

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SMT KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.1891/Mum/2022
(Assessment Year :2013-14)**

Asst. Commissioner of Income Tax, CC-7(3) Room No.655, Aayakar Bhavan, M.K.Road Mumbai – 400 020	Vs.	M/s. MMR Social Housing Pvt. Ltd., (Earlier Known as M/s. Lodha Buildcon Pvt. Ltd.,) 412, 4 th Floor, 17-G, Vardhaman Chambers, Cawasji Patel Road, Horniman Circle Fort, Mumbai – 400 001
PAN/GIR No.AABCL2715R		
(Appellant)	..	(Respondent)

**ITA No.1892/Mum/2022
(Assessment Year :2013-14)**

&

**ITA No.1894/Mum/2022
(Assessment Year :2015-16)**

Asst. Commissioner of Income Tax, CC-7(3) Room No.655, Aayakar Bhavan, M.K.Road Mumbai – 400 020	Vs.	M/s. Macrotech Developers Ltd., (successor to M/s. Lodha Impression Real Estate Pvt. Ltd.,) 412, 4 th Floor, 17-G, Vardhaman Chambers, Cawasji Patel Road, Horniman Circle Fort, Mumbai – 400 001
PAN/GIR No.AABCL2713K		
(Appellant)	..	(Respondent)

Assessee by	Shri Niraj Seth
Revenue by	Shri Ratnakar Shelke

Date of Hearing	05/09/2022
Date of Pronouncement	21/09/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA No.1891/Mum/2022,1892/Mum/2022 and 1894/Mum/2022 for A.Y.2013-14 & 2015-16 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A), Mumbai-49/10079/2016-17, CIT(A),Mumbai-49/10059/2016-17 & CIT(A),49 Mumbai/10359/2017-18 dated 26/05/2022, 19/05/2022 & 26/05/2022 (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 29/03/2016, 30/03/2016 & 29/12/2017 by the Id. Id. Dy. Commissioner of Income Tax, Central Circle 7(3), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

2. The only identical issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance of interest expenses which in the opinion of the Id. AO is capital in nature, in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessment order in this case has

been passed in the name of M/s Lodha Buildcon Private Limited u/s 143(3) of the Act dated 29.03.2016. This name was changed to MMR Social Housing Private Limited with effect from 06.12.2018. Subsequently this company got merged with Macrotech Developers Limited vide merger order dated 20.04.2022 passed by the Hon'ble National Company Law Tribunal (NCLT) Mumbai, effective from 30.04.2022 having appointed date as 01.04.2021. The assessee had duly intimated the fact of the aforesaid merger vide letter dated 24.06.2022. In view of these facts, the present appellate order in ITA No. 1891/Mum/2022 is passed in the name of the merged entity i.e. Macrotech Developers Limited, being the respondent. In respect of other two appeals, the orders of Id. CIT(A) has already been passed correctly in the name of Macrotech Developers Ltd. With the consent of both the parties, the appeal of the revenue in ITA No. 1891/Mum/2022 is taken up first for adjudication and the decision rendered thereon would apply with equal force for other two assesseees also , in view of identical facts, except with variance in figures and the name of real estate projects.

4. We find that the assessee is a company engaged in the business of real estate construction and development. During the year under consideration, the assessee was developing residential project named as 'Casa Royale' at Thane. The Id. AO noticed that assessee had debited Rs 5,00,78,994/- on account of interest cost retained in Inventory which was claimed as revenue expenditure by the assessee. The assessee company is following mercantile system of accounting and recognizing the revenue from the above project following Percentage of Completion Method. The assessee for the purposes of construction had borrowed interest bearing funds from the bank as well as from the group concerns. The Id. AO observed that the assessee is developing one project only and that the

accounting of the Construction activity has been done in accordance with Accounting Standard 7 (AS-7) as well as Guidance Note on Accounting for Real Estate Transaction issued by the Institute of Chartered Accountants of India (ICAI). The assessee had paid interest of Rs 19.75 crores and after reducing the interest income of Rs 14.75 crores, net interest expenses of Rs 5 crores had been claimed as deduction by the assessee company. The Id. AO observed that as per the Guidance Note issued by ICAI, all the expenses directly related to the project have to be carried over and debited to the cost of project. Such expenses can be claimed as deduction in the year in which the corresponding income of the project is credited in the books of account and offered to tax. The Id. AO noted that the assessee had allocated all other expenses to the work in progress except interest. It was submitted that the said interest expenditure is eligible for deduction in view of the fact that the interest being periodic cost and had to be allowed in the year of incurrence thereof as it admittedly pertains to the stock in trade of the assessee. The assessee relied on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Lokhandwala Construction Ind. Ltd reported in 260 ITR 579 (Bom) in support of its contentions. On the contrary, the Id. AO relied on the decision of Special Bench of Mumbai Tribunal in the case of M/s Wall Street Construction Ltd reported in 102 TTJ 505 (Mum) (SB) and disallowed the interest of Rs 5,00,78,994/- by capitalizing it to work in progress.

4.1. We find that the Id. CIT(A) had granted relief to the assessee by placing reliance on the decision of this tribunal in assessee's own case in ITA No. 1310/Mum/2021 for Asst Year 2014-15 dated 08.04.2022. Before us, the Id. DR vehemently relied on the decision of Special Bench of this Tribunal as referred supra and also submitted that the decision of Hon'ble

Jurisdictional High Court in the case of Lokhandwala Construction referred supra is not applicable relied upon by the Id. AR is factually distinguishable. In view of this, we deem it fit to address the applicability of decision of Lokhandwala Construction to the facts of the present case.

4.2. We find that the question of law raised before the Hon'ble High Court is as under:-

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the interest claimed as revenue expenditure amounting to Rs. 14,09,942 cannot be treated as capital expenditure and added to work-in-progress in spite of the fact that other expenses on project were being capitalised by the assessee itself and holding that the Commissioner of Income-tax was wrong in directing the Assessing Officer to disallow the said interest and treat the same as capital expenditure as a part of work-in-progress, thereby quashing the order under section 263 of the Act of the Commissioner of Income-tax ?"

4.3. We find from the above question that the main controversy before the Hon'ble High Court was not only whether the interest expenditure was capital or revenue but also whether or not the interest was required to be added to the work in progress. In the instant case before us, we find that the issue in dispute before us is as to whether the interest expenditure is required to be added to the cost of work in progress in case of income being recognized under Percentage of Completion Method. We hold that the controversy in the case before the Hon'ble High Court above is identical to the controversy before us also. Hence the findings given by the Hon'ble High Court for the aforesaid question would be applicable to the facts of the assessee before us also. We find that the Hon'ble High Court had held that the loan obtained by that assessee before it was for stock in trade. The project of that assessee constituted stock in trade of that assessee. Since that assessee had received loan for obtaining stock in trade, it was entitled to deduction u/s 36(1)(iii) of the Act. The Hon'ble High Court also placed reliance on the decision of the Hon'ble Bombay High Court in the case of Calico Dyeing & Printing Works vs CIT reported

in 34 ITR 265 (Bom) for the proposition that utilization of the capital was irrelevant for the purpose of adjudicating the claim of deduction u/s 36(1)(iii) of the Act. Ultimately the Hon'ble High Court concluded that interest expenditure could not be treated as capital expenditure nor could it be added to the work in progress.

4.4. In the instant case before us, the following points are not in dispute:-

- a) The only activity carried on by the assessee is development of residential project named as 'Casa Royale' at Thane.
- b) The loan borrowed by the assessee from Bank and from group concerns was utilized only for the purpose of residential project. Hence utilization of borrowed funds for the purpose of business is not in dispute.
- c) The project constitutes stock in trade of the assessee.
- d) Interest is paid on the project of the assessee which is held as stock in trade of the assessee.

4.5. We find that all these factors had been considered by this tribunal in assessee's own case for Asst Year 2014-15 in ITA No. 1310/Mum/2021 dated 08.04.2022, apart from factually distinguishing the heavy reliance placed by the Id. DR on the decision of Special Bench in the case of Wall Street Construction. The facts prevailing in that case, the judgements relied upon by both the parties and the decision rendered by this tribunal for Asst Year 2014-15 are as under:-

5. The Assessing Officer vide order dated 28 December 2016 passed under section 143(3) of the Act disagree with the submission made by the assessee and held that the assessee has not followed the correct method of accounting in respect of the expenses towards the project being developed by the assessee. The Assessing Officer further held that as per guidance note on accounting for real estate transaction issued by the Institute of Chartered Accountants of India, all expenses directly related to the project have to be carried over and debited to the

cost of project. Such expenses can be claimed as deduction in the year in which the corresponding income of the project is credited in the books of accounts and offered to tax. The Assessing Officer also refer to the decision of Special Bench of Tribunal in the case of M/s Wall Street Construction Ltd [102 TTJ 505] in support of its conclusion. Accordingly, the Assessing Officer, inter-alia, disallowed the interest cost of Rs. 4,35,36,783 and added to the work in progress of the assessee.

