

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

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

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.851/Mum/2021
(Assessment Year :2011-12)**

M/s. Avinash Bhosale Infrastructure Pvt. Ltd., 2, ABIL House, Ganesh Khind Road Range Hill Corner Pune – 411 007	Vs.	DCIT Central Cir-2(3) 8 th Floor, Room No.803, Old CGO Annexe Building Pratistha Bhavan M.K.Road, Mumbai – 400 020
PAN/GIR No. AABCA5452C		
(Appellant)	..	(Respondent)

Assessee by	Shri Anuj Kisnadwala
Revenue by	Shri Prasoon Kabra
Date of Hearing	25/11/2021
Date of Pronouncement	30/11 /2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.851/Mum/2021 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-48, Mumbai in appeal No.CIT(A)-48/I.T.104/DCCC-2(3)/2019-20 dated 29/01/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 18/06/2019 by the Id. Dy. Commissioner of Income Tax, Central Circle-2(3), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, there is a delay of 18 days in filing of appeal by the assessee. The Id. AR placed on record the order of the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 in SMW(c) No.3/2020 dated 23/09/2021 wherein the time limit for preferring appeals has been extended till 02/10/2021 in view of Covid-19 Pandemic. Considering the same, the delay in filing of the appeal by the assessee is hereby condoned and appeal admitted for adjudication.

3. The assessee has raised the following grounds:-

1. *The learned CIT(A) erred in confirming addition of Rs.12,74,850/- towards disallowance of interest expenses incurred on short term business loan without appreciating the facts explained during the course of assessment proceedings as well as during appellate proceedings. The appellant prays that the addition of Rs.12,74,850/- be deleted.*
2. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.*

4. The assessee has also filed the additional ground of appeal vide letter dated 25/11/2021 which is as under:-

1. *The learned CIT (A) ought to have held that the disallowance made by the Assessing Officer of Rs. 12,74,850/- on account of disallowance of interest is bad in law since no incriminating material pertaining to the said disallowance was found during the course of search from the premises of assessee and the relevant assessment year is an unabated year.*
2. *The appellant craves leave to add to, amend or alter, the foregoing ground of appeal.*

5. We have heard the rival submissions and perused the materials available on record. At the outset we find that issue of disallowance of interest on merits is contested by the assessee by way of original ground. We also find that assessee had raised an additional ground stating that for making such disallowance of interest, there was no incriminating material available with the Id. AO which was found during the course of

search and hence, no disallowance of interest could be made in the said unabated assessment year. We find that this additional ground is purely a legal issue and goes to the root of the matter and does not require verification of any fresh facts as all the facts relevant for adjudication of the said additional ground are already on record. Hence, we admit the said additional ground and take up the same for adjudication first.

5.1. We find a search and seizure action u/s.132 of the Act was initiated on ABIL group on 21/07/2017. Shri Avinash Bhosale is the promoter and founder of ABIL group. This group is primarily engaged in infrastructure development, real estate development and hospitality industry. The assessee company is also forming part of ABIL group and was also covered in the said search action u/s. 132 of the Act. Accordingly, notice u/s.153A of the Act was served on the assessee. The return of income for the A.Y.2011-12 which was filed originally was processed u/s.143(1) of the Act and as on the date of search on 21/07/2017, the time limit for issuance of notice u/s.143(2) of the Act for the A.Y.2011-12 in respect of original return filed, had admittedly expired. Hence, as on the date of search, the assessment for the A.Y.2011-12 becomes unabated assessment. The law is now very well settled that in respect of unabated assessment, the assessment completed earlier either u/s.143(1) or u/s.143(3) of the Act could be disturbed only if there is any incriminating material found during the course of search relating to such assessment year. In the instant case, we find that in the assessment framed u/s.153A r.w.s. 143(3) of the Act, the Id. AO had sought to disallow the interest paid and processing charges on borrowings from India Bulls Housing Finance Ltd., in the total sum of Rs.12,74,850/-. This disallowance was made by the Id. AO without making any reference to seized documents found during the course of search. Infact, the Id. AO himself in para 5 of

his order admits that "in the course of assessment proceedings, it is observed that assessee has claimed expenses towards interest expenses of Rs.10,54,250/- and loan processing charges of Rs.2,20,600/- on loan borrowed from M/s. India Bulls Housing Finance Ltd.," This observation clearly goes to prove that the Id. AO had only sought to re-examine the existing material already available on record while framing the search assessment for A.Y.2011-12 (being the unabated assessment year). The law is now very well settled that unless there is incriminating material found during the course of search, an unabated assessment shall not be disturbed in the search assessment. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645 and on the decision of Hon'ble Delhi High Court in the case of Kabul Chawla reported in 234 Taxman 300. In view of the above, we are inclined to allow the additional ground raised by the assessee and direct the Id. AO to delete the disallowance made in respect of interest paid on loan from India Bulls Housing Finance Ltd., Accordingly, the additional ground raised by the assessee is allowed. In view of the same, the adjudication of original ground becomes infructuous.

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

Order pronounced on 30/11/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/ 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