



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**in ITA No.239/CTK/2019**  
Assessment Year : 2010-2011

Shree Salasar Builders & Developers, Paras Plaza, Tinkonia Bagicha, Cuttack	Vs.	ITO, Ward 2(1), Cuttack
PAN/GIR No.ABJFS 5146 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Mohit Sheth, Adv  
Revenue by : ShriSubhendu Dutta, DR

**Date of Hearing : 28 /10/ 2020**  
**Date of Pronouncement : 25/11/2020**

**ORDER**

This is an appeal filed by the assessee against the order dated 28.6.2019 of the Id CIT(A), Cuttack for the assessment year 2010-2011.

2. This appeal was disposed of vide order dated 16.12.2019. However, vide order dated 5.10.2020 in M.A.No.02/CTK/2020, the appeal was recalled to adjudicate Ground No.2 of appeal, which was inadvertently not taken up for adjudication due to oversight in the order dated 16.12.2019. Ground No.2 of appeal reads as under:

“ 2. For that the Id AR should have allowed deduction of interest on borrowed capital as claimed and the disallowance of Rs.16,72,066/- is arbitrary and unlawful and otherwise bad in law.”

3. I have heard the rival submissions and perused the record of the case.

4. Ld A.R. of the assessee submitted that the assessee had made an advance amounting to Rs.1,13,60,000/- to Jain Builders Pvt Ltd., for the construction of the building. The said advance amount was utilised by the Jain Builders Pvt Ltd., in the subsequent year as the same was not utilised in the year under consideration. He submitted that the assessee has paid interest of Rs.30,99,784/- against the loan taken from the Bank. He submitted that the AO has allowed interest of Rs.14,45,718/-but the remaining amount of interest i.e. Rs.16,72,066/- has not been allowed to the assessee out of income from house property. Drawing my attention towards top para of last page of the first appellate order, Id A.R. submitted that the Id CIT(A) has noted that "*admittedly interest on borrowed capital for construction is to be allowed only when income from the relevant property is assessable under the head income from house property*". Ld counsel vehemently pointed out that in the same para, Id CIT(A) has also observed that "*the interest disallowed by the AO relates to an advance which has not been utilised and no construction has taken place and, therefore, admittedly the rental income is in no way relatable to the borrowed money on which the interest has been disallowed*". Ld counsel further drawn my attention towards copies

of the ledger account of Jain Builder Pvt Ltd., in the books of the assessee and copy of assessee's ledger in the books of Jain Builders Pvt Ltd., and submitted that the amount was given to Jain Builders Pvt Ltd., for construction which was partly utilised during present financial year 2009-2010 and remaining part was utilised during F.Y. 2010-2011, which is amply clear from the ledger relates to assessee contractee and Jain Builders Pvt Ltd.,'s contractor wherein, the bill raised by the contractor regarding construction of 13,400 sq.ft @ Rs.794.37 per sq.ft of Rs.1,06,44,625/- has been raised and settled out of said advance amount. Ld counsel also pointed out that this Bench in the order dated 16.12.2019 while deciding Ground No.1 of the assessee has concluded that the income from house property has to be assessed in the hands of the firm and not in the hands of the partners. Therefore, the interest paid by the assessee to the bank on the amount given by the firm for the purpose of construction to Jain Builders Pvt Ltd., has to be allowed to the assessee firm. Ld counsel lastly submitted that there is no and justified reason for the AO or for the Id CIT(A) for making such unsustainable and unreasonable disallowance.

5. Replying to above, Id DR strongly supported the assessment order as well as first appellate order and further submitted that when money was not utilised during relevant financial period, then the

interest cannot be allowed to the assessee and the AO was right in making disallowance in this regard.

6. On careful consideration of the rival submissions, admittedly and undisputedly, this bench in the order dated 16.12.2019(supra) while adjudicating Ground No.1 for A.Y. 2010-2011 has upheld the findings of the AO as well as Id CIT(A) by holding that the income on sale of house property has to be assessed in the hands of present assessee firm. Therefore, if any allowance regarding payment of interest has to be given that would obviously go to the credit of the assessee firm. Now the question remains as to whether the amount of advance given to contractor M/s. Jain builder Pvt Ltd., was utilised for the purpose of construction of building or not, it is not a case of the AO or Id CIT(A) that the amount given to Jain builders Pvt Ltd., was not utilised for the purpose of construction of house for the assessee. However, the main allegation of the authorities below is that the amount was not utilised for the purpose of construction of building during the relevant financial period. On this allegation, it is not in dispute that the amount of advance was not completely utilised by Jain Builders Pvt Ltd., during financial period 2009-10 pertaining to assessment year 2010-2011 but from the copies of ledgers in the books of the assessee contractee and contractor Jain Builder Pvt Ltd., it is clearly discernible that almost entire amount of

advance has been utilised for the purpose of construction of 13400 sq.ft and the amount of advance has been adjusted against bills raised by the contractor against the contractee assessee. In view of above noted facts and circumstances, I am unable to see any valid reason for making part disallowance of interest to the advance, which could not be utilised in relevant financial period and the same was used for the purpose of construction of the building during immediately subsequent financial period 2010-2011. Since the income on sale of property has been ordered to be taxed in the hands of the assessee by order dated 16.12.2019 (supra), therefore, part interest paid by the assessee towards loan taken from the bank for the construction of building has to be allowed to the assessee.

7. In view of foregoing discussion, I allow Ground No.2 of the assessee and, accordingly, interest borrowed on capital of Rs.16,72,066/- is deleted.

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

Order pronounced on 25/11/2020.

Sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 25 /11/2020

B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Shree Salasar Builders & Developers, Paras Plaza, Tinkonia Bagicha, Cuttack
2. The Respondent. ITO, Ward 2(1), Cuttack
3. The CIT(A) Cuttack
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**