

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'B' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND  
SHRI L. P. SAHU, ACCOUNTANT MEMBER  
(Through Virtual Hearing)**

**ITA No.174/Hyd/2021  
(Assessment Year : 2014-15)**

M/s. Lanco Hills Technology Park Pvt. Ltd.,  
Hyderabad.  
PAN AABCL 1228R .....Appellant.

Vs.

Asst. Commissioner of Income Tax,  
Circle 16(1), Hyderabad. ....Respondent.

Appellant By : Shri P. Murali Mohana Rao (A.R.)  
Respondent By : Shri YVST Sai (D.R.)

Date of Hearing : 16.11.2021.  
Date of Pronouncement : 30.11.2021.

**O R D E R**

**Per Shri S.S. Godara, J.M. :**

This assessee's appeal for Asst. Year 2014-15 arises from the Pr. Commissioner of Income Tax (Appeals)-4, Hyderabad's order dt.30.03.2021 passed in case No.ITBA/REV/F/REV5/2020-21/1031896960(1) in proceedings under Section 263 of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

2. We straight-away advert to the assessee's sole substantive grievance that PCIT herein had erred in law and on facts in directing the Assessing Officer to treat the assessee's interest expenditure adopted in the P&L Account to the tune of Rs.6811.51 lakhs (including Rs.2715.86 lakhs alleged to have incurred directly towards construction of SEZ property during the year ending as on 31.3.2014) as a capital item only. Relevant revisions direction to this effect read as under :

*“ 2. As per record, it is observed that as per Note 29 of Financial Statements for the year ended March 31, 2014, under the ‘Borrowing Costs’ you have stated that “Borrowing cost of Rs.6811.51 lakhs charged to the Profit and Loss Account, includes an amount of Rs.2715.86 lakhs which was incurred directly towards construction of SEZ Property during the year ended March 31, 2014”. As the amount of Rs.2715.86 lakhs pertains to construction of SEZ property, it needs to be capitalized and not allowable as revenue expenditure u/s.37(1). However, the said amount was neither added back in the*

computation statement by the Assessee nor disallowed by the Assessing Officer in the Assessment Order, which is incorrect as per the provisions of the Sec. 37(1). As per the provisions 37(1) of the I.T.Act, 1961, any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profit and gains of business or profession". Accordingly, the above mentioned amount is not allowable.

3. The assessment for the Asst.Year 2014-15 was completed by the Assessing Officer, without examining the eligibility of claim of expenditure by the assessee company. As the order passed u/s.143(3) r.w.s.92CA(3) and 144C(3) of the I.T.Act, 1961, dt: 27-11-2017 for the Asst.Year 2014-15 is found to have been passed by omitting the above aspect, the same is liable to be treated as erroneous in so far as it is prejudicial to the interests of the revenue within the meaning of section 263 of the I.T. Act, 1961.

4. Accordingly, a show cause notice u/s.263 dated 04-11-2019 was issued to the assessee on the following points and to explain as to why the Assessment Order for the A. Y. 2014-15 should not be set-aside.

*"Borrowing cost of Rs. 6811.51 Lakhs charged to the Profit and Loss Account, includes an amount of Rs.2715.86 Lakhs which was incurred directly towards construction of SEZ Property during the year ended March 31, 2014". As the amount of **Rs.2715.86 Lakhs pertains to construction of SEZ Property, it needs to be capitalized and not allowable as revenue expenditure u/s.37(1)**. The said amount has been added back in the computation statement, which is incorrect as per the provisions of the Sec. 37(1). As per the provisions 37(1) of the I.T.Act, 1961, any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profit and gains of business or profession". Accordingly, the above mentioned amount is not allowable"*

7. In response, Id.AR of the assessee, Shri.P.Murali Mohan Rao, CA filed submissions vide letter dated 15.11.2019 and appeared on 12-02-2020 and 18-03-2020. Submissions of the assessee are as detailed below:

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*Revisionary proceedings proposed in show cause notice u/s.263 of the Act:*

3.1 *While this being the facts of the case relating the assessment, vide the above cited Show cause notice; your honour has proposed to revise the order passed u/s.143(3) r.w.s.144C(3) of the Act on 27.11.2017, by invoking the powers vested with your honour u/s.263 of the Act, on the plea that the order passed as above is both erroneous and in as much as the*

same is prejudicial to the interest of the revenue.

3.2 For the above proposition the following issue are considered to be errors as they were not, presumed to have been, examined in the course of assessment proceedings.

(i) Borrowing cost debited in P&L account is Rs.6811.51 lakhs which includes Rs.2715.86 lakhs incurred directly towards the constructions of SEZ property and same proposed to be capitalized.

3.3 The above issues are the causes for the proposed invocation of the provisions of section 263 of the Act. Aggrieved by the above proposed additions we would like to submit our objections as under which may please be considered in favour of the company.

4. No revisionary proceedings can be made on the issues examined by AO.

4.1 In this regard, it may be submitted that the original assessment u/s.143(3) r.w.s 92CA(3) and 144C(3) has been completed on 27.11.2017 after thorough examination of all the issues by applying the provisions of law judiciously by taking one course of decisions as per law. There is no mistake in application of law or short coming in the enquiry or examination of the issues.

4.2 In this regard, we would like to submit the following points as under:

a) The A.O. has issued notice u/s.142(1) of the Act dated 01.07.2016 in that questionnaire also issued and he has examined thoroughly all the issues which, in the opinion of the A.O. needs examination. Therefore, the CIT cannot take recourse to 263 of the Act on the issues examined and taken a course of decision by the A.O.

b) In this connection, it is to submit that at the time of assessment proceedings, the Assessing officer in his **questionnaire dated 01.07.2016 via point no.20** asked to furnish all the **details in respect of the interest payment for the F.Y.2013-14**. In response, to the same the assessee has **submitted the reply dated 01.11.2016 and via point no 6 and provided the details of payment of interest made in F.Y.2013-14**.

**Copy of the questionnaire dated 01.07.2016 and reply dated 02.11.2016 is enclosed herewith for your kind reference.**

c) It is also pertinent to mention here that before the AO, we have submitted our facts and explained him that company has suspended capitalization of the borrowing costs pertaining to F.Y.2013-14 as the constructions work has been halted for a temporary period as per the Accounting Standard 16. Thus, any interest paid in respect of capital borrowed for the purpose of business qualifies for deductions. Therefore, after considering the submission of the

assessee and verify the facts of the case the AO has frame an opinion and not made any addition in this regard while completing the assessment. Hence once the AO has an opinion after verify all the details and facts of the case and not made any addition in this regard the same cannot be treated as erroneous order prejudicial to the interest of the revenue unless the view taken by the AO is unsustainable.

However, your goodself proposes to take another view, which is different from the view taken by the Assessing Officer and to assess to tax by proposing to revise the assessment order u/s.263 of the Act, which is not correct.

**d)** Therefore, it is very clear that, the AO verified all the information filed by the assessee on 02.11.2016 and after considering the facts in respect of the interest expenditure eligible for deduction as per the AS 16 has completed the assessment. Thus, the Assessing Officer has considered all the material available the assessment on record and have taken one of the possible views for completing the assessment in respect of the interest expenditure.

**e)** Since, the assessing officer has considered this aspect at the time of assessment proceedings and completed the assessment. Thus, the assessing officer has considered all the material available on record and have taken one of the possible views for completing the assessment.

**f)** The A.O. has already examined the issues extensively and has taken one conclusion as per law and on a change of opinion, the Pr.CIT cannot take another course of opinion and invoke 263 of Act.

**g)** The Pr.CIT cannot invoke the provisions of section 263, on the presumed reason of missing examination on certain issues, when the order passed by A.O. is correct.

**h)** Further to the above, it may be submitted that the A.O. has examined the issues during the course of assessment proceedings by issuing SCN, on the issues on which the Pr.CIT has issued revisionary orders on the issues already examined by the A.O. is ultra vires and beyond the jurisdiction of the CIT. The A.O. is a quasi judicial officer. When an assessment order is passed by such a quasi judgement authority the same is final unless other provisions of re-assessment, revision are legally applied. The Pr.CIT cannot thrust upon his own thoughts, perceptions, conclusions on the A.O. or direct him to pass an order in such a manner and in such a fashion as he thinks fit by setting aside the already completed assessment.

**i)** Further, there is no lapse on A.O. to examine the issues raised by Pr.CIT. It is not necessary that the A.O. has to record all the issues examined by him on record. It is not necessary that all the issues on which he wanted clarification should be put on paper. Some of the issues on which the examination is heard can be put to assessee in the course of assessment proceedings, verbally and may satisfy or dis-satisfy with the explanations. Thus, non-recorded of certain facts of examination on some issues need not necessarily lead to un-rebuttable conclusion to infer that the A.O. failed to examine certain issues on the face of the assessment record.

**j)** It is further submitted that where the assessee had furnished the requisite information and AO had completed assessment after considering all the facts, the Pr.Commissioner of

*Income Tax, is not justified in revising the order of the AO. In support of this, the assessee relies on the following case laws:*

*CIT Vs. Mehrotra Brothers [2004] 270 ITR 157 (MP)*

*CIT Vs. Parameshwar Bohra [2004] 267 ITR 698 (Raj)*

*Paul Mathews and Sons vs CIT [2003] 263 ITR 101 (Ker)*

*k) In view of the above facts, it is very clear that proposed revisionary proceedings u/s.263 of the Act is required to be dropped as the issues raised have been examined by the AO before completing the assessment u/s.143(3) r.w.s 92CA(3) and 144C(3) of the Act. Since the assessment order passed by AO was not erroneous and prejudicial to the interest of the revenue, the proposed revision u/s.263 is requested to be dropped.*

5. *Hon'ble Pr.CIT proposes to take another view, which is different from the view taken by the AO, for determining the total income of the assessee for the year under consideration. In this connection, it is submitted that where two views are possible and AO has taken one view with which the CIT does not agree, it cannot be treated as erroneous order prejudicial to the interest of the revenue and reliance is placed on the judgements of*

- i). Malabar Industrial Co. Ltd Vs. Commissioner of Income Tax(2000-(243)-ITR-0083-SC)*
- ii). CIT Vs Max India Ltd reported in 295 ITR 282(SC)*
- iii). Spectra Shares & Scrips(P) Ltd Vs CIT-III, Hyderabad [2013] 36 taxmann.com 348(AP)*
- iv). Srinivasa Hatcheris (P) Ltd Vs. DCIT [2002] 81 ITD 36(Hyd)*
- v). Inventaa Chemical Ltd Vs. ACIT, Circle-2(1), Hyderabad [2010]42 SOT 249 (Hyd)*
- vi). New Cyberabad City Projects (P) Ltd vs. ITO Ward-16(2), Hyderabad [2013] 33 taxmann.com 280(Hyd)*

6. *Without prejudice to the above, we would like to submit the following facts on the addition proposed in the show cause notice issued u/s. 263 of the Act.:*

*Borrowing cost incurred towards SEZ Property under construction for Rs. 2715.86 Lakhs*

*During the year ,under consideration the company has incurred the finance cost of Rs.6811.51 lakhs. Detailed break-up is given below:*

<b>Particulars</b>	<b>Amount (Rs.)</b>	<b>DWIP &amp; EDC</b>	<b>P&amp;L Account</b>
Interest on Rupee Term Loans	1,20,15,65,554	1,20,15,65,554	
Interest of Foreign Currency term Loans	27,15,86,822		27,15,86,822
Interest of Unsecured Loans/ICD	35,04,81,693		35,04,81,693
Interest of taxes	5,506		5,506
Interest Others	17,94,10,702	12,40,31,551	5,53,79,151
Other borrowing cost (Upfront fee, commitment charges etc..)	48,99,686	12,01,458	36,98,228
<b>Total Finance cost</b>	<b>2,00,79,49,963</b>	<b>1,32,67,98,563</b>	<b>68,11,51,400</b>

Out of such interest, Rs.2715.86 lakhs pertains to the purpose of SEZ property under construction (Note 29 of Financial statements). In respect of SEZ property the interest incurred of Foreign currency term loan and Rupee term loan for the F.Y.2013-14 is amounting to Rs.2715.86 lakhs. During F.Y.2013-14, there has been no active development taken place in respect of the SEZ property as the market condition were not good. So the interest incurred during the year under consideration was transferred to P&L account in line with AS-16.

It is submitted that as per AS-16, "Borrowing cost", cost incurred for holding partially completed assets doesn't tantamount for capitalization and accordingly the assessee correctly debited the same in P&L account.

#### 6.2 Allowable as per Accounting Standard-16 "Borrowing Cost"

According to AS16, Borrowing costs may be incurred during an extended period in which the activities necessary to prepare as asset for its intended use or sale are interrupted. The point to be considered is whether during such period capitalization should be suspended. Para 17 of As

16 provides that capitalization of borrowing costs should be suspended during extended periods in which active development is interrupted. However, it should be noted that for capitalization to be suspended, active development should have been interrupted. If substantial technical and administrative work is being carried out during the extended period then capitalization is not to be suspended. Similarly, there may be other circumstances when capitalization need not be suspended e.g. when a temporary delay is a necessary part of the process of getting an asset ready for its intended use or sale.

Borrowing cost may be incurred during an extended in which the activities necessary to prepare an asset for its intended use or sale are interrupted. Such costs are costs of holding partially completed assets and do not qualify for capitalization. However, capitalization of borrowing costs, is not normally suspended during a period when substantial technical and administrative work is being carried out. Capitalisation of borrowing costs is also not suspended when a temporary delay is a necessary part of the process of getting an asset ready for its intended use or sale. For example, capitalisation continues during the extended period needed for inventories to mature or the extended period which high water levels delay construction of a bridge. If such high water levels are common during the constructions period in the geographic region involved.

Accordingly, the assessee company has suspended capitalization of the borrowing costs pertaining to F.Y.2013-14, as the construction work has been halted for a temporary period.

Moreover, the assessee was not in acquisition of the asset but it was constructing it. As the assessee's business activity is of construction and development, the capital borrowed related for the purpose of activity to be carried out for business and not in acquisition of asset. Thus, any interest paid in respect of capital borrowed for the purpose of business qualifies for deduction. Therefore, the assessee's contention of charging interest to Profit and Loss account is justified and disallowance in this regard may please be dropped.

### 6.3 Allowable u/s. 37 of the Act.

We further submit that the interest charged on SEZ property amounting to Rs.2715.86 lakhs is allowable under section 37(1) of the Income Tax Act, 1961. The relevant extract of the section is reproduced:

"37(1). Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession"

In this connection, we would like to place reliance in the judgement of Hon'ble ITAT, Delhi

in the case of "The Hindustan Times Ltd and New Delhi Vs. Assessee on 1 January, 2009 , wherein it was stated that:

"—2.9 Now the assessee's claim is that after 12.12.2001 assessee has suspended the work on the new project and as it is mandate of AS-16 during the period in which the project is suspended, the borrowing cost should not be capitalized. Hence the inference is that it should be recognized as an expense in the period they are incurred. Now to consider as to whether AS-16 is applicable or not, it is relevant to find out as to whether the present case falls under the suspension of capitalization.

2.8 Paragraphs 17 and 18 of the AS-16 mandate as under:

'Suspension of capitalization

17. Capitalization of borrowing costs should be suspended during the period in which active development is interrupted.

18. Borrowing costs may be incurred during an extended period in which the activities necessary to prepare an asset for its intended use or sale of or interrupted.

Such costs are costs of holding partially completed assets and do not qualify for capitalization...

2.9 Now the assessee's claim is that after December 12, 2001, the assessee has suspended the work on the new project and as it is mandate of AS-16 during the period in which the project is suspended, the borrowing cost should not be capitalised. Hence, the inference is that it should be recognised as an expense in the period they are incurred...

And it is requested to drop the proceedings u/s.263 for A. Y.2014-15"

8. As there was a change in the incumbant, in order to afford an opportunity to the assessee, one more notice was issued on 03.02.2021 and 09.03.2021, to submit any explanation/submission by 15.03.2021. However, there was no further response from the assessee till date.

I have carefully gone through the submissions, facts and circumstances of the case and material available on record. On perusal of the reply and the assessment records and financial statements of the assessee company for the A.Y.2014-15, it is seen that the

assessee company at Item No.29 of the Notes to financial statements for the year ended March 31<sup>st</sup> 2014, had stated that "*Borrowing cost of Rs. 6811.51 Lakhs charged to the Profit and Loss Account, includes an amount of Rs.2715.86 Lakhs which was incurred directly towards construction of SEZ Property during the year ended March 31, 2014*". As it can be clearly seen that the amount of Rs.2715.86 Lakhs pertains to construction of SEZ Property, and is not allowable as revenue expenditure u/s.37(1), it needs to be capitalized. The said amount has not been added back in the computation statement, which is incorrect as per the provisions of the Sec. 37(1). As per the provisions 37(1) of the I.T.Act, 1961, any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profit and gains of business or profession". Accordingly, the above mentioned amount is not allowable.

The assessee vide its letter dated 15.11.2019 contended that the issue had already been verified by the Assessing Officer during the course of Assessment proceedings and hence the Revisionary proceedings cannot be invoked in the present case as it is only a change in view. In support of its contentions, the assessee had relied on the following case laws:

1. CIT Vs Mehritra Brothers (2002) 270 ITR 157 (MP)
2. CIT Vs Parameshwar Bohra (2004) 267 ITR 698 (Raj)
3. Paul Mathews and Sons Vs.CIT(2003)263 ITR 101(Ker)

Further, the assessee in para 4.2 a to c it is mentioned that the issue of capitalisation of borrowing cost had been discussed with the Assessing Officer during the course of Assessment proceedings. He further pointed out that in his reply to the Assessing Officer dated 02-11-2016 vide point No.6 he had provided the details of payment of interest which was called for vide questionnaire dated 01.07.2016 via point NO. 20. For the sake of convenience, the point No. 20 of the questionnaire dated 01.07.2016 is reproduced below:

*Q.20: with regard to interest payment, please furnish the following details (party wise)-*

- a.Name and address of the party;*
- b. Amount paid/credited;*
- c.Date of credit/payment;*
- d.Mode of payment.*

*In reply the assessee had submitted party details of the interest payment towards Andhra Bank, Bank of Baroda, Canara Bank, Central Bank of India Indian Bank, Indian Overseas Banks, Punjab National Bank, Syndicate Bank, UCO Bank, Vijaya Bank.*

As seen from the above, it is very much evident that the issue of non-capitalisation of interest payment on loan taken for construction of SEZ property was not discussed at all during the course of scrutiny assessment. Assessee's submissions are incorrect on this issue. All the case laws pointed by the assessee is on the ground that the issue under revision was already verified and discussed by the Assessing Officer during the course of scrutiny proceedings and the CIT disagreed with the decision of the Assessing Officer and proceeded for Revision. The facts of the cases relied by the assessee is distinguishable from the instant case. In this case the issue pointed out i.e. non capitalization of the interest payment on borrowed funds for construction of SEZ property was not discussed or verified during the course of scrutiny proceedings.

Further, the assessee had mentioned that the assessee is following Accounting Standard 16 according to which the assessee had suspended capitalization of borrowing cost as the construction work had been halted for a temporary period. The department did not dispute the Accounting Standard followed by the assessee. Only issue is for the purpose of taxation, the assessee had to capitalize the interest to the asset ie. SEZ property on which he can claim depreciation after the construction is completed and the asset is put to use. As per the provision of Sec.37(1) of the IT Act, any expenditure which is not of the nature of capital expenditure or personal expenditure of the assessee can be allowed. The payments of interest towards loan taken on construction of SEZ property is capital in nature. Hence it is not an allowable expenditure under Incometax Act without prejudice to any accounting standards followed by the assessee.

In view of the discussion made above, the assessment order passed by the assessing officer u/s. 143(3) r.w.s.92CA(3) and 144C(3) of the I.T.Act, 1961, dated 27-11-2017 is erroneous in so far as it is prejudicial to the interest of revenue u/s. 263 of the I.T.Act, 1961 for the reasons and observations mentioned above. Therefore, the assessment order passed for the A. Y. 2014-15 is set-aside in term of provisions of Section 263 of the I.T.Act and the Assessing Officer is directed to modify the assessment order considering the recents and decussions made above and pass consequential order as per law after affording opportunity to the assessee.

3. Learned authorized representative has placed on record the corresponding 142(1) notice dt.1.7.2016 raising specific query(ies) of party-wise interest payment details followed by the assessee's reply dt.1.11.2016 to this effect. He thereafter quoted a catena of case law compiled in 2nd paper book running into 146 pages that such a detailed exercise undertaken by the Assessing Officer during

scrutiny thereby not making any interest disallowance; does not attract section 263 revision jurisdiction in the given set of facts.

4. Learned CIT-DR has strongly supported the impugned revision direction mainly for the reason that the Assessing Officer had conducted inadequate enquiry qua the impugned interest issue. He sought to buttress the point that the legislature has inserted Explanation (2) to section 263(1) vide Finance Act, 2015 w.e.f. 1.6.2015 that an assessing authority has fail to examine the issue in proper perspective and therefore, the PCIT has rightly directed the Assessing Officer to disallow the interest amount in issue as capital expenditure only.

5. Coming to the assessee's argument that it has already succeeded in preceding and succeeding assessment years on the impugned interest disallowance in section 143(3) assessment appeal, Mr. Sai has specifically quoted 263 Explanation (1) clause (c) that the same had been

“considered and decided” after the impugned revision directions.

6. We have given our thoughtful consideration to rival contentions. It is not in dispute that the learned PCIT herein has not directed the Assessing Officer to frame de novo assessment but to pass a consequential order disallowing the impugned interest amount itself being in the nature of capital expenditure only. There could be hardly any issue regarding settled legal proposition in light of Malabar Industrial Co. Ltd. Vs. CIT 243 ITR 83 (SC) that assessment has to be both erroneous and causing prejudice to the interest of Revenue; simultaneously, before the CIT or the PCIT; as the case may be, invokes section 263 jurisdiction. There is yet another case law ITO Vs. DG Housing Projects Ltd. (2012) 343 ITR 323 (Del) defining the nature and scope of twin expressions “erroneous” and “prejudicial” to the interest of Revenue that it is not open for the CIT or PCIT to restore the matter once the assessing authority records any finding on merits. It is made clear

that the PCIT's directions in issue have reversed that assessment qua the interest issue on merits only.

7. We notice in this factual backdrop that the PCIT herein has himself undertaken a very detailed discussion to conclude that the assessee's interest amount needs to be capitalized only. There is nothing more left to the Assessing Officer to carry out qua consequential factual verification any more in other words any more. Faced with this situation only, we quote this tribunal's co-ordinate bench order(s) in assessee's own case(s) involving ITA Nos.1125 & 1126/Hyd/2018 for Assessment Years 2007-08 and 2011-12 dt.7.9.2021 deciding the instant issue against the department as under :

“ 14. Coming to Assessment Year 2013-14 in ITA 1128/Hyd/2018, the assessee's first and foremost substantive ground seeks to reverse interest disallowance incurred qua SEZ property under consideration amounting to Rs.11,81,00,000. The CIT(A)'s detailed discussion affirming the impugned disallowance reads as under :

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5. The Ground Nos. 2 to 3 are with regard to disallowance of interest towards SEZ property under construction for an amount of Rs. 11,81,00,000/-.

6.1 During the course of assessment proceedings, with regard to above grounds, the Assessing Officer noticed from para 28 of the Annual report that a sum of Rs. 5498.04 lakhs being borrowing cost was incurred directly towards construction of SEZ property. The entire expenditure towards SEZ property till the 4<sup>th</sup> Quarter has been capitalized by the assessee company. Reference is made to 36(1)(iii) wherein the Act has allowed for deduction of interest paid in respect of capital borrowed for the purposes of business or profession. However, that portion of interest which is paid in respect of capital borrowed for acquisition of an asset till the asset is put to use shall not be allowed as deduction. Therefore, in the present case, even though the asset has purportedly being not active, still cannot be said to be asset put to use. Further, sec.37(1), on which the assessee company is relied speaks about any expenditure in the nature of revenue. When the SEZ property is held to be under construction capital asset, any expenditure on that property will necessarily be a capital expenditure. Therefore, the expenditure claimed at Rs. 11.81 crores is disallowed and added to the total income.

6.2 During the course of appeal proceedings, with regard to above grounds and additional grounds, the appellant company submitted as under:

*During the Year under consideration the company has incurred the finance cost of Rs. 1,89,52,52,657/-. The detailed break-up the same is given below.*

Particulars	Amount (Rs.)	DWIP & DEC.	PBL Account
Interest on Rupee Term Loan	1,18,38,02,260	1,18,38,02,260,	2,72,41,656
Interest on Foreign Currency Term Loan	48,63,06,261	37,21,46,962	8.69.17.543

Interest on Unsecured Loans/ICD	5,04,43,539	-	5,04,43,539
Interest on Taxes	24,15,043	-	24,15,043
Interest Others	15,95,7,079	15,95,70,079	-
Other Borrowing Cost (Upfront Fee, Commitment Charges etc.)	1,27,15,475	38,68,699	88,46,766
<b>Total Finance Cost</b>	<b>1,89,52,52.657</b>	<b>1,71,93,88,000</b>	<b>17,58,64,647</b>

Out of such interest, Rs. 5,498.04 lacs pertains to the purpose of SEZ property under construction. The interest attributable to the first three quarters has been capitalized. In respect of SEZ Property, the interest incurred on Foreign Currency Term Loan and Rupee Term Loan for the fourth quarter is amounting to Rs.11,41,59,299. <<disallowance is 11.8 crores>> During the fourth quarter of AY 2013-14, there has been no active development taken place in respect of the SEZ property. So the interest incurred during the fourth quarter was transferred to P&L Account in line with AS-16.

- 3.1** Borrowing Cost may be incurred during an extended period in which the activities necessary to prepare an asset for its intended use or sale are interrupted. Such costs are costs of holding partially completed assets and do not qualify for capitalisation. However, capitalisation of borrowing costs is not normally suspended during a period when substantial technical and administrative work is being carried out. Capitalisation of borrowing costs is also not suspended when a temporary delay is a necessary part of the process of getting an asset ready for its intended use or sale. For example, capitalisation continues during the extended period needed for inventories to mature or the extended period during which high water levels delay construction of a bridge. if such high water levels are common during the construction period in the geographic region involved.
- 3.2** Accordingly, the assessee company has suspended capitalization of the borrowing costs pertaining to Quarter 4 as the construction work has been halted for a temporary period. The Assessing Officer got to the wrong end of the stick by disallowing the interest incurred. The AO should have taken

into account the explanation offered by the assessee that as per AS-16, cost incurred for holding partially completed assets doesn't tantamount for capitalization.

**3.3** Moreover, the assessee was not in acquisition of the asset but it was constructing it. As the assessee's business activity is of construction and development, the capital borrowed relates for the purpose of activity to be carried out for business and not in acquisition of asset. Thus, as already quoted in assessment order even in **Para 4.2** any interest paid in respect of capital borrowed for the purpose of business qualifies for deduction. Therefore, the assessee's contention of charging interest to Profit and loss account is justified and disallowance made in this regard may please be deleted.

We further submit that, the interest charged on SEZ Property amounting to Rs.11,41,59,299/- is allowable under section 37(1) of the Income Tax Act, 1961.

In this connection, we would like to place reliance in the judgment of Hon'ble ITAT, Delhi in the case of **The Hindustan Times Ltd, New Delhi vs. Assessee on 1 January, 2009**

7. I have carefully considered the assessment order and submissions of the appellant. As per para 4.2 of the assessment order, it is clear that the assessee itself has treated the SEZ property under construction as capital asset and any expenditure related to this property to be treated as capital expenditure only. Therefore, the appellant is not right to debit this interest amount of Rs. 11,41,59,299/- to P & L account. Therefore, the Assessing Officer is directed to capitalize this expenditure along with SEZ property asset. Hence, the submissions of the appellant were not accepted and the addition made by the Assessing Officer confirmed and grounds of appeal dismissed.

15. We have given our thoughtful consideration to rival pleadings against and in support of the impugned disallowance. The assessee's only case is quotes Accounting Standard AS-16 issued by the Institute of Chartered Accounts of India. There is no denial of the fact that both the lower authorities hold the impugned interest as pertaining to the relevant fourth quarter only wherein there was no alleged active development as per the assessee's stand. The fact also remains that the learned lower authorities have not uttered even a slightest reason about the foregoing "Wakf" litigation's "status quo order" (supra) constraining the assessee to suspend the real estate project

*development activity. Learned authorized representative vehemently contended before us that it was pendency of the Wakf proceedings as well as status quo order (supra) which primarily formed the main reason of suspension of the construction activity. Be that as it may, we are of the opinion that the foregoing AS-16 itself formed sufficient reason to claim its interest expenditure not under capital head on account of suspension of the construction activity. We thus accept assessee's instant former substantive ground."*

We adopt the above detailed discussion in light of accounting standard AS-16 to conclude that the impugned interest expenditure deserves to be treated as a revenue item only. We thus reverse learned PCIT's revision directions and restore the section 143(3) assessment as a necessary corollary. We thus accept the assessee's impugned substantive ground to this effect.

No other ground has been pressed before us.

8. This assessee's appeal is allowed in above terms.

*Order pronounced in the open court on 30th Nov., 2021.*

Sd/-

**(L.P. SAHU)**  
Accountant Member

Sd/-

**(S.S. GODARA)**  
Judicial Member

Hyderabad, Dt. 30.11.2021.

\* Reddy gp

Copy to :

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2.	ACIT, Circle 16(1), Hyderabad.
3.	Pr. C I T-4, Hyderabad.
4.	CIT(Appeals) Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.