6. In appeal before the CIT(A), assessee, inter-alia, submitted that the issue is covered in favour of the assessee by decision of Hon'ble Jurisdictional High Court in case of CIT v/s Lokhandwala Construction Industries Ltd.: [2003] 260 ITR 579. The CIT(A) vide impugned order dated 20 May 2021 held that the aforesaid decision of Hon'ble Jurisdictional High Court was on a different issue and thus is not applicable to the present case. The CIT(A) further held that the issue was considered by Special Bench of Tribunal in Wall Street Construction Ltd. (supra) and same is applicable to the facts of the present case. The CIT(A) also held that the fact that in case of Wall Street Construction Ltd. (supra) the assessee was following Project Completion Method whereas the assessee follows percentage of completion method is of no consequence. Thus, following the decision of Special Bench of Tribunal cited supra, CIT(A), inter-alia, dismissed appeal filed by the assessee. Being aggrieved the assessee is in appeal before us

7. During the course of hearing, Shri Niraj D. Sheth, learned Authorised Representative ("learned A.R.") submitted that the issue is covered in favour of the assessee by various decisions of Co-ordinate Bench of Tribunal rendered in cases of group concern.

8. On the other hand, Shri T. Shankar, learned Departmental Representative by vehemently relying upon the orders passed by the lower authorities submitted that principle of matching concept is to be followed and all the expenses are to be given similar treatment and thus the expenses should be allowed in the year in which the corresponding income is offered to tax.

9. We have considered the rival submissions and perused the material available on record. In the present case, the assessee has followed percentage of completion method for the purposes of recognising the revenue from its project. We find that in similar facts and circumstances, the Co-ordinate Bench of Tribunal in CIT v/s National Standard Private Limited in ITA No.3048/Mum./2019 vide order dated 5 April 2021 dismissed the appeal filed by the Revenue and allowed the claim of deduction under section 36(1)(iii) of the Act, by observing as under:

"4.2 The Ld. CIT(A), after noticing the ratio of decisions of Hon'ble Bombay High Court in CIT V/s Lokhandwala Construction Ind. Ltd. (260 ITR 0579), decision of Tribunal in M/s. Ashish Builders Private Ltd. (ITA No.310/M/ 2012); Rohan Estates (ITA ITA No.3048/Mum/2019 M/s. National Standard India Private Limited Assessment Year: 2013-14 No.7200/Mum/ 2010) & Pune Tribunal in

M/s Kolte Patil Developers Ltd. concurred with assessee's submissions and held as under:-

5.7. From the above, it is evident that any amount of the interest paid in respect of capital borrowed for the business purposes constitutes an allowable deduction. The said clause (iii) of section 36(1) of the Act supports the assessee's claim in the present case. This view is upheld in the case of CIT vs Lokhandwala Construction Industries Ltd. (supra) as well as the decision of the Tribunal in the case of M/s. Ashish Builders Pvt Ltd. (supra) irrespective of the method of accounting of recognizing the income followed by the assessee. The present case involves the payment of interest of Rs.4,39,49,000/- the interest paid to debenture holders, Financial institutions, Unsecured loan etc. It is not the case of the Revenue that the interest claim of Rs.4,39,49,000/- and related capital borrowed was not utilized by the assessee for business purposes of the assessee.

5.8. The case of Wall Street constructions Ltd. (2006) 102 TTJ 505 is one where the assessee was following project completion method and therefore the ITAT held that the interest cost shall be debited to work in progress and allowed to be claimed as deduction only in the year in which the corresponding income is offered to tax. In the instant case, the assessee is following percentage completion method (POCM) and therefore the judgment of Wall Street constructions Ltd. is not applicable to this case. The assessee is following percentage completion and offers a part of the revenue every year depending upon the percentage of completion. The funds have been borrowed for the purpose of construction and have gone into the projects of the assessee which are stock in trade and not capital asset of the assessee. Therefore, the amendment brought in the Act with effect from 2003 by way of introducing the proviso to section 36 (1) (iii) also does not affect the facts of the case of the assessee. In view of the binding judgment of the jurisdictional High Court in the case of Lokhandwala constructions and also of the jurisdictional ITAT in the cases of Ashish Builders Private Ltd and Rohan Estate Private Ltd (supra) and also the various judicial pronouncements relied upon by the assessee, the interest expenditure claimed by the assessee is held to be allowable. Therefore, the AO is directed to delete the addition made of Rs.4,39,49,000/-. This ground of appeal is ALLOWED.

