

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.869/Bang/2018 : Asst.Year 2014-2015

M/s.Rukmini Realtors Pvt. Ltd. Divyasree Chambers, A Wing No.11, O'Shaugnessy Road Bangalore - 560 025. <b>PAN : AABCK7099M.</b>	v.	The Assistant Commissioner of Income-tax, Circle 5(1)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Narendra Sharma, Advocate

Respondent by : Sri.Ganesh Sankar, Addl.CIT

<b>Date of Hearing : 22.12.2021</b>	<b>Date of Pronouncement : 23.12.2021</b>
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**ORDER**

**Per George George K, JM**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 30.11.2017. The relevant assessment year is 2014-2015.

2. The grounds raised read as follows:-

*"1. The order of the Authorities below, in so far it is against the appellant is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.*

*2. The Authorities below are not justified in disallowing a sum of Rs.1,47,20,308/- as the interest debited towards finance cost, which interest debited were wholly and exclusively were for the purposes of business in view of the fact that the loans availed were also utilized wholly and exclusively for the purposes of business and thus the addition made is arbitrary and requires be deleted under the fact and circumstances of the appellant's case.*

*3. For the above and such other grounds that may be urged at the time of hearing of appeal, the appellant prays the same may be allowed in the interest of equity and justice."*

3. The brief facts of the case are as follows:

The assessee is a private limited company engaged in real estate activities. For the assessment year 2014-2015, the return of income was filed declaring total loss of Rs.1,51,37,751. The assessment was selected for scrutiny and notice u/s 143(2) of the I.T.Act was issued. The assessment u/s 143(3) of the Act was completed vide order dated 27.12.2016, determining the total loss of Rs.4,17,443. The Assessing Officer made an addition of Rs.1,47,20,308 (being the interest expenditure disallowed). The relevant observation of the Assessing Officer, reads as follows:-

*“4. During the year under consideration, the assessee has taken loan and paid an advance to its director, one Shri P.Syamaraju and has debited Rs.1,47,20,308/- as loss before interest. Details regarding the same were called for and submissions made by the assessee were examined. Further, it is found that loan taken by the assessee company has not been utilized for the business purpose of the assessee company. Hence, the entire interest of Rs.1,47,20,308/- debited to the P & L A/c as interest expense is therefore disallowed and added to the income declared by the assessee and brought to tax.”*

4. Aggrieved, the assessee filed an appeal to the first appellate authority. Before the first appellate authority it was submitted that the amount has been paid to the director Sri.P.Syamaraju, as advance for purchase of a property. It was stated that the advance of money to the director was out of commercial expediency and was wholly and exclusively for the purpose of business of the assessee. Therefore, it was submitted that the disallowance of interest expenditure on

mere surmises and conjectures was not tenable in law. The CIT(A) rejected the contentions of the assessee. The CIT(A) held that the borrowed funds have been diverted to the director interest free without any commercial expediency. Therefore, the CIT(A) concluded that the A.O. has rightly disallowed proportionate interest expenses. The relevant finding of the CIT(A), reads as follows:-

*“5.1 I have considered the above grounds of appeal, statement of facts and written submissions filed by the appellant and also perused the assessment order. The Assessing Officer has disallowed a sum of Rs.1,47,20,30S/- on account of interest paid on such borrowals on the ground that such payments made to the Director of the appellant company namely Sri P. Shyama Raja were not for the purposes of business. Now the question will arise what is the business expediency? Why loan taken and given to its directors as advance. The interest paid on the loan was disallowed by the Assessing Officer since there was no business expediency. The Hon'ble Apex Court in the case of S.A. Builders Vs. CIT on which decision the appellant relied on even clearly says that if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. In the appellant's case the and its director to whom the loan was given nor demonstrated that is was not given for the personal benefit of its director. Even from the Balance-Sheet it is seen that the appellant has huge long term borrowings with nominal share capital of Rs.1 ,90,000/- and the balances under the head surplus and reserves are running in negative and major heads in assets side are long term loans and advances out of which the advance for a property to a director Mr. P. Shyama Raju is shown at Rs.9,22,00,000/- which clearly shows that the borrowed funds are only utilized to give advance to the director without any interest. On the other hand on those borrowals huge interest was being paid and showing loans in the P&L account. The Assessing Officer has rightly disallowed the interest expense, on the premise that the borrowed funds are not exclusively utilized for the purpose of business of the appellant company. Therefore, the addition made by the Assessing Officer is hereby upheld.*”

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee has filed two sets of paper book enclosing therein copy of minutes of the meeting of Board of Directors dated 15.11.2012, audited financial statement for assessment year 2014-2015, assessment order for the subsequent assessment year, namely, A.Y. 2015-2016, etc. The learned AR reiterated the submissions that the amounts were advanced to the director of the company to purchase properties on behalf of the company. The learned AR by placing reliance on the Board Resolution (refer page 3 of the paper book filed by the assessee), submitted that the advances were given to the director to acquire certain land within the period of 15 months from the date of receipt of such funds advanced failing which the director was to pay interest to the assessee-company. It was submitted that in the subsequent year, the interest paid by the director to the company was disclosed in the return of income and accordingly scrutiny assessment was completed.

6. The learned Departmental Representative, on the other hand, submitted that the assessee had borrowed huge amounts by paying interest and diverted the same to the director, interest free. The purpose for which the amounts were diverted was to acquire certain lands, which never materialized. Therefore, it was submitted that the claim of the assessee is devoid of any merits. It was further submitted by the learned DR that the money could have been advanced to

the director at the final stage of purchase of the land instead of advancing the money, even prior to identification of the land. Therefore, it was submitted that the entire case of the assessee is only a made believe affair and the assessment order and the CIT(A)'s order confirming the same needs to be upheld.

7. We have heard rival submissions and perused the material on record. As rightly pointed out by the CIT(A) that the assessee has huge long term borrowings with nominal share capital of Rs.1,90,000 and the balance under the head surplus and reserve was running in negative. The major heads on assets side are long term loans and advances out of which amount of Rs.9.22 crore is paid to the director of assessee-company. This clearly shows that the borrowed funds are only utilized to give advance to the director without any interest. The minutes of the meeting of Board of Directors dated 15.11.2012 relied on by the learned AR is never made available to the A.O. nor the CIT(A). It is for the first time placed before the ITAT without even producing it as an additional evidence. Admittedly, the purchase of land never materialized and the advance paid to director Shri Syamaraju was returned to the assessee only after a gap of 4 years. We fail to understand as to why the amounts were advanced to the director before even a property was identified. If the claim of the assessee, that it has advanced the amount to the director to purchase the property, the same could have been done at the finalization of the sale agreement or final stage of

sale. In the instant case, we are of the view that the advances were made *prima facie* not for the purpose of purchasing a property on behalf of the assessee, but for personal benefit of the director. For the aforesaid reasons, we are of the view that the CIT(A) has correctly affirmed the A.O.'s order and we uphold the same. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 23<sup>rd</sup> day of December, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 23<sup>rd</sup> December, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-5, Bengaluru.
4. The Pr.CIT-5, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore