

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “H”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1710/M/2021  
Assessment Year: 2012-13**

DCIT, Central Circle-1(2), 906, 9 <sup>th</sup> Floor, Pratishtha Bhawan, Old CGO Bldg. (Annexe), M.K. Road, Mumbai - 400020	Vs.	M/s. Sunny Vista Realtors Pvt. Ltd., 511, Dalamal Towers, 211, Nariman Point, Mumbai – 400 021 <b>PAN: AAKCS1269E</b>
(Appellant)		(Respondent)

**CO No.33/M/2022  
(Arising out of ITA No.1710/M/2021)  
Assessment Year: 2012-13**

M/s. Sunny Vista Realtors Pvt. Ltd., 511, Dalamal Towers, 211, Nariman Point, Mumbai – 400 021 <b>PAN: AAKCS1269E</b>	Vs.	DCIT, Central Circle-1(2), 906, 9 <sup>th</sup> Floor, Pratishtha Bhawan, Old CGO Bldg. (Annexe), M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Kinjal Bhuta &  
Shri Nihar Mehta, A.R.

Revenue by : Shri Rakesh Ranjan, D.R.

Date of Hearing : 05 . 07 . 2022

Date of Pronouncement : 04 . 08 . 2022

## **O R D E R**

**Per : Kuldip Singh, Judicial Member:**

For the sake of brevity aforesaid appeal and cross objections bearing common question of law and facts are being disposed of by way of composite order.

2. Appellant DCIT, Mumbai (hereinafter referred to as the Revenue) and cross objector M/s. Sunny Vista Realtors Pvt. Ltd. (hereinafter referred to as the assessee) by filing the present appeal and cross objections emanated from the same impugned order dated 12.07.2021 sought to set aside the same passed by the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] on the grounds inter alia that:

### **ITA No.1710/M/2021 (Revenue's appeal)**

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), was correct in allowing the business loss of Rs.26,64,84,775/- claimed on account of depreciation and amortization of amalgamation expenses, which was capitalized to work-in-progress because the assessee had only one contract and therefore, entire expenses including depreciation were liable to be capitalized as work in progress.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in directing the assessing officer to treat the interest income of Rs.1,79,59,415/-, being interest earned on fixed deposits as ‘Business Income’ instead of ‘Income from Other Sources’.”*

### **CO No.33/M/2022 (Assessee's cross objections)**

*“The Ld. CiT(A) erred in confirming the order passed by Assessing officer despite the fact that there was no incriminating material found during the search proceedings. That the initiation of assessment proceedings u/s. 153C of the Income Tax Act, 1961 and the subsequent assessment order is without jurisdiction and bad in law and ought to be quashed.”*

3. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee is into the real estate development of Special Economic Zone (SEZ) at Panvel, Maharashtra. Assessee filed the return of income declaring loss of Rs.18,41,63,492/- on 30.09.2012, which was subsequently revised on 17.06.2013 at the total loss of Rs.18,33,83,922/-. Subsequently, on the basis of search and seizure operation carried out in case of Hiranandani Group some material relating to the present assessee was found and seized. So the case of the assessee was centralized to the charge of ACIT, CC-1(2) and notice under section 153C of the Act was issued and in response thereto assessee filed return of income disclosing a loss of Rs.26,64,84,775/-. Then notices under section 143(2) and 142(1) of the Income Tax Act, 1961 (for short 'the Act') were issued along with questionnaire. Assessing Officer (AO) noticed that the assessee has earned income from fixed deposits amounting to Rs.1,79,59,415/- which was set off against the business expenses.

4. During the year under assessment out of the total expenses incurred to the tune of Rs.36,956.72 lakhs assessee has claimed an amount of Rs.29,853.92 lakhs as work in progress (WIP) of the project in India and balance amount of Rs.7102.80 lakhs is debited to the profit and loss account. Out of the expenditure of Rs.7102.80 lakhs assessee has shown interest and other income of Rs.233.62 lakhs and net loss as per profit & loss account is at Rs.2094.88 lakhs. Assessee after adjusting allowable and disallowable expenses computed the net business loss at Rs.2664.85 lakhs. Assessee while computing the business loss disallowed expenses to the tune of Rs.2888.20 lakhs under section 37 of the Act and

claimed expenses allowable as deduction at Rs.3740.33 lakhs. Declining the contentions raised by the assessee and on failure of the assessee to file explanation qua the additional expenses claimed in the return of income filed in response to section 153C AO disallowed an amount of Rs.26,64,84,775/- claimed by the assessee as business loss and thereby framed the assessment under section 153C read with section 143(3) of the Act.

5. Declining the contentions raised by the assessee the AO proceeded to hold that since earning income from the FDs purchased from the bank is not a business activity as per constitution of the assessee company, the income earned from interest of the FDs is to be treated as income from other sources and thereby made an addition of Rs.1,75,59,415/-.

6. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order Revenue as well as assessee have come up before the Tribunal by way of filing appeal as well as cross objections respectively.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

### **Ground No.1**

8. At the very outset, it is brought to the notice of the Bench by the Ld. A.R. for the assessee that this issue has already been

decided in favour of the assessee in its own case for A.Y. 2009-10, vide order dated 11.01.2017 passed in ITA No.4580/M/2013 and in assessee's group concern case M/s. Hiranandani Palace Garden Pvt. Ltd. vs. ACIT(OSD) in ITA No.4579/M/2013 for A.Y. 2009-10 order dated 03.12.2015.

9. We have perused the orders dated 11.01.2017 & 03.12.2015 passed by the Tribunal in case of assessee and in case of its group company which are on identical facts. Operative part of the order passed by the Ld. CIT(A) is as under:

**Decision on Ground No.1 and 2:**

***8.0 I have considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. This issue of business loss and inclusion of certain expenses to WIP of the project, has been examined by the Hon'ble ITAT; Mumbai in the case of the assessee for A.Y. 2009-10 vide order dated 11.01.2017 wherein in due consideration to the facts of the case the one TAT directed to delete the addition made by the AO by including various expenses to WIP and thus directed to allow the claim of the assessee in this regard by observing as under:-***

***"22. Thus, raking into account all the facts and circumstances of the case, we find that action of the AO in treating the impugned expenses as part of WIP was not justified and was contrary to law and facts. The claim made by the assessee is in line with the method of accounting consistently followed by the assessee and is in accordance with law and facts of this case. Therefore, addition made by the AO is directed to be deleted.***

***23. The AO is directed to allow the expenses as have been claimed by the assessee. The consequential effect shall also be given by the AO while passing order giving appeal effect for the amount of closing WIP of the year under consideration as well as opening WIP of the immediately subsequent assessment year. Thus, with these directions, the grounds 1 to 3 raised by the assessee are allowed."***

***8.1 It is further seen that the Hon'ble ITAT, Mumbai in the case of M/s. Hiranandani Palace Gardens Pvt. Ltd. vs. ACIT (supra) ITA No.4579/Mum/2013 dated 03.12.2015, a group***

*concern, also directed to allow an identical claim towards business expenses etc. by observing as under:-*

*"11. We have considered rival contentions and carefully gone through the orders of the authorities below. The percentage completion method of accounting has ITA No.4579/M/2013 M/s. Hiranandani Palace Gardens P. Ltd. 8 been regularly followed by the assessee. In the succeeding assessment year 2010-11, the AO has accepted the deducibility of the identical nature of expenses in the assessment order passed u/s 143(3) of the I.T. Act. We agree with contention of the Id. Counsel for the assessee that the employee cost refers to salary paid to the employees who are looking after the administration of office and not directly related to construction of the project but is part of the administrative expenses, Similarly, the office and administrative expenses and selling and marketing expenses are to be charged to the profit & loss account in the very same year in which they are incurred and have to be excluded from the- cost of inventories for working out closing WIP as per the guidelines issued by the ICAI, Accounting Standard AS-2 and AS-7.The assessee has regularly and consistently been following the said method of accounting as per the provisions of section 145A of the IT. Act. The AO has not assigned any cogent reason as to why the method, which has been consistently followed by assessee and accepted by the department in past as well in succeeding assessment years and which is in accordance with the recognized principles of accounting by ICAI, is being rejected. In our view, the action of the Revenue Authorities in rejecting the assessee's accounting method, without assigning any reason is not justified. The accounting method followed by the assessee and thereby excluding the indirect expenses such as office employees' salary, administrative expenses and marketing & selling expenses is as per the recognized principles of accountings and as such the claim of the assessee deserves to be allowed. We hold accordingly. The additions made by the lower authorities on this issue are hereby ordered to be deleted."*

*8.2 It appears that similar decision has been rendered by the Hon'ble ITAT Mumbai, in case of M/s Lodha Palazzo vs. ACIT (supra) ITA no. 2298/Mum/2012 dated 10.12.2014.*

*8.3 The facts of the present case are identical to the case of the assessee for A.Y. 2009-10, as also the case of M/s. Hiranandani Palace Gardens Pvt, Ltd.(supra). Therefore respectfully following the decision of Hon'ble ITAT, Mumbai, in the case of the assessee as also in case of M/s. Hiranandani Palace Gardens Pvt. Ltd.(supra), tho derision of the AO in*

*disallowing the business loss and capitalization of the expenses to WIP is directed to be deleted.”*

10. When the Ld. CIT(A) has decided this issue in favour of the assessee by relying upon the decision rendered by co-ordinate Bench of the Tribunal in assessee's own case vide order dated 11.01.2017 (supra) and vide order dated 03.12.2015 passed in assessee's group company case (supra) by relying upon the order passed by the Tribunal in case of Lodha Palazzo vs. ACIT in ITA No.2298/M/2012 by duly thrashing the facts which are identical to the cases relied upon by the Ld. CIT(A), no interference by Tribunal is called for. Moreover, the assessee has been consistently following a particular method of accounting which is not contrary to law and in these circumstances the AO is not permitted to disturb the same on the ground that assessee should follow some other method of accounting.

11. So in these circumstances view taken by the AO in considering the impugned expenses as part of work in progress (WIP) is not sustainable in the eyes of law. Moreover, the claim of the assessee is in line with the method of accounting consistently being followed by the assessee. In these circumstances, we find no illegality or perversity in the impugned findings by the Ld. CIT(A), hence, ground No.1 is determined against the Revenue.

### **Ground No.2**

12. The Ld. CIT(A) decided the issue as to treating the interest income of Rs.1,79,59,415/- earned by the assessee from fixed deposits as business income instead of income from other sources as has been held by the AO, which is under challenge before the

Tribunal. The Ld. CIT(A) decided this issue in favour of the assessee by returning following findings:

***“11.0 I have considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. The Ground no. 3 deals with treatment of interest income earned on fixed deposits of Rs. 1,79,59,415/- under the head other sources as against under the head business shown by the assessee. The assessee has argued that since no new facts have been brought on record, nor has been found during the course of search, no different view could have been taken by the AO in proceedings u/s 153C towards this income being business income.***

***11.1 I have considered the facts of the case. The issue involved is treatment of interest income from fixed deposits. While the assessee has treated it as income from business, the AO treated the same under the head 'Other Sources'. It is seen that an identical issue has been decided by my Ld. Predecessor in the case of M/s. Hiranandani Palace Gardens Pvt. Ltd., vide order dated 21.03.2016 wherein he directed to delete the addition by observing as under:-***

***"I find that the impugned receipts of Rs. 6,94,26,906/- cannot be treated as receipts that flow to the appellant de hors the business as they are directly and explicitly linked to the business of the appellant. They cannot be treated as 'Income from other Sources'. Respectfully following the above decision of Hon'ble ITAT in appellant's own case, and the ratio of the decision of Hon'ble Apex Court cited above, this ground of appeal is allowed."***

***11.2 It is seen that identical issue has been decided by the Hon'ble ITAT, Mumbai in the case of M/s. Hiranandani Palace Gardens Pvt. Ltd., ITA No.4579/Mum/2013 dated 03.12.2015, directed to allow the claim of the assessee in this regard by observing as under:-***

13. We have taken notice of the fact that the Ld. CIT(A) again decided this issue by following the decision rendered by coordinate Bench of the Tribunal in assessee's group company case bearing ITA No.4579/M/2013 dated 03.12.2013, by following the judgment rendered by Hon'ble Bombay High Court in case of CIT vs. Lok Holdings 308 ITR 356 Bom. Hon'ble Bombay High Court in case of Lok Holdings (supra) dealt with the identical issue wherein assessee was engaged into the development of properties

and advance taken from the customer was deposited with the banks in the course of business which was held to be assessable as business income. So in these circumstances, again we find no illegality or perversity in the impugned deletion made by the Ld. CIT(A), hence ground No.2 is also determined against the Revenue.

14. In view of what has been discussed above, appeal filed by the Revenue is hereby dismissed. At the same time, when assessee has got the relief on merits cross objections filed by the assessee have become infructuous and moreover the same have not been pressed. So cross objections filed by the assessee are also dismissed.

**Order pronounced in the open court on 04.08.2022.**

**Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 04.08.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.