

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.5065/Mum/2019
(Assessment Year :2015-16)**

Dy. Commissioner of Income Tax Central Circle 1(2), Mumbai, 906, 9 th Floor, Pratishta Bhavan Old. C.G.O. Building (Annexe) M.K.Road, Mumbai – 400 020	Vs.	M/s. Antevorta Developers Pvt. Ltd., 514, Dalamal Chambers, 211 F.P.J. Marg, Nariman Point Mumbai – 400 021
PAN/GIR No. AAHCA1092J		
(Appellant)	..	(Respondent)

Assessee by	Shri Vijay Mehta & Shri Anuj Kisnadwala
Revenue by	Shri Ravinder Sindhu
Date of Hearing	29/03/2022
Date of Pronouncement	31/03 /2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5065/Mum/2019 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-47, Mumbai in appeal No.CIT(A)-47/10036/2017-18 dated 13/05/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/06/2017 by the Id. Dy. Commissioner of the Income Tax, Central Circle-1(2), Mumbai (hereinafter referred to as Id. AO).

2. The Revenue has raised the following grounds:-

1. Whether on the facts and circumstances of the case and in law, the CIT(A) was right in deleting disallowance made by the AO with regard to the business expenditure of Rs.7,65,94,120/- debited to Profit & Loss account and to carry forward the same to the construction Work-in-Progress relying on the decision M/s. Hiranandani Palace Garden Pvt. Ltd. even though the Department has filed appeal u/s 260A of the Act in the case before High Court on the issue vide ITAXL/ 1257/2016 dated 14.09.2016.

2. "Whether on the facts and circumstances of the case and in law, the CIT(A) was right in treating interest income of Rs.23,62,179,- earned by the assessee on fixed deposits placed with bank out of temporary surplus in business as 'Business Income' as against "Income from Other Sources" relying on the decision of ITAT in the case of M/s. Hiranandani Palace Garden Pvt. Ltd. even though the Department has filed appeal u/s.260A of the Act in the case before High Court on the issue vide ITAXL/1257/2016 dated 14/09/2016.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a private limited company engaged in the business of real estate development. The return of income was filed by the assessee for A.Y.2015-16 on 29/09/2015 declaring total loss of Rs.7,12,59,752/-. The assessment was completed u/s.143(3) of the Act on 30/06/2017 assessing total income at Rs.23,83,885/- after making the following additions / disallowances:-

- a. Disallowance of entire business expenses of Rs.7,65,94,120/- debited in the profit and loss account and the same was added to the work in progress of the project being constructed by the assessee.
- b. Treating interest income of Rs.23,62,179/- earned on fixed deposits as 'income from other sources'.

3.1. The assessee is into business of Real estate development and had purchased a plot of land in Kodigehalli Village, YelahankaHobli, Hebbal, Bengaluru, Karnataka. Hebal is situated at Bangalore and located near the new airport. Assessee was involved in developing 9 towers of 18 storeys in Phase 1, which consist of flats from 1 to 3 BHK with ultra-modern

amenities. The assessee follows completed contract method as the basis of its accounting system and recognizes revenue to the extent it is probable that the economic benefits will flow to the assessee and the revenue can be reliably measured. During the year under consideration, the assessee is engaged in the construction activity of the said project and is in the initial phase of development.

3.2. Since the assessee follows project completion method, all the revenues and expenses directly related with its project are transferred to the project work in progress during the year under consideration. Out of the total expenses incurred during the year, the expenses amounting to Rs.115,55,66,080 have been shown as Project Work in progress. The balance expenses which are administrative in nature and not directly related with the project amounting to Rs. 7,65,94,120/- have been debited in the Profit & Loss Account. Net loss as per Profit & Loss Account has been shown at Rs.7,48,81,635/- and after adjusting allowable and disallowable expenses, the net business loss is computed at Rs. 7,12,81,458/-.

3.3. The entire details of business expenses claimed by the assessee were duly submitted before the Id. AO. The assessee also pleaded that the entire financial statements have been prepared by it in accordance with accounting standards prescribed by the Institute of Chartered Accountants of India, more particularly, the Accounting Standards (AS)-2 on "valuation of inventories" and AS-7 of "Construction Contracts". The assessee also pleaded that the income tax return has been filed by it in consonance with provisions of Section 145A of the Act . The assessee also placed reliance on the Guidance Note on 'Accounting for real estate transactions' issued by the Institute of Chartered Accountants of India (ICAI) wherein it has been specifically pointed out that the following costs

should not be considered as part of construction cost and development cost if they are material:

- (a) General administration costs; selling cost;
- (b) Depreciation of idle plant and equipment;
- (c) Cost of unconsumed or uninstalled material delivered at site; and
- (d) Payment made to sub-contractors in advance of work performed.

Thus, as per the above guidelines, the administrative and selling expenses have been specifically excluded from the cost of inventory for work for closing WIP. Further as per AS-7 vide paragraph 19 it has been mentioned that the general administrative cost and selling cost does not constitute the cost of the project. Therefore, as per Guidance note, AS-2 and even AS-7, the general administrative expenses and selling expenses are not project cost and are to be charged to the profit and loss account in the very same year in which they are incurred.

3.4. Despite the aforesaid submissions, the Id. AO proceeded to disallow the entire administrative and selling expenses debited in the profit and loss account by the assessee and claimed as deduction to the tune of Rs.7,65,94,120/- and added the same to closing work-in-progress of the construction project in progress.

3.5. Yet another issue which need to be addressed is the assessee had earned interest income from fixed deposits amounting to Rs.23,62,179/- and the same was reduced by the assessee from the cost of construction of work in progress in the balance sheet. The Id. AO sought to treat the said interest income as income from other sources and separately brought the same to tax on the ground that this sum was invested out of idle funds lying with the assessee and hence, the decision of the Hon'ble

Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., reported in 227 ITR 172 would come into operation.

3.6. Both the aforesaid action of the Id. AO were deleted by the Id. CIT(A) by placing reliance on the decision of the Co-ordinate Bench of Mumbai Tribunal in the case of Hiranandani Palace Residence Pvt. Ltd., in ITA No.4579/Mum/2013 dated 30/12/2015.

4. At the outset we find that first issue with regard to disallowance of administrative and selling expenses was subject matter of adjudication by this Tribunal in assessee's own case for A.Y.2014-15 in ITA No.5064/Mum/2019 dated 01/11/2021. In fact, the same ground raised by the Revenue for A.Y.2015-16 was raised before this Tribunal in A.Y.2014-15 also. The relevant operative portion of the said Tribunal order is reproduced hereunder:-

"8. We have heard the rival submissions and perused the material available on record. The sole disputed issue emphasised by the Ld. DR that the CIT(A) has granted relief to the assessee by treating the expenses debited to profit and loss account as the revenue expenditure whereas the Assessing Officer in the assessment proceedings has made elaborate discussions on the facts and treated such expenditure as part of the capital work in progress. The CIT(A) has relied on the decision of the Co-ordinate Bench of the Hon'ble Tribunal in the group companies case and allowed the relief. Whereas, the Revenue has not accepted the decision of the ITAT and challenged before Jurisdictional High Court of Bombay in appeal u/s.260A of the Act. Whereas the Ld. AR has supported the order of the Id. CIT(A) and relied on the group company decision of the Hon'ble Tribunal. We consider it appropriate to refer to the observations of the CIT(A) at page 11 para 8.3. to 8.4. which is read as under:-

"8.3. I have noted that a similar issue had come up for adjudication before the Hon'ble ITAT Mumbai Bench "H" in one of the group concern of the Appellant. The Hon'ble ITAT, Mumbai "H" Bench in ITA No. 4579/M/2013 in the case of M/s Hiranandani Palace Gardens P. Ltd. Vs ACIT(OSD), Circle 3(1), Mumbai for the A.Y. 2009-10, vide order dated 30.12.2015 had held as under:-

"11. We have considered rival contentions and carefully gone through the orders of the authorities below. The percentage completion method of accounting has been regularly followed by the assesses. In the succeeding assessment year 2010-11, the AO has accepted the deductibility of the identical nature of expenses in

the assessment order passed u/s 143(3) of the IT. Act. We agree with contention of the Id. Counsel for the assessee that the employee cost refers to salary paid to the employees who are looking after the administration of office and not directly related to construction of the project but is part of the administrative expenses. Similarly, the office and administrative expenses and selling and marketing expenses are to be charged to the profit & loss account in the very same year in which they are incurred and have to be excluded from the cost of inventories for working out closing WIP as per the guidelines issued the ICAI, Accounting Standard AS-2 and AS-7. The assessee has regularly and consistently been following the said method of accounting as per the provisions of section 145A of the LT, Act. The AO has not assigned any cogent reason as to why the method, which has been consistently followed by assessee and accepted by the department in past as well in succeeding assessment years and which is in accordance with the recognized principles of accounting by ICAI, is being rejected. In our view, the action of the Revenue Authorities in rejecting the assessee's accounting method, without assigning any reason is not justified. The accounting method followed by the assessee and thereby excluding the indirect expenses such as office employees' salary, administrative expenses and marketing & selling expenses is as per the recognized principles of accountings and as such the claim of the assessee deserves to be allowed. We hold accordingly. The additions made by the lower authorities on this issue are hereby ordered to be deleted."

6. Both the Ld. representatives of the parties have submitted that the issue is squarely covered by the above decision of the Tribunal. We find that rather the case of the assessee is on better footing as the assessee was carrying out different projects though at the same location, hence it was not a case of single project. Even otherwise the resultant income from the project is a loss even after capitalisation of expenditure by the AO to work in progress. Hence, there is no tax implication, so far as the year under consideration is concerned and the loss otherwise also has to be carried forward. Under such circumstances, it cannot be said that the assessee has adopted the above stated accounting method to avoid tax on income for the year under consideration. The assessee, thus, has followed the accounting method which has been consistently followed by it and which is as per the recognized principles of accounting. In view of the above discussion of the matter and following the above decision of the Tribunal for the sake of consistency, this issue is decided in favour of the assessee."

*8.4 Thus, this issue is covered in favour of the Appellant by the order of the Hon'ble ITAT, Mumbai in the case of M/s Hiranandani Palace Gardens P. Ltd., referred supra. Accordingly, the **Ground No. 1** of the present appeal is **allowed**.*

9. The Ld. DR could not controvert the findings of the CIT(A) with any cogent material or new tangible information and relied on the officer order. We find the CIT(A) has dealt on the provisions facts, Accounting standards and the Co-ordinate Bench decision of this Hon'ble Tribunal in the group companies case and granted the relief and passed a reasoned order. We respectfully follow the judicial precedence and are not inclined to interfere with the order of the CIT(A) and uphold the same and dismissed the grounds of appeal of the Revenue.

4.1. Respectfully following the aforesaid decision, the ground No.1 raised by the Revenue is dismissed.

5. With regard to the taxability of interest of income on fixed deposits amounting to Rs.23,62,179/-, we find that the same was invested out of surplus funds available with the assessee. Admittedly, the surplus funds had been generated by the assessee out of its business. Hence, it could be safely concluded that the monies generated by the assessee were from its business and hence, only the business funds has been parked with the bank in the form of fixed deposits which had eventually yielded interest income. Admittedly, the business of the assessee had already commenced in as much as the construction activity had been started by the assessee and the cost incurred thereon were included in the closing work in progress in the balance sheet. Only, in view of the fact that assessee is following the project completion method for recognition of revenue, there is no income from construction activity disclosed by the assessee in the profit and loss account. This does not mean that assessee had not commenced its business. In fact the assessee is given an option either to follow percentage completion method or project completion method for recognition of Revenue from construction projects. In the instant case as stated supra, the assessee has chosen to follow project completion method. Once, the business is commenced by the assessee, any surplus business funds remaining with the assessee which had been used by the assessee for making investment in fixed deposits would only go to recover the interest expenditure partly which has been done by the assessee in the instant case. In other words, the assessee had made fixed deposits with banks and derived interest income thereon only to recover the interest expenditure paid by it on the loans borrowed by it for the purpose of business. Hence, the interest income squarely partakes the character of

business income. Admittedly, the business income from construction projects would be offered in the year of project completion of the project followed by the assessee. This interest income of Rs.23,62,179/- would go to reduce the closing work in progress of construction project carried out by the assessee, which has been done by the assessee in the return of income. Hence, no fault could be attributed in the accounting treatment and the income tax treatment given by the assessee. We find that the decision of the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd., referred to supra is factually distinguishable as in that case, the business itself had not commenced and interest income from fixed deposits had been earned before the commencement of business. Hence, the reliance placed by the Id. DR on the said decision does not advance the case of the Revenue.

5.1. We also find that the very same issue was subject matter of adjudication by this Tribunal in the case of DCIT vs. Saudela Constructions Pvt. Ltd., in ITA No.5058-5061/Mum/2019 dated 29/10/2021 wherein it was held as under:-

“12. The issue raised in ground No.5 is against the deletion of Rs.55,04,550/- by Ld. CIT(A) as added by the AO on account of interest income on fixed deposits.

13. The facts in brief are that during the year under consideration the assessee earned income by way of interest on fixed deposits of Rs.55,04,550/- which was reduced from project work in progress . According to the AO the said interest income should be taxed as income from other sources and accordingly a show cause notice was issued. The assessee replied the show cause notice by submitting that the assessee has raised huge funds and there is a gap between raising of funds and deployment of funds. During the intervening period these funds are to be kept in the fixed deposits in order to reduce the interest cost of borrowings. The assessee submitted that the income from these fixed deposits are directly due to capital receipt of the assessee company to meet the requirement of project undertaken at Bengaluru and this is an income which is accrued to the assessee in the course of business and the said interest income

is inextricably linked to the business of the assessee and has to be reduced from project cost of inventory. The AO did not accept the contention of the assessee and treated the interest income as income from other sources and brought to tax accordingly.

14. After hearing both the parties and perusing the material on record, we find that the issue has been decided by the co-ordinate Bench of the Tribunal in favour of the assessee in the case of sister concern case M/s. Hiranandani Palace Garden Pvt. Ltd. vs. ACIT (supra) wherein it has been held that interest income from fixed deposits during the intervening period i.e their borrowing and deployment is assessable as business income and thus allowed the appeal of the assessee. Therefore, we do not find any infirmity in the order of Ld. CIT(A) and accordingly the same is upheld on this issue by dismissing the ground No.5 of the Revenue's appeal."

5.2. Moreover, we also find from the perusal of the balance sheet that similar interest income of Rs.6,45,036/- has been earned by the assessee in A.Y.2014-15 also for which no addition was made by the Id. AO. Hence, even going by the principle of consistency when there is no change in the facts and circumstances of the case as has been held by the Hon'ble Supreme Court in the case of Radhasoami Satsang reported in 193 ITR 321, the interest income earned on fixed deposits in the instant case would only go to reduce the cost of construction of closing work in progress and cannot be taxed separately as income from other sources.

5.3. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, the ground No.2 raised by the Revenue is dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 31/03/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated 31/03/2022
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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