

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 106/Mum/2022 (A.Y. 2017-18)

M/s. Firstlight Properties Pvt. Ltd. 82, 8 th Floor, Free Press House, Free Press Journal Marg, Nariman Point Mumbai-400 021. PAN : AAACS7947P	Vs.	ACIT, CC-5(3) Room No. 1906 19 th Floor Air India Building Nariman Point Mumbai-400 021.
(Appellant)		(Respondent)

Assessee by	Shri Nishit Gandhi
Department by	Shri Vivek Upadhyay
Date of Hearing	18.08.2022
Date of Pronouncement	23.08.2022

ORDER

The assessee has filed this appeal challenging the order dated 30.11.2021 passed by learned CIT(A)-53, Mumbai and it relates to A.Y. 2017-18. The assessee is aggrieved by the decision of learned CIT(A) in confirming the assessment of interest income of Rs. 26,12,230/- as income from other sources.

2. The facts relating to the issue are stated in brief. The assessee is a real estate developer. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has received interest income of Rs.26,12,230/- and it netted off the same against interest expenditure of Rs.12.39 crores, which was included in the "Work in Progress". The Assessing Officer noticed that the assessee has earned interest income of Rs. 26,12,230/- by parking it fund on short term basis. By placing reliance on the decision of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (1997) 93 taxman 502, the Assessing Officer held that the

above said interest income assessable in the hands of the assessee under the head 'income from other sources'. The assessee submitted that the funds parked in the fixed deposits are out of borrowed funds and hence interest income was rightly netted off against interest expenditure. It was also submitted that the treatment given by the assessee would get support from the following decisions rendered by Hon'ble Bombay High Court :

- a) CIT Vs. Paramount Premises (P) Ltd. (1991) 190 ITR 259
- b) CIT Vs. Lok Holdings (2010) 189 taxman 452.

The Assessing Officer did not agree with the submissions of the assessee. Accordingly, he assessed interest income in the hands of the assessee under the head 'income from other sources'. The Learned CIT(A) also confirmed the same.

3. The Learned AR submitted that the Assessing Officer has wrongly relied upon the decision of Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. (supra), since the facts of the above said case are not applicable to the present case. He further submitted that the tax authorities have not taken note of the decision rendered by Hon'ble Jurisdictional Bombay High Court in the case of Paramount Premises (P) Ltd. (supra) and Lok Holdings (supra). He submitted that the deposits/advances were given for the business purposes and further there is direct nexus between the borrowed funds and advances/deposits given. Accordingly he submitted that learned CIT(A) was not justified in confirming the assessment of interest income under the head 'income from other sources'.

4. On the contrary, learned DR submitted that the assessee has not produced any material either before the Assessing Officer or learned CIT(A) to prove that the advances/deposits were given for business purposes.

5. Having heard the rival submissions, I am of the view that, in the interest of natural justice, assessee may be provided with an opportunity to present its case properly before the Assessing Officer. I also noticed that the Assessing

Officer/learned CIT(A) has not explained as to how the decision rendered by Hon'ble Bombay High Court in the case of Paramount Premises (P) Ltd. and Lok Holdings (supra) are not applicable to the facts of the present case. Accordingly I am of the view that this issue requires fresh examination at the end of the Assessing Officer. Accordingly, I set aside the order passed by learned CIT(A) and restore the same to the file of the Assessing Officer for examining it afresh. I also direct the assessee to furnish all information and explanation in support of its contention. After affording adequate opportunity of being heard to the assessee, the Assessing Officer may take appropriate decision in accordance with law.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 23.08.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 23/08/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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