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5. Upon due consideration of material facts, it is quite evident that the assessee was following percentage of completion method of accounting to recognize revenue from operations as against the case law of Tribunal Special Bench in M/s Wall Street Construction Limited (102 TTJ 505) which deal with a case wherein the assessee was

following completed contract method and therefore, the said decision was not applicable to the facts of the case, as rightly held by learned first appellate authority.

6. Proceeding further, it is undisputed fact that the assessee was engaged in real estate construction and had borrowed capital for business purposes. No other diversion of income has been alleged by Ld. AO. As noted by Ld. CIT(A), the interest was paid to debenture holders, financial institutions as well as unsecured loan creditors and the loan was utilized for business purposes. The funds were borrowed for the purpose of construction and have gone into the projects of the assessee which constitute assessee's stock-in-trade and not capital asset. In view of these clear cut findings, the adjudication of Ld. CIT(A) could not be faulted with. Another important fact is that the assessee has followed consistent accounting treatment to charge interest expenditure in the accounts. Therefore, the ground thus raised by the revenue stand dismissed."

10. Similarly, in DCIT v/s Palava Dwellers Pvt. Ltd. in ITA No.2147/Mum./ 2018 vide order dated 20 February 2020, following the decision of Hon'ble Jurisdictional High Court in Lokhandwala Construction (supra), another Co-ordinate Bench of Tribunal dismissed the appeal filed by the Revenue and allowed the claim of deduction under section 36(1)(iii) of the Act.

11. The learned DR could not show us any cogent reason to deviate from the aforesaid orders. Thus, respectfully following the aforesaid judicial precedence rendered by the Co-ordinate Bench of Tribunal in similar facts and circumstances, we direct the Assessing Officer to allow deduction under section 36(1)(iii) of the Act in respect of interest expenditure of Rs. 4,35,36,783.

12. In the result, appeal by the assessee is allowed in terms of our aforesaid findings.

4.6. We further find similar decision is rendered by this tribunal in the case of the following cases, out of which, majority cases are group entities of assessee and some are non-group entities of the assessee:-

Sr.No	Name of Assesses	ITA No.	Assessment Year	Date of Order
Group Entities				
1	National Standard (India) Limited	3048/M/2019	2013-14	05/04/2021

*ITA No.1891/Mum/2022 and other appeals
M/s. MMR Social Housing Pvt. Ltd.,
(Earlier known as M/s. Lodha Buildcon Pvt. Ltd.,)*

2	Macrotech Developers Limited	68/Mum/2019	2015-16	28/03/2022
	Macrotech Developers Limited (Successor to Bellissimo Crown Build Mart Pvt Ltd.)	2336/Mum/2019	2013-14	28/03/2022
3	MMR Social Housing Private Limited	1310/M/2021	2014-15	08/04/2022
4	Sanathnagar Enterprises Ltd.	792/M/2019 & 793/M/2019 & 794/M/2019	2013-14	12/04/2022
	Sanathnagar Enterprises Ltd.		2014-15	12/04/2022
	Sanathnagar Enterprises Ltd.		2015-16	12/04/2022
5	Cowtown Infotech Services Pvt Ltd (earlier known as Cowtown Land Development Private Limited)	4053/M/2019	2013-14	26/04/2022
6	Macrotech Developers Limited	2148/Mum/2018	2014-15	12/05/2022
7	Palava Dwellers Pvt. Ltd	2147/Mum/2018	2014-15	20/02/2020
8	Palava Dwellers Pvt. Ltd	1594/Mum/2019	2015-16	30/08/2022
9	Palava Dwellers Pvt. Ltd	1539/Mum/2019	2015-16	30/08/2022
Won Group Entities				
10	Ashish Builders Pvt. Ltd.	310/Mum/2012& 1566/Mum/2011	2008-09 & 2007-08	23/09/2016
11	Rohan Estate	7200/Mum/2010	2006-07	16/01/2016
12	M/s. Kolte Patil Developers Ltd., (Erstwhile Corolla Realty Ltd. merged with Kolte Patil Developers Ltd.)	80/PUN/2016	2011-12	15/11/2017

4.7. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee. Accordingly, the grounds raised by the revenue are dismissed for ITA No. 1891/Mum/2022.

5. The aforesaid decision would apply mutatis mutandis for ITA Nos. 1892 and 1894/Mum/2022 also except with variance in figures and name of the project, in view of identical facts.

6. In the result, all the appeals of the revenue are dismissed.

Order pronounced on 21/09/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 21/09/2022

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,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai