

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 707/Bang/2013
Assessment year : 2008-09

M/s. Southern Hills Developers (P) Ltd. [formerly M/s. Nitesh Estates Project Pvt. Ltd.], 7th Floor, Nitesh Timesquare, No.8, M.G. Road, Bangalore-560 001 PAN: AACCN 3865H	Vs.	The Deputy Commissioner of Income Tax, Circle 12(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Shri Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.02.2022
Date of Pronouncement	:	21.02.2022

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 28.3.2013 of Commissioner of Income Tax (Appeals)-III, Bangalore for the assessment year 2008-09.

2. Originally this appeal was disposed of by dismissing it by this Tribunal vide order dated 29.7.2016. On further appeal by the assessee to the Hon'ble High Court of Karnataka in ITA No.636/2016, the High Court vide order dated 31.8.2021 remitted the appeal to the Tribunal for reconsideration. Accordingly, this appeal is taken up for hearing.

3. The assessee is engaged in the business of engineering contracts and real estate development. During the course of assessment proceedings, the Assessing Officer noted that the assessee has shown sales on the basis of recognition of revenue from the project NBG which was jointly executed with a partner. He also noted that the finance charges claimed by the assessee was not related to the borrowings used for NBG Project at all, but may be used in respect of loan raised for work in progress where revenue had not been recognized. Accordingly, he disallowed the entire amount claimed as finance charges of Rs.3,43,72,724 and treated the same as capitalized under work in progress.

4. On appeal the CIT (Appeals) granted part relief and allowed part financial charges upto 61.60% being consumed in respect of NBG Project and the balance amount was disallowed being interest payable to the bank in respect of work in progress. Therefore, the CIT (Appeals) allowed the claim of Rs.1.98 Crores being 61.60% of the total expenditure of interest on loan and the balance disallowance was sustained. Against this, the assessee is in appeal.

5. The Id. AR drew our attention to working sheet of interest allocation placed at page 27 of the PB which is reproduced below. According to him, the assessee incurred total interest of Rs.3,40,82,556 the details of which are as follows:-

S.No.	Project	Amount
1.	N.B.G.	2,19,12,666
2.	N.K.B.	5,22,045
3.	Head Office	1,02,94,505
4.	N.C.W.	13,53,340
	TOTAL	3,40,82,556

6. It is submitted that Rs.21,19,12,666 relates to NBG project and Rs.1,02,94,505 relates to HO expenditure which is not attributable to any specific project. He submitted that the assessee already allocated an amount of Rs.18,75,385 relating to other projects which has been included in the work-in-progress as no income has been offered for taxation. The amount relating to NBG project is at Rs. 21,19,12,666 is to be allowed as a deduction as the assessee already recognised 91% of the project revenue as income of the assessee. There is no question of any disallowance out of it. Further Rs. 1,02,94,505, not relating to specific project and relating to HO borrowings, has to be allowed in its entirety.

7. The Id. DR submitted that with regard to interest of Rs. 21,19,12,666 for NBG project, the assessee offered income to the extent of 91% of Rs.55 crores and proportionately the interest expenditure to be allowed and the balance has to be carried forward and to be included in the work-in-progress. Similarly with regard to allocation of interest of 1,02,94,505, the assessee has not furnished the details of the project for which it has been incurred and hence the issue may be remitted to the file of AO.

8. We have heard both the parties and perused the material on record. With regard to Rs.18,75,385 debited to P&L Account, it has been included in the work-in-progress and no deduction deduction is warranted as no income is offered to tax.

9. With regard to finance charges of Rs. 21,19,12,666 relating to NBG project, the assessee offered only 91% of the revenue of this project, correspondingly only 91% of the interest to be allowed. The assessee has to show that the balance of interest is duly included in the work-in-progress of that project and carried forward to the next assessment year. In other words, assessee is entitled to claim 91% of the interest charges relating to NBG project out of Rs. 21,19,12,666. AO is directed accordingly to re-

examine whether 91% of the NBG project revenue has been offered to tax and decide the issue afresh.

10. With regard to finance charges of 1,02,94,505, the Id. AR stated that it does not belong to any specific project and no amount can be disallowed on this count. In our opinion, the assessee has to demonstrate that it is not relating to any specific project and it is general finance charges incurred by the assessee at H.O. level by filing necessary cash flow statement being the amount of loan on account of general in nature. Accordingly, the issue is remitted to the AO for fresh consideration.

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

Pronounced in the open court on this 21st day of February, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st February, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.