

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

**ITA No.526/Mum/2021
(Assessment Year :2012-13)**

M/s. Macrotech Developers Ltd., (Successor to Bright Gold Construction Pvt. Ltd., since merged with Lodha Impresion Real Estate Pvt. Ltd.,) (earlier known as Lodha Developers Ltd.,) 412, Floor-4, 17G Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400 001	Vs.	DCIT, Central Range-7(3) Room No.655, 6 th Floor Aaykar Bhavan Maharshi Karve Road Mumbai – 400 020
PAN/GIR No.AACL1490J		
(Appellant)	..	(Respondent)

Assessee by	Shri Niraj Seth
Revenue by	Shri S G Mehta
Date of Hearing	01/06/2022
Date of Pronouncement	08/06/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.526/Mum/2021 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A), Mumbai-49/10087/2015-16 dated 10/02/2021 (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 30/03/2015

by the Id. Dy. Commissioner of Income Tax, Central Circle 7(3), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of interest on account of non-deduction of tax at source u/s.40(a)(ia) of the Act in the facts and circumstances of the instant case.

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 construction and development. During the year under consideration, the Id. AO observed that assessee had paid the interest of Rs.1,63,10,620/- without deduction of tax at source to its group company on the loans borrowed from group company. In response to the show-cause notice issued by the Id. AO as to why the provisions of Section 40(a)(ia) of the Act should not be invoked on the assessee, the assessee responded that the recipient party had duly filed its returns of income alongwith interest income and tax and hence in view of the second proviso of Section 40(a)(ia) r.w.s. 201 of the Act, no disallowance of interest u/s.40(a)(ia) of the Act would be operational in the hands of the assessee. It was also pleaded that the amendment brought by way of second proviso by Finance Act 2012, is to be construed with retrospective in operation. The Id. AO however, objected that the said amendment should be held only in prospective in application and accordingly, proceeded to disallow the interest. However, the Id. AO observed that out of the total interest of Rs.1,63,10,620/-, an amount of Rs.1,26,96,353/- has been capitalised by the assessee to inventory account and the remaining amount of Rs.36,14,267/- has been debited to profit and loss account. Accordingly, the Id. AO disallowed Rs.36,14,267/- u/s.40(a)(ia)

of the Act and sought to reduce a sum of Rs.1,26,96,353/- from the value of inventory. This action of the Id. AO was upheld by the Id. CIT(A).

3.1. It is a fact that assessee had duly enclosed the details of recipient wherein the recipient had disclosed the interest income in its return and paid taxes thereon. The assessee had also submitted the requisite audit certificate in the prescribed form No.26A and filed it before the Id. AO as well as before the Id. CIT(A). This goes to conclusively prove that the payee had duly paid taxes on the same and in view of the second proviso to Section 40(a)(ia) r.w.s.201 of the Act, no disallowance u/s. 40(a)(ia) of the Act could be made in the hands of the assessee payer. Though the second proviso has been introduced by the Finance Act 2012, the same had been held to be retrospective in operation by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Landmark Township Pvt. Ltd., reported in 377 ITR 635. Respectfully following the same, we direct the Id. AO to delete the disallowance u/s.40(a)(ia) of the Act in the sum of Rs.36,14,267/- and also increase the value of inventory in the sum of Rs.1,26,96,353/-. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 08/ 06 /2022 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/ 06 /2022
KARUNA, sr.ps

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