assessee submits that this treatment of the assessee has been accepted by the revenue in the immediately preceding assessment year i.e. A.Y: 2009-10 while completing the assessment u/s. 143(3) of the Act. Similarly, Ld. Counsel for the assessee referring to Page No. 212 of the Paper Book submitted that this position was accepted by the Ld.CIT(A) for the immediately succeeding assessment year i.e. A.Y. 2011-12 and there is no appeal by the revenue. Therefore, Ld. Counsel for the

assessee submits that following the principle of consistency claim of the assessee should be accepted.

12. Ld. DR vehemently supported the orders of the authorities below.

13. We have heard the rival submissions, perused the orders of the authorities below. We have also perused the Assessment Order for the A.Y: 2009-10 and also the Ld.CIT(A) order for the A.Y. 2011-12 the treatment followed by the assessee has been accepted by the department while completing the assessment u/s. 143(3) of the Act for the A.Y. 2009-10 and also for the A.Y. 2011-12. We observe from the order of the Ld.CIT(A) for the A.Y. 2011-12 that the treatment of the assessee in treating the interest income from partners as "business income" and reducing the same from closing work in progress has been accepted. The relevant submissions of the assessee and the observations of the Ld.CIT(A) are as under: -

"Appellant's Submission:

(i) The Appellant entered into a Memorandum of Understanding on 30/12/2007 with Unitech Group for the assignment of development rights in respect of Plot No. 807 and Plot NO. 786 situated at TTC Industrial Estate, Navi Mumbai. Accordingly, the Appellant has undertaken the construction activity on these plots and constricted part building on Plot No. 807 and incurred cost thereon.

(ii) A dispute arose between the Appellant and Unitech Group in relation to grant of development rights through the said MoU. A Conciliator was appointed to resolve the dispute and the; differences between the Appellant and Unitech Group under the Arbitration and Conciliation Act, 1996. Accordingly, a deed; of Conciliation was executed to evidence the terms of settlement wherein it was decided that the Appellant shall surrender the development rights acquired on plot no 807 along with the partly constructed building in favour of the land owners i.e Unitech group and shall acquire all the right title and interest of plot no 786 absolutely in its favour.

(lii) The Appellant has been maintaining separate books of accounts for these 2 projects. The Valuation of partly constructed building on plot no. 807 was arrived at Rs.6.60 crores and consideration for acquisition of plot no 786 was arrived at ₹.8.5 crores. Accordingly following effect was/given to the annual accounts for the year ended 31/03/2011:

Particulars	Plot No 807	Plot No 786	Total
Opening WIP as on 01/04/2010	8,93,13,797/-	91,17,823/-	9,84,31,620/-
Expense incurred during the year	67,93,368/-	57,70,617/-	1,25,63,985/-
Total cost incurred before conciliation	9,61,07,165/-	1,48,88,440/-	
Value arrived at as per conciliation deed	(6,60,00,000/-)	8,50,00,000/-	
Loss on 807	3,01,07,165/-		
WIP 786		9,98,88,440/-	
Less interest charged on partners' capital account		87,91,409/-	
Closing WIP 786		9,10,97,031/-	

(vi) The Appellant submits that the books of accounts of the Appellant contain the details of WIP for plot no.807 & plot no.786 separately. The two projects are completely disparate and there is no commonality between the two to justify the merging of their financials.

(vii) Thus the loss of Rs. 3,01,07,165/-incurred on plot no 807 should be allowed in the year in which it is accrued, i.e. the

impugned, assessment year instead of adding the same to the closing WIP of Plot no: 786 and deferring in to an indefinite future.

(viii) Even otherwise the stand of Id. AO is grossly contrary., If everything is to be adjusted .in WIP of Plot No.786, then income, of "Ellora Castle" should not have been taxed separately. As per the logic of Ld.AO even that profit of Ellora Castle should have been adjusted against the WIP of Plot no 786. Therefore, Ld AO's stand is illogical and contradictory.

(ix) The Appellant has charged interest on the partners capital account for an amount of Rs.87,91,409/- on account of amounts overdrawn by them. The said amount was credited to Profit & Loss account for the year .under appeal as income. The said interest income was reduced from the closing work-in-progress for plot no.736 as mentioned in chart above and thus closing work-in-progress of plot no.786 was arrived at Rs.9,10,97,029/-. Ld. AO inadvertently missed to take into account the interest amount while calculating the closing work-in-progress of plot no.786 (refer page-no.8 of the assessment order). No adverse finding is given in respect of the said interest amount. On the contrary Ld.AO, assessed the same as income for the year by not allowing the same to be reduced from WIP. Hence, the said amount should be allowed to be reduced from the closing work-in-progress of plot no.786.

(x) CC for Plot no. 807 was issued by MIDC vide letter dated 09/10/2010. CC for Plot no. 786 was issued by MIDC vide letter dated 21/11/2009.

DECISION:-

(i) On 31/12/2007, Appellant entered into an MOU with M/s.Unitech Group for development of plot no. 807 and Plot no. 786 respectively and undertook construction. Details of work in progress till 31/03/2011 filed before AO vide submission dated 18/11/2013.

(ii) When under construction dispute arose between parties, Settled through Conciliation deed dt. 21/02/2011 as per which:

- Appellant surrendered the development rights of Plot no. 807. Against cost of construction Rs.9,61,07,165/-. Appellant received Rs.6.60 Cr, resulting in a loss of Rs.3,01,07,165/- which was. duly reflected in profit and loss, account of BNC and accepted by the AO.

- Appellant acquired Plot no. 786 for Rs.8.50Cr. Along with expenses incurred during the year, closing WIP of Plot no.786 amounting, to Rs.9.10 Cr which was duly reflected in profit and loss account and balance sheet of Bhoomi Net City.

(iii) Appellant disposed of Plot no. 807 and retained Plot no.786. Both are geographically separate, with independent sanctioned plans and commencement certificate.

(iv) In remand report, AO has declined to make any comments.

(v) Loss of surrender of rights in Plot no. 807 cannot be treated as part of WIP of Plot no. 786.

(vi) If any assessee is carrying on different projects, and separate books of accounts are maintained for each, the WIPs of these projects cannot be merged since their dates of completion and taxable income would arise at different point of time. In this case also, the financials cannot be merged simply because, both projects are being settled, though a common Conciliation Deed.

In view of above facts of the case the addition of Rs.3,88,98,576/- and reduction of interest income of ₹.87,91,409/- from WIP is deleted and the ground of appeal is "Allowed".

14. Therefore, the department having accepted the treatment of the assessee in reducing interest from partners from work-in-progress in the immediately preceding assessment year and also in the immediately succeeding assessment year, we see no reason to reject the very same treatment given by the assessee for the interest received from the partners for the current Assessment Year i.e. A.Y. 2010-11. Therefore, applying principle of consistency we direct the Assessing Officer to delete

the addition made under the head "income from other sources". Ground No. 3 of grounds of appeal is allowed.

15. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced on 09.11.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 09/11/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum