

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.542/Mum/2020 (A.Y: 2015-16)

M/s Lhotse Developers and Traders Pvt Ltd., Hotel Grand Homotel, CTS No. 406/11, 4 th Floor, Raheja Chambers, Linking Road, Santacruz (W), Mumbai – 400054.	Vs.	DCIT – 12(3)(2) Room No. 147B, 1 st Floor, Aaykar Bhavan, MK Road, Mkumbai – 400020.
PAN/GIR No. : AABCL0079N		
Appellant	..	Respondent

Appellant by :	Shri Ravindra Poojary. AR
Respondent by :	Shri Mehul B. Jain. DR

Date of Hearing	09.11.2021
Date of Pronouncement	17.11.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-20, Mumbai, passed u/s 143(3) and 250 of the Act.

At the time of hearing, the Ld.AR submitted that the ground of appeal No. I & II are not pressed and made endorsement in the appeal memo. Therefore, the grounds of appeal I & II are treated as withdrawn and are dismissed. The effective ground of appeal-III is as under:

III Treatment of interest income of Rs. 75,86,135/-

1. The Ld. CIT(A) erred in upholding the treatment of interest income earned of Rs. 75,86,135/- as income from other sources instead of income from business offered by the appellant in the return of income filed.

2. The CIT(A) failed to consider the fact that assessee had borrowed funds from Kikomo Trading (India) Pvt Ltd., for the purpose of business and utilized the funds for advancing loan to B. Raheja Property Pvt Ltd., on which the interest was earned. Such interest income earned was inextricably linked with the amount borrowed and therefore, such interest earned ought to have been allowed as business income.

2. There was a delay of 22 days in filing the appeal before the Hon'ble Tribunal. The assessee has filed the condonation petition along with affidavit. On perusal of the facts, we found that there is a reasonable cause and the Ld.DR has no specific objections. Accordingly, we condone the delay and admit the appeal.

3. The Brief facts of the case are that the assessee company is engaged in the business of real estate development and filed the return of income for the A.Y 2014-15 on 29.09.2015 with a total income (loss) of Rs.1,89,11,749/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld.AR of the assessee appeared from time to time and furnished the details and the case was discussed. The Assessing Officer(A.O.) find that the

assessee in the return of income has disclosed the loss under the business. The assessee company has debited interest expenditure of Rs.96,15,667/- in the profit and loss account and the assessee has only one project under construction at Hyderabad. The assessee has filed a letter on 13.11.2016 referred at Para 4 of the assessment order. The A.O. was not satisfied with the explanations and observed that the assessee has not carried on business activities during the year and capitalized the interest expenditure towards work in progress (WIP) of the project.

4. Whereas, the assessee has disclosed interest income of Rs.75,86,135/- as other income under income from business. The A.O is of the opinion that the interest income should be taxable under income from other sources. The assessee has filed a letter dated 13.11.2017 explaining the nexus of borrowed funds and justification of the claim of the expenses, but the A.O found that the submissions of the assessee are not tenable as the assessee is not engaged in the business of borrowing and lending of funds. The main business of the firm is in construction of the properties and the funds are borrowed for the purpose of business. Therefore the entire interest income from B. Raheja Property Pvt Ltd was assessed under income from other sources and determined the total loss of Rs. 27,09,950/- and passed the order u/s 143(3) of the Act dated 08.12.0217.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has confirmed the action of the AO and dismissed the assessee's appeal. Aggrieved by the order of the CIT(A) the assessee has filed an appeal before the Honble Tribunal.

6. At the time of hearing, the Ld. AR has restricted the submissions on the ground of appeal No.III were the A.O. has treated the interest income under income from other sources, irrespective of the fact that assessee has provided the loan for business purpose. The Ld. AR contended that the loan was given for continuation of the business relations and the business funds have been utilized due to project delay. The Ld.AR submitted that the assessee has obtained the barrowed funds from Kikomo Trading (India) Pvt Ltd and the same was utilized for the purpose of advancing loan to M/s. B Raheja Property Pvt Ltd due to delay in project works of the assessee. The assessee has been offering the interest on loan from B. Raheja Properties @ 18% p.a. from earlier years and Whereas, the funds are borrowed from the M/S Kikomo Trading (India) Pvt Ltd.@ 18% p.a. The assessee' project at Hyderabad could not be completed due to state agitations and the business liabilities were accumulated. The Ld. AR's contention are that the assessee has obtained the loan and due to agitation of Andhra Pradesh and Telangana, there was slow down

in real estate market and the project could not be proceeded. In such circumstances, the assessee has provided the loan and the business was continued. The Ld.AR submitted that since the assessing officer (A.O.) has capitalized the interest expenditure to Work In Progress(WIP) Account and the CIT(A) has confirmed the action of A.O. and the assessee is not pressing this ground of appeal before the Honble Tribunal. Hence the Interest income taxed under the Income from other sources should be credited to the Work In Progress (WIP) Account. The Ld.AR has substantiated the submissions with the paper book and the judicial decisions and prayed for allowing this ground of appeal. Contra, the Ld. DR supported the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue that the CIT(A) has confirmed the action of the A.O treating the interest on loan received from B. Raheja Property Pvt Ltd under income from other sources. The contentions of the Ld.AR that the assessee has obtained the loan for the purpose of business from M/s Kikomo Trading (India) Pvt Ltd and the loan was utilized for advancing to B. Raheja Property Pvt Ltd and at the same rate of interest. The Ld.AR submitted that the assessee has taken up a residential and commercial project at Hyderabad but due to various agitations in respect of separation of Andhra Pradesh and Telangana

the project could not be proceeded and there was lot of pending approval from local authorities and the project was temporally stopped and also due to slowdown in the real estate market. Therefore the assessee considering the fact of availability of funds and the same could not be utilized for the purpose of business immediately has advanced the loan. The Ld. AR has demonstrated that the amount lying with the assessee, which was borrowed from Kikomo Trading (India) Pvt Ltd. and was advanced to B. Raheja Property pvt Ltd and there exist a direct nexus of amount advanced. The Ld. AR referred to the bank statements where the credit from M/s Kikomo Trading (India) Pvt Ltd is reflected and at the same time the amount was advanced to B. Raheja Property Pvt Ltd. The only line of dispute is that, the assessee due to slow down of real estate business and the project under taken at Hyderabad could not be take off has advanced the funds on interest. The Ld. AR submitted the financial statements and emphasized on the income and the business operations.

8. The Ld. AR has referred to the profit and loss account at page 9 of the paper book, where the assessee has disclosed the income under schedule 19 which also includes interest income. Prima-facie it cannot be presumed that the assessee is not in the business but due to temporary lull in the real estate business the assessee could not proceed with the project. On perusal

of the notes on the financial statements at page 22 of the paper book at note 14 inventories, the assessee has disclosed the construction work in progress which the revenue cannot dispute. The Ld.AR has relied on the following judicial decisions.

1. *CIT Vs. Lok Holdings [2010] 189 taxman 452 (Bombay).*
2. *Karanja Terminal & Logistics (P) Ltd. Vs. DCIT, [2019] 109 taxmann.com 105 (Mum-Trib).*
3. *NTPC Sail Power Company P Ltd, Vs CIT [2012] 25 taxmann.com 401 (Del).*
4. *Indian Oil Panipat Power Consortium Ltd., Vs. ITO [2009] 181 taxmann 249 (Delhi).*
5. *CIT Vs. Bokaro Steel Ltd., [1999] 102 Taxmann 94 (SC).*
6. *CIT Vs. Dalmia Promoters Developers Pvt Ltd., [2006] 281 ITR 346 (Delhi).*

9. For the brevity purpose we refer to the Hon'ble High Court of Bombay decision in the case of CIT Vs. Lok Holdings [2010] 189 taxmann 452 held as under:

In the instant case, income from interest, admittedly, arose out of running business of the assessee. Interest was earned out of monies accruing from the business of the assessee and the same was also utilized for the purpose of its business.

In view of the judgment of the Bombay High Court in the case of CIT Vs. Paramount Premium (P) Ltd [1991] 190 ITR 259 in which on identical issue was decided in favour of the assessee and which was squarely applicable to the facts of the instant appeal, the interest income earned by the assessee would be assessable as income from business and not as income from other sources.

10. We considering the ratio of the decision, facts and the submissions of the assessee find that the assessee

business cannot be treated as non operating. The assessee could not take up the project immediately due to slow down of real-estate activities at Hyderabad. Further, the Ld.AR submitted that for the A.Y.2012-13 & A.Y.2013-14 the A.O. has accepted the interest income as business income. We are of the considered view that the interest income on loan cannot be treated as income from other sources and since the assessee has accepted the capitalization of interest expenditure to W.I.P. We are of the substantive view that the Interest income taxed under the Income from other sources should be credited to the Work In Progress (WIP) Account . Accordingly, we set aside the order of the CIT(A) on this disputed issue and direct the Assessing officer to credit the interest received on loan to the Work In Progress (WIP) Account and allow the ground of appeal in favour of the assessee

11. In the result, the appeal filed by the assessee is partly allowed

Order pronounced in the open court on 17.11.2021

Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 17.11.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai