

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.5070/Mum/2019
(Assessment Year :2015-16)**

M/s. KGA Investments 601, Commerce House 140, Nagandas Master Road Fort, Mumbai-400023	Vs.	ITO 17(2)(1), Mumbai Aayakar Bhavan Churchgate, Mumbai – 400 020
PAN/GIR No.AAHFK9638F		
(Appellant)	..	(Respondent)

Assessee by	Shri Harish Motiwala
Revenue by	Shri Prasoon Kabra
Date of Hearing	23/11/2021
Date of Pronouncement	26/ 11/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5070/Mum/2019 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-28, Mumbai in appeal No.CIT(A)-28/ITBA-10289/ITO-17(2)(1)/2017-18 dated 11/06/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 17/11/2017 by the Id. Income Tax Officer, Ward 17(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of interest made

by the Id. AO u/s.36(1)(iii) of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee firm is a builder and had filed its return of income for the A.Y.2015-16 on 22/08/2015 declaring total income of Rs. Nil. The Id. AO on perusal of the Work-In-Progress (WIP) account of the assessee observed that assessee has included interest of Rs.25,41,60,323/- to the said WIP account. The assessee was asked to furnish the complete details of interest paid, which was duly furnished by the assessee. The Id. AO observed on perusal of the same that assessee had paid interest on unsecured loans to the tune of Rs.10,53,92,553/-. The assessee also furnished the party wise details of interest payment together with rate of interest paid thereon. The Id. AO observed that rate of interest paid by the assessee to all the related parties were at 12%.The rate of interest to a non-related party i.e. Bharat Mining and Engineering Company was at 18%. The Id. AO also observed that assessee has paid interest @16% to M/s. Chittaranjan Housing Company Pvt. Ltd., and 12% to M/s. Prateek Apparels Pvt. Ltd., both being **unrelated parties** of the assessee. This goes to prove that assessee has paid interest at varied rates ranging from 12% to 18% to different parties. Based on this, the Id. AO concluded that reasonable rate of interest on unsecured loans paid to outsiders would be 16% and hence, the excess interest of 2% paid by the assessee on certain loans at 18% is disallowable u/s. 40A(2)(b) of the Act r.w.s. 36(1)(iii) of the Act and accordingly, arrived at the disallowance figure of Rs.18,27,530/-. This sum of Rs.18,27,530/- was reduced by the Id. AO from the closing work-in-progress figure. This action of the Id. AO was upheld by the Id. CIT(A).

3.1. It is not in dispute that interest paid to related parties by the assessee was only at 12%. It is not in dispute that the interest paid by the assessee @18% was paid to a non-related party. Once, the interest is paid to non-

related party, the primary applicability of provisions of Section 40A(2)(b) of the Act fails as the payment is not made by the assessee to any specified persons being relatives thereon. We find that assessee had borrowed unsecured loans from various parties at varied rates of interest. The rate of interest charged by various lenders is always market driven based on demand and supply and urgent need of money for the assessee. There cannot be standard rule which should be set that assessee should borrow only at prescribed rate, more so, when the loan borrowed is unsecured. Hence, we hold that there is absolutely no case for the Revenue to make disallowance of interest @2% amounting to Rs.18,27,530/- by reducing the same from closing work-in-progress on the ground that it is excessive. Moreover, we find that the Revenue had not disputed the fact that borrowings have been utilised by the assessee for the purpose of its business upto interest rate of 16%. We find that the Revenue is disputing only the alleged excess portion of 2% as not meant for business, which, in our considered opinion, is totally unwarranted in the facts and circumstances of the instant case for the reasons detailed hereinabove. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 26/ 11/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 26/ 11 /2021
KARUNA, sr.ps

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, Mumbai

		Date	Initial	
1.	Draft dictated on	25/11/2021		Sr.PS
2.	Draft placed before author	25/11/2021		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		