

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4053/Mum/2019
(A.Y: 2013-14)

DCIT, CC – 7(3) Room No. 655, 6 th Floor Aayakar Bhavan, M.K. Road, Mumbai – 400020	Vs.	M/s Cowtown Land Development Pvt Ltd(Now M/s Cowtown Infotech Services Limited)216, Shah Nahar Industrial Estate, DR. E Moses RoadWork, Mumbai – 400018.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC4889L		
Appellant	..	Respondent

Assessee represented by :	Mr.Niraj Sheth.AR
Department represented by :	Mr.R A Dhyani.DR

Date of Hearing	22.02.2022
Date of Pronouncement	26.04.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-49, Mumbai passed u/s 143(3) and 250 of the Act. The revenue has raised the following grounds of appeal:

- 1. Whether on the facts and circumstances of the case in law, the Ld. CIT(A) erred in deleting the addition of Rs. 3,44,34,000/- made by the A.O u/s 36(1)(iii) and capitalized the same to work in progress.*
- 2. Whether on facts and in law the Ld. CIT(A) was correct in allowing the interest payment of Rs. 3,09,205/- on the unsecured as the said loans were nothing but bogus accommodation entries.*

2. The brief facts of the case are that the assessee company is engaged in the business of land development, construction and real-estate properties. The assessee company has filed the return of income for the A.Y 2013-14 on 30.09.2013 disclosing a total loss of Rs. (-)24,23,67,446/-. 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 submitted the details and the case was discussed. During the financial year under considering the company is developing a project at Western Express Highway, Mumbai, The Assessing officer (A.O.) on perusal of the financial statements found that the assessee is following the mercantile system of accounting. Further for the purpose of determination of revenue from the project, the assessee

is following the percentage competition method of accounting. The assessee has borrowed the interest bearing funds from the banks and the group concerns and as on 31.03.2013 the total outstanding loan liability is Rs.9823 lakhs. During the financial year, the assessee after set off of the interest income and the net interest expenses of Rs. 344.34 laksh has been debited to profit and loss account. The A.O dealt on the provisions of Sec. 36(1)(iii) of the Act and observed that the assessee has considered the interest component in the work in progress. The contention of the Ld. AR that the assessee has filed the explanations on 23.03.2016 mentioning that the interest expenses have been claimed as deduction in the year of incurrence and the interest is periodic cost and the claim has to be allowed u/s 36(1)(iii) of the Act. Further the contentions of the Ld. AR that the assessee is following the mercantile method of accounting and the revenue recognition is as per the project completion method of Accounting Standard of ICAI. But the A.O. was not satisfied with the explanations and disallowed the claim and added to the work in progress. Further the A.O has observed that there is

violation of provisions of Sec.269SS/269T of the Act and is being dealt separately and worked out the assessed loss of Rs.(-)20,79,33,445/- and passed the order u/s 143(3) of the Act dated 30.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO, whereas in respect of capitalization of interest the CIT(A) observed that the A.O has made addition to the work in progress and the assessee has filed the elaborate submissions in the course of appellate proceedings referred at page 3 Para 5.2 of the CIT(A) order on factual aspects of business operations, provisions of law and judicial decisions. The CIT(A) has considered the assessee's submissions on the interest capitalization and is of the opinion that it is a recurring issue and dealt on the jurisdictional High Court and the Honble Tribunal decisions and directed the A.O. to delete the addition and allowed the grounds of appeal of the assessee. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

4. At the time of hearing the Ld. DR submitted that the CIT(A) has erred in directing the A.O. to delete the addition u/s 36(1)(iii) of the Act as the A.O has treated the interest component as capital expenditure and the decisions relied by the CIT(A) are distinguishable.

5. Contra, the Ld. AR supported the order of the CIT(A) and further substantiated with the judicial decisions in respect of group companies on the identical issue and prayed for dismissal of revenue appeal.

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue in the revenue appeal that the CIT(A) has erred in deleting the addition u/s 36(1)(iii) of the Act relying on the decision of Hon'ble High Court of Mumbai. We find in the Hon'ble Tribunal in the assessee's group company M/s Palava Developers Pvt Ltd and Lodha Developers in ITA No. 2147/Mum/2018 and 2348/Mum/2018 for the A.Y 2014-15 order dated 20.02.2020 has dealt on the same issue in the revenue appeal where the grounds of appeal are similar and observed at page 2 Para 3 as under:

3. In so far as Ground Nos. 1 and 2 are concerned, briefly stated the facts are that, the Assessing Officer while completing the assessment on 30.12.2016 u/s.143(3) of the Act noticed that assessee for the purpose of construction of residential project borrowed interest bearing funds from group concerns, banks and financial institutions. Assessing Officer noticed that assessee paid interest of ₹.164.71 Crores and earned interest income of ₹.42.57 Crores and net interest expenses were shown at ₹.122.15 crores. Assessing Officer noticed that out of this ₹.122.15 crores the assessee capitalized an interest of ₹.105.13 crores and shown as work in progress. He further noticed that in the return of income interest of ₹.89.12 crores have been claimed as deduction out of this ₹.105.13 Crores which were capitalised in the Books of Accounts. The assessee was required to explain as to why interest expenses claimed in the return of income shall not be disallowed. The assessee submitted that interest expenses have been claimed as deduction in the year of incurrance as the interest is periodic cost and pertains to the year for which it belongs to. It was further submitted that the said interest is allowable as deduction u/s. 36(1)(iii) of the Act being interest pertaining to stock in trade of the assessee. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Taparia Tools Pvt. Ltd., v. JCIT in Civil Appeal No. 6366/2003 dated 23.03.2015 and the decision of the Hon'ble Bombay High Court in the case of CIT v. Lokandwala Construction Industries Ltd., [260 ITR 579].

4. Not convinced with the submissions of the assessee, the Assessing Officer placing reliance on the judgement of the Hon'ble Special Bench, Mumbai in the case of M/s. Wall Street Construction Limited [102 TTJ 505] wherein it has been held that the interest cost shall be debited to work in progress and allowed to be claimed as deduction only in the year in which corresponding income offered to tax, Assessing Officer denied the claim of the assessee. On appeal the Ld. CIT(A) following the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Lokandwala Construction Industries Ltd., [260 ITR 579] and various other decisions of the Coordinate Benches allowed the claim for deduction of interest. Against this order the revenue is in appeal before us.

5. Ld. DR vehemently supported the order of the Assessing Officer and also the decision of the Special Bench in the case of M/s. Wall Street Construction Limited (supra).

6. We have heard the rival submissions, perused the orders of the authorities below and case laws relied on. This aspect of the matter has been elaborately considered by the Ld. CIT(A) with reference to the averments of the Assessing Officer and considering the submissions of the assessee and also the decision of Hon'ble Jurisdictional High Court in the case of CIT v. Lokandwala Construction Industries Ltd., (supra) and various other decision and allowed the claim of the assessee observing as under: -

"The submissions of the learned counsel have been carefully considered. According to the learned counsel the interest claimed by the assessee is a period cost and has to be allowed under section 36 (1) (iii) of the Act. The assessee has relied upon the judgment of the apex court in the case of the Taparia tools Ltd vs. DCIT (2015) 272 ITR 605 wherein the Supreme Court held that the only aspect which needed examination was as to whether the provisions of section 36 (1) (iii) read with section 43 (2) of the act was satisfied or not. Once these are satisfied there is no question of denying the benefit of deduction in the year in which such an amount was actually paid or incurred. Further, the proviso introduced by the Finance Act 2003 prohibits the allowance of interest cost only if the borrowed funds have been utilized for acquisition of a capital asset even for existing business. In this case the borrowed funds have been utilized for stock in trade which is not a capital asset. The jurisdictional Bombay High Court in the case of Lokhandwala constructions Inds Ltd 260 ITR 579 held as under:

"in the instant case, it was dear that the assessee undertook two-fold activities. It bought and sold flats. Secondly, the assessee was also engaged in the business of construction of buildings. The profits from both the activities were assessed under section 28. The assessee had undertaken the project of construction of flats. Therefore, the loan was obtained for obtaining stock-in-trade. The project constituted the stock-in-trade of the assessee. The project did not constitute a fixed asset of the assessee. Since the assessee had received loan for obtaining stock-in-trade, it was entitled to deduction under section 36(1)(iii).

While adjudicating the claim for deduction u/s 36(1)(iii), the nature of expenses, whether the expenses are on capital account or revenue account is irrelevant as the section itself says that interest paid by the assessee on the capita! borrowed by the assessee is an item of deduction.

The utilization of the capital is irrelevant for the purpose of adjudicating the claim for deduction u/s 36(l)(iii)."

The SLP filed by the Department against the Bombay High Court judgment has been rejected by the Supreme Court. The Hon'ble ITAT Mumbai in the case of M/S Ashish Builders Private Ltd vs. ACIT ITA number 310/M/2012 held as under:

"A) Interest on unsecured loans and fixed deposits: It is the claim of the assessee that the entire interest expenditure is allowable as it is a time related fixed finance cost on the borrowed capital. The claim of the assessee should be allowed in full in view of the various decisions on this issue. To start with, we perused the order of the Tribunal in the case of Rohan Estates Pvt. Ltd. (supra) which is one of the sister concerns of the assessee. We perused the para 3.2 of the said order of the Tribunal and find it is a self explanatory and the decision of the Tribunal supports the case of the assessee. Under comparable facts of the assessee, interest cost was allowed in favor of the assessee relying on binding jurisdictional High Court judgment in the case of M/s Lokhandwala Construction Industries Ltd. (supra). For the sake of completeness of this order we extract relevant para 3.2 of the order which is reproduced as under:

"3.2 With regard to the interest expenditure,.....The interest cost on the corresponding capital borrowed would nevertheless continue to be incurred, without any corresponding increase in the value of the inventory or the project. Similarly, a project, or part thereof, may be partly sold or even remain unsold for quite some time after its completion. While revenue would stand to be booked only on the part, if any, sold, the interest cost would continue to be incurred on the entire capital, even as no corresponding gain inures I terms of value addition to the project, which stands in fact completed, so as to increase its cost by loading the said cost thereon. It is for these reasons that interest (financing) cost is normally considered as only a period (fixed) cost, and charged to the operating statement for the year in which the same is incurred. As such, what in our view would prevail is the method of accounting being regularly followed by the assessee, i.e. on a year basis. The same also has the sanction of law inasmuch as sec. 145 clearly provides for determination of the business income on the basis of the method of accounting being regularly followed, with the mandate of sec 36(l)(iii)

being also satisfied, and toward which the assessee relies on the decision in the case of CIT vs Lokhandwala Construction Inds. Ltd(supra). The same also clarifies that the interest cost is to allowed u/s 36(l)(iii), irrespective of whether it stands incurred in relation to stock-in-trade or on capital account, as the said section draws no such distinction. The issue, though, we may clarify, is not as to whether the borrowed capital stands utilized toward trading operations or on capital account; the instant case being decidedly of the former, but whether the said cost, having been incurred, is to be capitalized as a part of the project cost and, thus, taken into account for the purpose of valuation of inventory (stock-in-trade) as at the year-end and, consequently, the determination of gross profit for the year. It is only the cost that is incurred and otherwise allowable, which, it may be appreciated, would stand to be considered thus, where it otherwise qualifies for being reckoned as a part of the cost of production/construction, and thus of the inventory or the project cost as at the year-end. The deductibility of the said cost u/s 36(l)(iii) is thus neither in doubt nor in dispute, Further, it may also be in place to state that section 36(l)(iii) stands since amended by Finance Act, 2003 w.e.f, 01/04/2004, by way of insertion of a proviso thereto, so that any interest cost on capital account is to be necessarily capitalized. Accordingly, it is only the interest cost computing the business income qua the business of which the relevant asset is aor is to constitute a part (also refer Explanation 8 to s.43(l)). The said decision may, thus, in the given facts and circumstances of the case as, well as the amended law, not be of much assistance."

We have also perused the said binding High Court judgment in the case of M/s Lokhandwala Construction inds. Ltd. (supra) and find the same is relevant for the following conclusion - "construction project undertaken by the assessee builder constituted its stock in trade and the assessee was entitled to deduction under section 36(l)(iii) of the Act in respect of the interest on the loan obtained for execution of said project." Relying on the another judgment of Hon'ble Bombay High Court in the case of Calico Dying and Printing Works 34 ITR 265 Bombay, Hon'ble Bombay High Court concluded that the interest expenditure relating to the borrowed capital is allowable u/s 36(l)(iii) of the Act. The relevant lines from the para 4 reads as under;

"that, while adjudicating the claim for deduction under section 36(l)(iii) of the Act the nature of expense 0- whether the expenditure was on capital account or revenue account - was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That the utilization of capital was the relevant for the purpose of adjudicating the claim of deduction under section 36(l)(iii) of the Act. (referring to the judgment in the case of Calico) It was laid down that where an assessee claims deduction of interest paid on the capital borrowed all that the assessee was to show that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether capital was borrowed in order to acquire the revenue asset or a capital asset....."

Considering the above settled position in the matter we are of the opinion that the assessee is entitled to claim entire interest deduction relatable to the capital borrowed and utilized for business purposes in the year under consideration. Resultantly, we disapprove the decision of the Assessing Officer/CIT(Appeals) in transferring the interest expenditure to WIP account.

Therefore, assessee is justified in debiting the same to the P&L accounts of the respective assessment years. Thus, we order the Assessing Officer to accept the claim as made in the return of income. Accordingly, this part of the ground No. 1 is allowed in favour of the assessee"

The Hon'ble ITAT in the case of ITO vs Rohan states ITA number 7200/MUM/2010 held as under:

"3.2 With regard to the interest expenditure, though the Accounting Standard -2 (AS-2) on the valuation of inventories issued by the Institute of Chartered Accountant of India (ICAI) would suggest that the interest expenditure ought to be taken into account in the valuation of inventories where and to the extent there is a direct nexus, the said standard is not mandatory under the Act. In fact, even following AS-2 a direct nexus has to be established for the interest cost to form part of the cost of production or construction, as the case may be, and, thus, a part of the valuation of the unsold inventory or work-in-progress as at the year-end. This is as, to cite by way of an example from the civil construction itself, the work on a project may not be underway at all for the whole or a part of the year, or

say as its optimum or normative level, on account of various business exigencies. The interest cost on the corresponding capital borrowed would nevertheless continue to be incurred, without any corresponding increase in the value of the inventory or the project. Similarly, a project, or part thereof, may be partly sold or even remain unsold for quite some time after its completion. While revenue would stand to be booked only on the part, if any, sold, the interest cost would continue to be incurred on the entire capital, even as no corresponding gain inures in terms of value addition to the project, which stands in fact completed, so as to increase its cost by loading the said cost thereon. It is for these reasons that interest (financing) cost is normally considered as only a period (fixed) cost, and charged to the operating statement for the year in which the same is incurred. As such, what in our view would prevail is the method of accounting being regularly followed by the assessee, i.e. on a year basis. The same also has the sanction of law inasmuch as sec. 145 clearly provides for determination of the business income on the basis of the method of accounting being regularly followed, with the mandate of sec 36(l)(iii) being also satisfied, and toward which the assessee relies on the decision in the case of CIT vs Lokhandwala Construction Inds. Ltd(supra). The same also clarifies that the interest cost is to allowed u/s 36(l)(iii), irrespective of whether it stands incurred in relation to stock-in-trade or on capital account, as the said section draws no such distinction. The issue, though, we may clarify, is not as to whether the borrowed capital stands utilized toward trading operations or on capital account; the Instant case being decidedly of the former, but whether the said cost, having been incurred, is to be capitalized as a part of the project cost and, thus, taken into account for the purpose of valuation of inventory (stock-in-trade) as at the year-end and, consequently, the determination of gross profit for the year. It is only the cost that is incurred and otherwise allowable, which, it may be appreciated, would stand to be considered thus, where it otherwise qualifies for being reckoned as a part of the cost of production/construction, and thus of the inventory or the project cost as at the year-end. The deducibility of the said cost u/s 36(l)(iii) is thus neither in doubt nor in dispute. Further, it may also be in place to state that section 36(l)(iii) stands since amended by Finance Act, 2003 w.e.f. 01/04/2004, by way of insertion of a proviso thereto, so that any interest cost on capital account is to be necessarily capitalized. Accordingly, it is only the interest cost computing the business income qua the business of

which the relevant asset is a or is to constitute a part (also refer Explanation 8 to s.43(l)). The said decision may, thus, in the given facts and circumstances of the case as, well as the amended law, not be of much assistance.

In fact, even going by the Revenue's stand, another issue would arise and, accordingly, need to be determined apriori. Considering the said cost as includable in the project cost may have a direct bearing on the gross profit rate, and which may therefore stand to decline from the reported and accepted rate of 23%, and cannot be presumed be remain as such, i.e., unchanged."

The Hon'ble ITAT Pune in the case of M/S Kolte Patil Developers Ltd erstwhile Corola reality Ltd merged with Kolte Patil Developers Ltd) also held as under:

"Further, we find the Mumbai Bench of the Tribunal in the case of M/s Ashish Builders Pvt. Ltd. (supra) has decided an identical issue in favour of the assessee. Relevant Paragraphs are being reproduced hereunder for better appreciation of the issue:

"6. Ground No. 1 of the appeal relates to the addition of some of the expenses to the WIP account i.e. interest on unsecured loan/fixed deposit (sic-car loan), advertisement expenses, brokerage expenses and loan processing fees. AO considered the above expenses as relatable to the WIP account and recomputed the WIP account at Rs.5,33,28,399/- . /Assessee contends that the above said expenditure is fully allowable in the year under consideration. In this regard, assessee relied on various ITA No. 80/PUN/2016 M/s Kolte Patil Developers Ltd., decisions. This issue is relevant for AYs/appeals under consideration. We shall take up expenditure-account wise adjudication in the following paragraphs:

"A) Interest on unsecured loans and fixed deposits: It is the claim of the assessee that the entire interest expenditure is allowable as it is a time related fixed finance cost on the borrowed capital. The claim of the assessee should be allowed In full in view of the various decisions on this issue. To start with, we perused the order of the Tribunal in the case of Rohan Estates Pvt. Ltd. (supra) which is one of the sister concerns of the assessee. We perused the para 3.2 of the said order of the Tribunal and

find it Is a self explanatory and the decision of the Tribunal supports the case of the assessee. Under comparable facts of the assessee, interest cost was allowed in favor of the assessee relying on binding jurisdictional High Court judgment in the case of M/s Lokhandwala Construction Industries Ltd. (supra). For the sake of completeness of this order we extract relevant para 3.2 of the order which is reproduced as under:

"3.2 With regard to the interest expenditure.....The interest cost on thecorresponding capital borrowed would nevertheless continue to be incurred, without any corresponding increase in the value of the inventory or the project. Similarly, a project, or part thereof, may be partly sold or even remain unsold for quite some time after its completion. While revenue would stand to be booked only on the part, if any, sold, the interest cost would continue to be incurred on the entire capital, even as no corresponding gain inures I terms of value addition to the project, which stands in fact completed, so as to increase its cost by loading the said cost thereon. It is for these reasons that interest (financing) cost is normally considered as only a period (fixed) cost, and charged to the operating statement for the year in which the same is incurred, As such, what in our view would prevail Is the method of accounting being regularly followed by the assessee, i.e. on a year basis, The same also has the sanction nf law Inasmuch as sec. 145 clearly provides for determination of the business income on the basis of the method of accounting being regularly followed, with the mandate of sec 36(l)(iii) being also satisfied, and toward which the assessee relies on the decision in the case of CIT vs Lokhandwala Construction Inds. Ltd(supra). The same also clarifies that the interest cost is to allowed u/s 36(l)(iii), irrespective of whether it stands incurred in relation to stock-in-trade or on capital account, as the said section draws no such distinction. The issue, though, we may clarify, is not as to whether the borrowed capital stands utilized toward trading operations or on capital account; the instant case being decidedly of the former, but whether the said cost, having been incurred, is to be capitalized as a part of the project cost and, thus, taken into account for the purpose of valuation of inventory (stock-in-trade) as at the year-end and, consequently, the determination of gross profit for the year. It is only the cost that is incurred and otherwise allowable, which, it may be appreciated, would stand to be considered thus, where it otherwise qualifies for being reckonedas a part of the cost of production/construction, and thus of the inventory or the project cost a

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We have also perused the said binding High Court judgment in the case of M/s Lokhandwala Construction incls. Ltd. (supra) and find the same is relevant for the following conclusion - "construction project undertaken by the assessee builder constituted its stock in trade and the assessee was entitled to deduction under section 36(l)(iii) of the Act in respect of the interest on the loan obtained for execution of said project/' Relying on the another judgment of Hon'ble Bombay High Court in the case of Calico Dying and Printing Works 34 ITR 265 Bombay, Hon'ble Bombay High Court concluded that the interest expenditure relating to the borrowed capital is allowable u/s 36(l)(iii) of the Act. The relevant lines from the para 4 reads as under;

"that, while adjudicating the claim for deduction under section 36(l)(iii) of the Act the nature of expense 0- whether the expenditure was on capital account or revenue account was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That the utilization of capital was the relevant for the purpose of adjudicating the claim of deduction under section 36(l)(iii) of the Act. (referring to the judgment in the case of Calico) It was laid down that where an assessee claims deduction of interest paid on the capital borrowed all that the assessee was to show that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether capital was borrowed in order to acquire the revenue asset or a capital asset...../'

Considering the above settled position In the matter we are of the opinion that the assessee is entitled to claim entire interest deduction relatable to the capital borrowed and utilized for business purposes in the year under

consideration, Resultantly, we disapprove f decision of the Assessing Officer/CIT(Appeals) in transferring the interest expenditure to WIP account.

Therefore, assessee is justified in debiting the same to the P&L accounts of the respective assessment years. Thus, we order the Assessing Officer to accept the claim as made in the return of income. Accordingly, this part of the ground No. 1 is allowed in favour of the assessee."

14. From the above, it is evident that any amount of the interest paid in respect of capital borrowed for the business purposes constitutes an allowable deduction. The said clause (Hi) of section 36(1) of the Act supports the assessee's claim in the present case. This view is upheld in the case of CIT vs Lokhandwala Construction Industries Ltd. (supra) as well as the decision of the Tribunal in the case of M/s. Ashish Builders Pvt. Ltd. (supra) irrespective of the method of accounting of recognizing the income followed by the assessee. The present case involves the payment of interest of Rs.8,19,23,638/-, the interest paid to debenture holders, Financial institutions, Unsecured loan etc. It is not the case of the Revenue that the interest claim of Rs.3,00,57,566/- and related capital borrowed was not utilized by the assessee for business purposes of the assessee."

However, the case of Wall Street construction is one where the assessee was following project completion method and therefore the ITAT held that the interest cost shall be debited to work in progress and allowed to be claimed as deduction only in the year in which the corresponding income is offered to tax. In the instant case, the assessee is following percentage completion method (POCM) of therefore the judgment of Wall Street construction is not applicable to this case. The assessee is following percentage completion and offers a part of the revenue every year depending upon the percentage of completion. The funds have been borrowed for the purpose of construction and have gone into the projects of the assessee which are stock in trade and not capital asset of the assessee. Therefore, the amendment brought in the Act with effect from 2003 by way of introducing the proviso to section 36 (1) (iii) also does not affect the facts of the case of the assessee. In view of the binding judgment of the jurisdictional High Court in the case of Lokhandwala constructions and also of the jurisdictional ITAT in the cases of Ashish

Builders Private Ltd and Rohan Estate Private Ltd and also the various judicial pronouncements relied upon by the assessee the interest expenditure claimed by the assessee is held to be allowable, It is also to be mentioned here that during the proceedings before the Income Tax Settlement Commission, the AO had raised specific question in relation to claim on interest expenditure made by the appellant and reply was filed by the appellant explaining the same. Wherein the assessee explained that disallowance cannot be made u/s 36(l)(iii) of the Act, in view of the jurisdictional High Court's decision in the case of Lokhandwala Construction (supra). After considering the assessee's submissions, the AO accepted the same and did not raise objection in relation to interest claimed in the report u/s 245D (3) report filed before the ITSC. Further no disallowance/ adjustment was made by ITSC in relation to such interest claimed while passing the order. The addition made by the AO is directed to be deleted. These grounds of appeal are ALLOWED.”

- 7.** *On a careful perusal of the order of Ld.CIT(A), we do not see any infirmity in allowing the claim of the assessee as the claim of the assessee is in tune with the decision of the Hon'ble Jurisdictional High Court in the case of Lokandwala Construction (supra) wherein it has been held that when the project constructed by the assessee is its stock in trade and not a fixed asset of the assessee the interest paid on loans obtained for stock in trade is an allowable deduction u/s. 36(1)(iii) of the Act. We also find that in the proceedings before the settlement commission the assessee claimed interest expenses and as per the order dated 28.07.2014 of the settlement commission and during verification proceedings u/s. 245D(3) of I.T. Act, the assessee informed the Assessing Officer that interest of ₹.124.02 crores as claimed in the computation of income on ground of interest expenses retained in inventory is deductible under provisions of section 36(1)(iii) of the Act. It was further informed that the said amount of interest paid was in respect of capital borrowed for the purpose of business or profession. It was further submitted that the construction and development having commenced, the business is in operation, therefore, interest is allowable u/s. 36(1)(iii) of the Act. It was also further brought to the notice of the Assessing Officer that in the case of CIT v. Lokandwala constructions Industries Ltd., [131 Taxman 810] the assessee's claim for deduction of interest, although the revenue was*

recognized only on project completion basis in subsequent year, was allowed in the year in which the claim of interest was made. Thus, it was contended that the interest expenditure incurred during the year is claimed and allowable as expenses even though the same has been inventorised in the Books of Accounts. These contentions were accepted by the revenue and no objection has been raised by the Assessing Officer and the settlement commission has accepted these contentions of the assessee. This fact was also taken note by the Ld.CIT(A) in allowing the claim of the assessee. Therefore, since the revenue could not controvert the findings of the Ld.CIT(A) that the project constructed by the assessee for which the loans have been taken is not a stock in trade and also the other findings of the Ld.CIT(A), we do not find any valid reason to interfere with the findings of the Ld.CIT(A) and accordingly we sustain the order of the Ld.CIT(A) on this issue. Grounds raised by the revenue are rejected.

7. Further the Coordinate Bench of the Honble Tribunal in the case of DCIT Vs. M/s National Standard Pvt Ltd, in ITA No. 3048/Mum/2019 for the A.Y 2013-14 dated 05.04.2021 dealt on the similar issue at page 2 Para 3.2 to 3.3 as under:

3.2 The assessee had borrowed funds from bank and group entities and paid aggregate interest of Rs.1887.29 Lacs. After adjusting interest income of Rs.1447.80 Lacs there-from, it claimed deduction of net interest of Rs.439.49 Lacs from business income in statement of computation of income on the reasoning that interest expenditure was periodic cost and hence, an allowable deduction u/s 36(1)(iii). Reliance was placed on the decision of Hon'ble Apex Court in Taparia Tools Pvt. Ltd (CA No.6366/2003) as well as on the decision of Hon'ble

Bombay High Court in CIT V/s Lokhandwala Construction Ind. Ltd. (260 ITR 0579) to support the said claim.

3.3 However, going by Accounting Standard 7 issued by Institute of Chartered Accountants of India (ICAI), Ld. AO opined that expenses directly related to the project were to be debited to cost of project and could be claimed as deduction only in the year in which corresponding income of the project was credited in Books of Accounts and offered to tax. Notably, the assessee allocated all other expenses to work-in-progress except interest. These expenses were also periodic cost and would be allowable as deduction in toto on assessee's logic. Relying upon the decision of Special Bench in the case of M/s Wall Street Construction Limited (102 TTJ 505), which held that interest cost was to be allowed as deduction only in the year in which the corresponding income was offered to tax, the interest expenditure thus claimed was disallowed and added back to work-in-progress as reflected by the assessee in the books of accounts.

5. Upon due consideration of material facts, it is quite evident that the assessee was following percentage of completion method of accounting to recognize revenue from operations as against the case law of Tribunal Special Bench in M/s Wall Street Construction Limited (102 TTJ 505) which deal with a case wherein the assessee was following completed contract method and therefore, the said decision was not applicable to the facts of the case, as rightly held by learned first appellate authority. 6. Proceeding further, it is undisputed fact that the assessee was engaged in real estate construction and had borrowed capital for business purposes. No other diversion of income has been alleged by Ld. AO. As noted by Ld. CIT(A), the

interest was paid to debenture holders, financial institutions as well as unsecured loan creditors and the loan was utilized for business purposes. The funds were borrowed for the purpose of construction and have gone into the projects of the assessee which constitute assessee's stock-in-trade and not capital asset. In view of these clear cut findings, the adjudication of Ld. CIT(A) could not be faulted with. Another important fact is that the assessee has followed consistent accounting treatment to charge interest expenditure in the accounts. Therefore, the ground thus raised by the revenue stand dismissed

8. We find that the CIT(A) has dealt on the disputed issue and relied on the facts and provisions of law, amendments, accounting standards and judicial decisions of Hon'ble High Court and the Honble Tribunal and directed the AO to delete the addition u/s 36(1)(iii) of the Act and passed a reasoned order on the disputed issue. Further the Ld. AR has supported the similar decisions of the Coordinate Bench of the Honble Tribunal as discussed in the above paragraphs. The Ld.DR could not controvert the findings of the CIT(A) on this disputed issue with any new cogent evidence/ material information to take a different view. Accordingly we do not find any infirmity in the order of the CIT(A) and are not inclined to interfere with the

order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 26.04.2022

Sd/-
(RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 26.04.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai