

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 5332/MUM/2019  
Assessment Year: 2012-13**

Asst. Commissioner of Income Tax,  
CC-7(3),  
Room No. 655, Aayakar Bhavan,  
M.K. Road,  
Mumbai-400020.

**Vs.** M/s Cowtown Infotech Services  
Pvt. Ltd. (earlier known as to  
M/s Sumangla Developers &  
Farms Pvt. Ltd.)  
412, Vardhan Chambers, Cawasji  
Patel Street, Fort,  
Mumbai-400 001.

**PAN No. AALCS 9363 E  
Appellant**

**Respondent**

Revenue by : Mr. Gurbinder Singh, DR  
Assessee by : Mr. Niraj Sheth, AR

Date of Hearing : 12/08/2021  
Date of pronouncement : 08/11/2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The present appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-49, Mumbai [in short 'CIT(A)'] for the assessment year 2012-13 dated 29.05.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. The only ground raised by the Department in this appeal is regarding deductibility of interest of ₹8,66,65,278/- u/s 36(1)(iii) of the Act. The Revenue has raised following grounds of appeal :

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the disallowance of interest of ₹8,65,13,131/- in spite of the facts brought out in the assessment order that the assessee had utilized interest bearing borrowed funds for non-business purpose as the assessee did not indulge in business activity during the year and none of the expenses claimed by the assessee have been incurred for purchase of land or for the preliminary working for purchase of land.*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in granting relief to the extent of ₹8,65,13,131/- to the assessee in respect of the interest allowed u/s 36(1)(iii) of the IT Act.”*

3. Briefly stated facts are that the assessee is a private limited company engaged in the business of land development and construction of buildings. The assessee e-filed its return of income for the relevant AY 2012-13 on 30.09.2012, declaring business loss of ₹ 9,46,09,331/-. The case was selected for scrutiny under CASS. Notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, the AR of the assessee filed the relevant information.

4. During the assessment proceedings, the AO observed that the assessee paid ₹2,35,895,864/- and earned interest income of ₹14,92,30,136/-. He also observed that the assessee was not engaged in any business activity during this year. The assessee borrowed huge money and advanced the same to various parties. In the net result, they claimed the differential interest payment of ₹8,66,65,278/- as deduction. The AO observed that on the same set of facts the differential interest was disallowed in the preceding assessment year in AY 2011-12.

5. It is brought to our notice that in the previous assessment year 2011-12 the Ld. CIT(A) has sustained the disallowance and in the second appeal, the Co-

ordinate Bench has decided the issue in favour of the assessee. The same is reproduced below:

*“7. We find from the facts that the AO has not disputed the genuineness of payment of interest receipt, interest on the loan borrowed and amount advanced. The only issue raised by the lower authorities is that the assessee has not taken these advances for business purposes. We find that once the AO has allowed part of interest for particular year, the genuineness is established. Secondly, even the purpose is also established. For this, the assessee has produced the resolution passed by Board of Directors of assessee company dated 26.02.2010, which clearly states that these loans secured or unsecured are for the purpose of the business. The copy of resolution was placed on record. Hence, the purpose is established. Even otherwise, we are of the view that the AO did not even dispute the upfront payment interest in the part of the year and once this is the position, the interest cannot be disallowed. We allow the claim of the assessee and this issue is accordingly allowed.”*

6. We noticed from the order of Ld. CIT(A) for this assessment year that he followed the Co-ordinate Bench decision and allowed the appeal filed by the assessee. Since the issue is already considered by the Co-ordinate Bench and decided the issue in favour of the assessee, we do not see any reason to interfere with the order passed by the Ld. CIT(A).

7. Respectfully following the same, we dismiss the appeal filed by the Revenue.

**Order pronounced in the open Court on 08/11/2021.**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 08/11/2021  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

BY ORDER,

//True Copy//

(Dy./Assistant Registrar)  
**ITAT, Mumbai**