

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 304/Del/2017

Asstt. Year : 2011-12

Unitech Hospitality C/o Luthra & Luthra Law Offices 103, Ashoka Estate, Barakhamba Road, Connaught Place, New Delhi – 110 001 PAN AAACU8460H (Appellant)	Vs.	DCIT, Circle-18(1) Room No. 193, C.R. Building New Delhi 110 002 (Respondent)
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Assessee by:	None
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	05.04.2022
Date of pronouncement	25.04.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 09.11.2016 of the Ld. Commissioner of Income Tax (Appeals)-22, New Delhi (“CIT(A)”) pertaining to the assessment year 2011-12.

2. The assessee is a company engaged in the business of hospitality services and real estate development. For the assessment year 2011-12 the assessee company filed its return of income electronically on 29.09.2011

declaring total income of Rs. 66,88,857/-. After initial processing of the return under section 143(1), the case was selected for scrutiny. The assessment under section 143(3) was framed by the Ld. Assessing Officer (“AO”) on 20.03.2014 on total income of Rs. 24,21,33,610/- including therein addition of – (i) Rs. 17,51,37,897/- being profit as per percentage completion method; (ii) interest of Rs. 1,97,36,049/- received from M/s. Unitech Developers & Hotels Pvt. Ltd. (“UDHPL”); and (iii) interest of Rs. 4,05,70,811/- on advances.

3. The assessee appealed before the Ld. CIT(A) challenging the aforesaid additions.

3.1 The Ld. CIT(A) has summarised additions made by the Ld. AO as under:-

“The Assessing Officer has estimated 20% of the advances received of Rs. 87,56,89,484/- as profit from Real Estate project on percentage completion method. The amount of Rs. 87,56,89,484/- was the advances received from customers. The second addition has been made on account of interest free advance to two concerns. The appellant gave interest free advance to its holding company in respect of which an estimated addition of 15% of the closing balance of Rs. 11,30,97,996/- has been made. The second component of addition is at the rate of 8% of closing balance of advance to M/s. Unitech Developers and Hotels Pvt. Ltd. on closing balance of Rs. 29,50,76,402/-. The appellant had charged on interest at the rate of 7% from this concern which is a co-subsidiary of M/s. Unitech Ltd. The Assessing Officer estimated the reasonable interest rate at 15% and made an addition of the differential amount of 8%. These two additions totalling Rs. 4,05,70,811/- have been made under the head income from other sources. The interest at the rate of 7% received from Unitech Developers and Hotels Pvt. Ltd. of Rs. 1,97,36,049/- which was credited by the appellant in the work in progress account, has also been taxed under the head ‘income from other sources.’”

3.2 According to the Ld. CIT(A), all the three additions have been challenged as also the assessment of interest income from UDHPL under the head ‘income from other sources’.

4. After taking into account the findings of the Ld. AO and the submissions of the assessee during appellate proceedings, the Ld. CIT(A) gave partial relief with the following observations:-

“5.1. The appellant’s contentions have been examined. As regards addition of notional interest, the appellants contention is accepted in principle that the addition for notional interest cannot be made. However, the addition of interest payment can be made if interest bearing funds have been diverted or non-business persons as interest fee advances.

5.2. The profit and loss account of the appellant shows a rental income of Rs. 68,46,360/- against which the administrative expenses of only 84,524/- have been claimed. The remaining expenses incurred have been debited to capital work in progress, which stood at 6.55 crores at the end of the year as against 46.19 crores, at the beginning of the year. This amount includes interest income as under:-

- (a). Interest on FDR Rs. 32,055/-
- (b). Interest receivable on unsecured loans Rs. 8,89,65,226/-.

It includes interest debited as under:-

- (a) Interest on TDS Rs. 64,150/-
- (b) Interest on TDS Rs. 1,54,630/-
- (c) Interest on term loan Rs. 11,80,58,921/-
- (d) Other interest Rs. 2,083/-

5.3. The above figures are cumulative figures. The interest pertaining to the year under appeal is as under:-

- (a) Interest credit
 - (i) Interest on FDR Rs. 32,055/-
 - (ii) Interest receivable on unsecured loan Rs. 1,97,36,049/-

(b) Interest debited

- (i) Interest on TDS Rs. 64,150/-
- (ii) Interest on TDS Rs. 1,54,630/-
- (iii) Interest on term loan Rs. 91,46,784/-

5.4. From the balance-sheet of the appellant, it is noticed that the advances and security deposits from customers totalling 101.45 crores has mainly gone as advances of 54.45 crores besides CWIP. Therefore, while the addition of notional interest cannot be upheld, the interest disallowance out of that debited in the capital work in progress can certainly be made. While interest on TDS cannot be allowed even otherwise, the remaining interest debit is of Rs. 91,47,784/- only on term loan. Therefore, CWIP is reduced by Rs. 93,66,564/- and the addition of notional interest of Rs. 4,05,70,811/- is deleted. For statistical purpose ground no. 2 and 3 treated as partly allowed.

5.5. As regards interest received on unsecured loan from UDHPL, it has no nexus with the project. So, its assessment under the head income from other sources is confirmed.

6. On the issue of percentage completion method, the appellant was asked to furnish year wise details of the project from the beginning till date showing

advances received, capital work in progress shown, sales shown each year with the corresponding profits offered for tax, vide order sheet entry dated 19.11.2015.

6.1. *After that, the appeal was fixed for hearing on 12.01.2016, 08.03.2016, 19.04.2016, 21.06.2016, 25.07.2016, 05.09.2016, 26.09.2016, 20.10.2016, 26.10.2016, 07.11.2016 and 08.11.2016. However, the required details were not furnished. In AY 12-13 also only profit from sale of assets of Rs. 1,70,52,548/- has been shown.*

6.2. *Strangely in AY 12-13 the advances from customers have reduced to 1 crore from 87.6 crores in AY 11-12 and CWIP has reduced to NIL. It is not known only it is shown as profit from sale of assets by appellant. Apparently a profit of 1.7 crores has been shown on CWIP (opening) of 87.6 crores, which comes to 1.9% only. This finding is only a presumption as the appellant has not mentioned the sales amount in the audited accounts of AY 12-13 filed. However, it confirms that the project was almost complete in AY 11-12 and application of percentage completion method is justified.*

6.3. *Since appellant did not furnish complete project details, inspite of several opportunities given, it cannot be ascertained as to what were the total sale proceeds and profits of project and in which year it was offered for tax. Therefore, the AO's action is upheld in principle. The estimated profit at 20% of CWIP is however on a higher side. Therefore, the profit is estimated at 12% instead of 20% taken by AO and ground no. 1 is partly allowed."*

5. Aggrieved, the assessee came in appeal before the Tribunal on the following grounds:-

1. *The order passed by the Learned Commissioner of Income Tax (Appeals) ("**Ld. CIT(A)**") under Section 250 of the Act is bad in law and on the facts and circumstances of the case;*
2. *The Ld. CIT(A) has erred in fact and law in adopting percentage of completion method for determining the business income of the appellant and estimating profit at 12% of the advances received;*
3. *The Ld. CIT(A) has erred in fact and law by disallowing the interest expenditure on TDS and Term Loan amounting to Rs. 93,66,564/- claimed by the appellant without appreciating the facts and circumstances of the case in proper perspective;*
4. *The Ld. CIT(A) has erred in fact by treating interest received amounting to Rs. 1,97,36,049/- by the appellant on advance given to its co-subsidiary as Income from Other Sources;"*

6. The first hearing was fixed by the Tribunal for 05.01.2021 but none appeared for the assessee. The department was represented by the Ld.

CIT(DR). The hearing was adjourned for 16.03.2021. On that date also only Ld. CIT(DR) was present and none attended for the assessee. Next hearing was fixed for 10.08.2021. No one attended on behalf of the assessee, though Sr. DR was present. Again hearing was fixed for 01.11.2021. None was present on behalf of the assessee on that day also. However, Sr. DR was present. The last notice of hearing was sent by speed post fixing the hearing for 05.04.2022. The postal authorities returned the notice with the remark "Refused, returned to sender". Under these circumstances, we proceed to pass an ex-parte order after hearing the Ld. DR.

7. We have gone through the assessment order. We find that the assessee company responded to the statutory notices issued by the Ld. AO from time to time and filed submissions and necessary details as requisitioned. Evidently the assessment was framed after giving proper opportunity of hearing. Before the Ld. CIT(A) the assessee company attended the hearing initially but when certain details of the project was asked vide order sheet entry dated 19.11.2015 there was non-compliance despite several opportunities given. As stated earlier, there was no appearance at all on behalf of the assessee company before us.

8. Perusal of the appellate order revealed that the Ld. CIT(A) has given substantial relief to the assessee. In the absence of any fresh material on record before us, we confirm the order of the Ld. CIT(A) and reject the appeal of the assessee.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 25th April, 2022.

sd/-
(G. S. PANNU)
PRESIDENT

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 25/04/2022

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	