

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 3797/Del/2019 : Asstt. Year : 2013-14

Enchanted Wood Club Ltd., 6-B, Mathura Road, Jungpura, New Delhi-110040	Vs	Income Tax Officer, Ward-8(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCE2487P		

Assessee by : Sh. R. S. Singhvi, CA &

Sh. Rajat Garg, CA

Revenue by : Sh. Lalit Kishore, Sr. DR

Date of Hearing: 26.05.2022

Date of Pronouncement: 29.06.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-34, New Delhi dated 13.02.2019.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order of the Ld. Commissioner of Income Tax, (Appeal) is bad in law and on the facts of the case.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) is not justified in sustaining the disallowance out of interest amounting to Rs 76,28,290/- u/s 36(1)(iii) of the Income Tax Act without appreciating the fact that the interest free funds available with the company were much more than the alleged capital work in progress.

3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) is not justified in disallowing interest without appreciating that no such disallowance was made / sustained in any of the earlier years. The assessee had not raised any fresh loan in the year under reference or in any earlier years after A Y 2010-2011.*

4. *Without prejudice to the above, the Ld. CIT(A) failed to appreciate that the assessee had given all its assets and facilities on lease to a third party i.e. VCI Hospitality Pvt. Ltd. on a fixed monthly license fees. Thus as far as the assessee is concerned all the assets and facilities owned by the assessee were duly put to use. Therefore no disallowance u/s 36(1)(iii) of the Income Tax Act should have been sustained.*

5. *Without prejudice to the above, the Ld. AO has wrongly computed the amount of capital work in progress as well as the amount of interest disallowed u/s 36(1)(iii) of the Income Tax Act."*

3. The brief facts of the case are that the assessee is engaged in the business of running of club and hotel. During the year under consideration, appellant has declared rental income by leasing out club and hotel. Return declaring an income of Rs. NIL was filed on 01.10.2013. The AO has completed the assessment u/s 143(3) vide order dated 28.03.2016 after making addition u/s 36(1)(iii) at Rs. 76,28,290/- and prior period expenses of Rs. 5,09,746/- and Rs. 5,00,000/-. The total income assessed at Rs. 2,08,54,160/-.

4. Heard the arguments of both the parties and perused the material available on record.

- The assessee has submitted that AO has disallowed a sum of Rs. 76,28,290/- out of the interest paid amounting to

Rs. 1,95,06,935/- including interest on term loan capitalized during the year.

- The AO has made the disallowance on the ground that borrowed funds were also utilized in the fixed assets out of which Rs. 25,53,51,760/- incurred on assets not put to use.
- The appellant has submitted that no disallowance out of interest u/s 36(1)(iii) can be made as the appellant had given all the assets and liabilities on lease/license to a third party M/s VCI Hospitality Pvt. Ltd.
- The assessee has been receiving a fixed amount of Rs. 3.75 crore per annum hence all of its assets and facilities were put to use.
- No fresh loan was taken by it during the year under consideration.
- The term loan outstanding as on 31.03.2012 at Rs. 12.08 crores and cash credit of Rs. 75,00,000/- were converted into one term loan of Rs. 13 Crores.
- No disallowance was made in AY 2012-13.
- The assessee had sufficient interest free fund to the extent of Rs. 19.90 crores which are more than the alleged investment fixed assets not put to use.

5. We have considered the facts of the case, finding of the / submissions of the appellant. The AO has disallowed the interest borrowed funds which were utilized for the purpose of the capital asst put to use as per the proviso of section 36(1)(iii). The investment in capital assets is not put to use is made out of interest free fund.

6. The financials of the assessee are as under:

		Part - B	
	Parameters	Current Year	Previous Year
1	Paid-up share capital/capital of partner/proprietor	11,446,000.00	11,446,000.00
	Share Application Money/Current Account of Partner or Proprietor, if any,	Nil	Nil
3	Reserves and Surplus/Profit and Loss A/c	238,207,270.00	231,776,191.00
4	Secured loans	115,440,356.00	133,871,651.00
5	Unsecured loans	39,861,228.00	32,539,822.00
6	Current liabilities and provisions	25,897,652.89	28,604,803.82
7	Total of Balance Sheet	430,852,507.00	438,238,467.00
8	Gross turnover/gross receipts	44,233,812.80	50,598,948.00
9	Gross profit	41,872,014.92	42,910,183.27
10	Commission received	Nil	Nil
11	Commission paid	Nil	Nil
12	Interest received	876,274.16	120,606.53
13	*Interest paid	18,573,168.00	19,866,106.64
14	Depreciation as per books of A/c	11,588,954.64	14,280,577.70
15	Net Profit (or loss) before tax as per Profit and Loss Account	13,131,398.96	5,621,720.65
16	Taxes on income paid / provided for in the books	2,640,000.00	715,000.00

7. The table indicates that own funds are much more than the loan funds.

ENCHANTED WOODS CLUB LTD					
Assessment Year 2013-2014					
<u>Details of Capital Work-in-progress</u>					
	Opening Balance as on	01/04/2010	01/04/2011	01/04/2012	01/04/2013
		2,17,94,674.54	2,48,45,928.00	2,57,40,258.00	2,47,50,261.00
Addition:	Interest Capitalization	30,34,184.00	8,94,330.00	9,61,859.00	
Add:-	Other Adjustment	17,070.00	-	(19,51,857.00)	-
Deletion:	By Transfer to Fixed Assets	-	-	-	-
	Closing Balance	2,48,45,928.54	2,57,40,258.00	2,47,50,260.00	2,47,50,261.00
The amount was credited to WIP on finalisation of the bills of contractors and capital goods suppliers. This amount represent deduction made from the bills of contractors and suppliers					

8. The table indicates that the amounts have been duly capitalized.

ENCHANTED WOODS CLUB LTD					
					Annexure "A1"
Relevant Profit & Loss Items	31.03.2009	31.03.2010	31.03.2011	31.03.2012	31.03.2013
Financial Expenses as per P&L A/c (Schedule 15 of P&L A/c)					
Interest on Term Loan	1,65,76,714	1,86,34,068	1,74,79,819	1,91,35,810	1,78,84,592
Interest on Working Capital Loan	59,07,758	52,79,196	10,41,417	10,45,724	16,22,543
Other Interest Paid	-	-	23,87,536	5,78,903	27,892
Total Interest paid during the year	2,24,84,472	2,39,13,264	2,09,08,772	2,07,60,437	1,95,35,027
Add: Credit Card/Bank Charges (Schedule 15 of P&L A/c)	1,44,940	2,06,541	6,63,543	-	-
Total Interest & Bank Charges	2,26,29,412	2,41,19,805	2,15,72,315	2,07,60,437	1,95,35,027
Less: Interest Capitalised (Schedule 16, Point No 14)	1,87,34,537	53,06,293	30,34,184	8,94,330	9,61,859
Balance Finance Cost debited to the Profit & Loss A/c	38,94,875	1,88,13,512	1,85,38,131	1,98,66,107	1,85,73,168
(Details as per Schedule "B" Attached)					

9. Capitalization of interest on the term loan is reflected in the last column.

ENCHANTED WOODS CLUB LTD						
Comparative chart of Sales, Net Profit & Cash Profit						
						Annexure - 2
Particulars	31.03.2008	31.03.2009	31.03.2010	31.3.2011	31.03.2012	31.03.2013
Revenue from Operation						
Sale of Products	1,84,37,068.51	2,35,48,903.06	7,31,13,831.59	7,59,52,862.04	42,26,283.00	37,33,812.80
Sale of Services	8,67,417.08	15,07,184.47	21,03,799.89	17,60,077.49	1,50,00,000.00	4,05,00,000.00
Membership Fees & Others	58,02,000.00	1,34,86,336.17	1,43,23,957.00	1,91,76,312.50	13,72,665.00	-
Total Sales & Services	2,51,06,485.59	3,85,42,423.70	8,95,41,588.48	9,68,89,252.03	5,05,98,948.00	4,42,33,812.80
Other Income	19,28,796.01	16,68,686.67	4,59,059.86	3,69,242.38	17,42,493.82	36,21,739.20
Income	2,70,35,281.60	4,02,11,110.37	9,00,00,648.34	9,72,58,494.41	5,23,41,441.82	4,78,55,552.00
Profit / (Loss) as per P&L A/c	(58,04,262.03)	(2,78,271.78)	(49,26,521.27)	(20,02,286.88)	55,88,086.65	1,31,31,398.96
Add: Depreciation (P&L A/c)	39,67,344.52	47,19,136.18	1,12,45,103.84	1,41,79,983.30	1,42,80,577.70	1,15,88,954.64
Cash Profit / (Loss) before Tax	(18,36,917.51)	44,40,864.40	63,18,582.57	1,21,77,698.42	1,98,68,664.35	2,47,20,353.60
Less: Tax Paid	-	1,00,000.00	-	-	7,15,000.00	26,40,000.00
Cash Profit / (Loss) after Tax	(18,36,917.51)	43,40,864.40	63,18,582.57	1,21,77,698.42	1,91,53,664.35	2,20,80,353.60
+ Note:- Fixed license fees received from VCI Hospitality 37.50 Lacs per month = 4.50 Crore per annu, The license fees was reduced to Rs 32.50 Lacs per month w.e.f. 1.7.2012						

10. The table reveals that the amounts received out of sale of services which have been purchased by obtaining the loan are duly reflected.

11. Thus, ongoing through the interest on term loan, interest on working capital loan, interest on unsecured loan, total interest paid, interest capitalized, interest claimed and bank charges, we hold that no disallowance u/s 36(1)(iii) is called for.

12. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 29/06/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 29/06/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR