

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1487/Bang/2019
Assessment Year: 2012 – 13

M/s. Nitesh Housing Developers Pvt. Ltd. Nitesh Time Square 7 <sup>th</sup> Floor, #8, M.G. Road Bengaluru 560 001 <b>PAN NO : AACCN6510F</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle-5(1)(2) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Shri Sumer Singh Meena, D.R.

<b>Date of Hearing</b>	:	14.07.2022
<b>Date of Pronouncement</b>	:	14.07.2022

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of CIT(A) dated 25.3.2019. The assessee has raised following grounds of appeal:-

1. *“The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence probabilities, facts and circumstances of the appellant's case.*

2. *The learned CIT[A] is not justified in upholding the disallowance of Rs.28,90,07,189/- being the provision made for interest on debentures that was allowable in terms of section*

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36[1][iii] of the Act under the facts and in the circumstances of the appellant's case.

3. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234B and 234C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

4. *For the above and other grounds that may be urged at the time of hearing of the appellant, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be warded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

2. There was a delay of 23 days in filing the appeal before this Tribunal which was explained by the assessee by way of affidavit that the assessee was going through severe financial crisis for the past few years, as a result of which there is a failure to take steps to file this appeal. In our opinion, this is good and sufficient reason to file this appeal belatedly. Accordingly, the delay of 23 days is condoned and appeal is admitted for adjudication.

3. After hearing both the parties, we are of the opinion that similar view came for consideration before this Tribunal in ITA No.60/Bang/2016 dated 13.1.2017 in which the Tribunal has held as under:-

*"6. We heard rival submissions and perused the material on record. The issue that arises for consideration is whether the proportionate premium on redemption of debentures is allowable as deduction. There is no quarrel about the proposition that premium paid on redemption of debentures is revenue expenditure and allowable proportionally during the period of debenture. But the issue requires to be examined with reference to terms of share subscription agreement. Whether the terms of contract or agreement entered into by the respondent-assessee-company with its investor i.e. HDFC Asset Management Co. Ltd., and other promoters provide for payment of any premium on redemption or not, the onus lies on the assessee to prove that the liability for expenditure crystallized during the year under consideration and*

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*this has to be determined with reference to terms of agreement entered into at the time of allotting debentures. In the present case, the original agreement of OaT-13 subscription or debentures had undergone changes twice first on 15/5/2010 and second on 12/11/2012. It is only pursuant to second addendum dated 12/11/2012 that the debentures were redeemed into preference shares at a premium yielding rate of IRR of 26% of the subscription amount. The original terms of debenture subscription agreement holds good during the previous year relevant to assessment year under consideration, in terms of which, it cannot be said that there was a definite liability towards premium on redemption of debentures as it is dependent on the following two conditions:*

*i Completion of IPO, and*

*ii. Exercise of option of converting debentures into preference shares of the investors i.e. HDFC Asset Management Co. Ltd., It is only vide second addendum dated 12/11/2012 it was agreed that debentures were to be redeemed at a premium into preference shares which is beyond the accounting year under consideration. Therefore, it cannot be said that liability for premium had crystallized. Furthermore, investor is also interested in respondent-assessee-company as it holds 10% of the shares of the respondent-assessee-company. In light of this fact, there is possibility that the terms of original purchase agreement had been changed to suit convenience of parties and it is only a make belief story in order to make claim for depreciation on account of premium paid on redemption of debentures. Therefore, the claim for deduction of proportionate amount of premium on redemption of shares is not allowable in the year under consideration as the liability neither crystalized nor genuineness of the transaction was not proved beyond doubt. The CIT(A) had not looked into aspect of genuineness of the second addendum entered by the respondent assessee company with investor HDFC Asset Management Co. Ltd. Therefore, the finding of the CIT(A) cannot stand the test of law and cannot be upheld.*

*7. In the result, the appeal filed by the revenue is allowed.”*

4. In view of the above order of Tribunal, we inclined to dismiss this appeal on similar lines.

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

Order pronounced in the open court on 14<sup>th</sup> Jul, 2022

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 14<sup>th</sup> Jul, 2022.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**