

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 1893/MUM/2022**

(Assessment Year 2014-15)

ACIT CC-7(3)  
ROOM NO. 655,  
Aayakar Bhavan,  
M.K.Road,  
Mumbai- 400 020

Vs.

M/S Macrotech Developers  
Ltd.  
(Successor to M/s Sahajanad  
Hi-Tech Construction Pvt.  
Ltd.)  
412,4<sup>TH</sup> Floor, 17-G,  
Vardhaman Chambers,  
Cawasji Patel Road,  
Horniman Circle, Fort,  
Mumbai-400001

**(Appellant)**

**(Respondent)**

**PAN No.AAECP1936F**

**ITA No. 1885/MUM/2022**

(Assessment Year 2015-16)

ACIT CC-7(3)  
Room no. 655,  
Aayakar Bhavan,  
M.K.Road,  
Mumbai- 400 020

Vs.

Macrotech Developers Ltd.  
(Successor to Bellissimo  
Developers Thane Private Limited)  
412, Floor-4, 17G  
Vardhman Chamber, Cawasji,  
Patel Road, Horniman Circle,  
Fort, Mumbai-400 001

**(Appellant)**

**(Respondent)**

**PAN No.AADCO0409D**

**ITA No. 1864/MUM/2022**

(Assessment Year 2015-16)

Macrotech Developers Ltd.  
(Successor to Bellissimo  
Developers Thane Private  
Limited)  
412, Floor-4, 17G  
Vardhman Chamber, Cawasji,  
Patel Road, Horniman Circle,  
Fort, Mumbai-400 001

Vs.

DCIT,  
Central Circle 7(3)  
Room no. 655, 6<sup>th</sup> floor,  
Aaykar Bhavan,  
M. K. Road,  
Mumbai-400 021

**(Appellant)**

**(Respondent)**

**PAN No.AADCO0409D**

**Assessee by** : Shri. Gunajjan Kakkad  
**Revenue by** : Shri. Nishant Somaiya SRAR

**Date of hearing:** 22-09-2022  
**Date of pronouncement:** 26-10-2022

## **ORDER**

**PER PRASHANT MAHARISHI, AM:**

### **A.Y. 2014-15**

01. ITA No. 1893/Mum/2022 is filed by the Asst. Commissioner of Income Tax, Central Circle 7(3), Mumbai [the learned Assessing Officer] for A.Y. 2014-15 against Appellate order passed by the Commissioner of Income-tax (Appeals)-49, Mumbai [the learned CIT (A)] dated 26<sup>th</sup> May, 2022, wherein the appeal filed by the Assessee against the assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 28<sup>th</sup> December, 2016 passed by the Dy. Commissioner of Income Tax, Central Circle 7(3), Mumbai, (the learned Assessing Officer) was partly allowed.
02. The learned Assessing Officer is aggrieved with the order of the learned CIT (A) in deleting the disallowance of interest expenditure amounting to ₹6,33,67,881/-.
03. The brief fact of the case is that the assessee is a company engaged in the business of construction and development of real estate and was developing a residential project at Pune. Assessee filed its return of income on 30<sup>th</sup> November 2014 at a total income of ₹28,61,89,640/- which was the further revised on 9<sup>th</sup>

March 2015 at a total income of ₹22,28,21.760/-. The case of the assessee was picked up for scrutiny.

04. The learned Assessing Officer noted that assessee is following percentage completion method of accounting for real estate projects. It has borrowed capital for the business and has paid interest of ₹43.02 crores and earned interest income of ₹31.71 crores resulting into net interest expenditure of ₹11.31 crores. Out of that assessee capitalized interest of Rs. 6.76 crores in work-in-progress in the books of account. Interest of ₹6.34 crores was claimed as deduction in the return of income. The learned Assessing Officer asked that why the interest expenses claimed should not be disallowed.
05. Assessee submitted that the interest expenditure is claimed as deduction in the return of income in the year of incurring those expenses, interest is periodic cost and therefore, same is claimed as deduction. Assessee relied upon the decision of Hon'ble Bombay High Court in CIT vs. Lokhandwala Construction Inds. Ltd. 260 ITR 579 (Bom).
06. The learned Assessing Officer rejected the contention of the assessee. He held that as per Accounting Standard (AS)-7 and Guidance Note on Accounting for Real Estate Transactions issued by the Institute of Chartered Accountants of India, all the expenses directly related to the project must be carried over as the cost of the project. It can be claimed as deduction in the year only when corresponding income of the project is credited in the books of account. He, therefore, held that the entire

interest expenditure requires to be considered as cost of the project. Accordingly, the interest cost of ₹6,33,67,881/- was disallowed holding that decision of Bombay High Court was rendered before the introduction of proviso to Section 36(1)(iii) of the Act inserted as per Finance Act, 2003. Consequently, assessment order under Section 143(3) of the Act was passed on 28<sup>th</sup> December 2016.

07. The assessment order was challenged before the learned CIT (A) who deleted the disallowance following the decision of the co-ordinate bench in assessee's own case as well as the other group concerns.
08. Therefore, the learned Assessing Officer is aggrieved with that order and has preferred the appeal before us.
09. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer whereas the learned Authorized Representative vehemently supported the order of the learned CIT (A) as well as the several orders of the co-ordinate Benches in assessee's own case and other concerns.
010. We have carefully considered the rival contentions and perused the orders of the lower authorities. Further, the learned CIT (A) in paragraph no. 6.3.2 to 6.3.3 has decided this issue as under:-

*"6.3.2 I had considered this issue in the case of another group concern of the assessee naming M/s. MMR Social Housing Pvt. Ltd. (formerly known as Lodha Buildcon Pvt. Ltd.) for A.Y. 2014-15. In my*

*appeal order in the said case in appeal No. CIT(A), Mumbai-49/10582/2016-17 dated 20/05/2021, had discussed this issue in detail and held that the assessee was not eligible to claim this expenditure in view of the decision of Hon'ble Special Bench of the Mumbai ITAT In the case of Wall Street Construction Ltd. (101 ITD 156). In the said order, had discussed why, as ITD 156). In the per my opinion, the decision of Hon'ble Bombay High Court in the case of CIT v. Lokhandwala Construction Industries Ltd. [260 ITR 0579 (Bom)] did not support the case of the assessee and the issue was to be decided in view of decision of Hon'ble Special bench of the Tribunal in the case of Wall Street Construction Ltd.(supra). The assessee, thereafter, filed an appeal before the Hon'ble Mumbai ITAT against the said appeal order passed by me in the case of M/s. MMR Social Housing Pvt. Ltd., and the Hon'ble Mumbai Tribunal has decided the issue in favour of the assessee. The Hon'ble ITAT, in the order dated 08/04/2022 in ITA No.1310/Mum./2021 (A. Y. 2014-15), has given the following findings:*

*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 recognizing the revenue from its project. We find that in similar facts and circumstances, the Coordinate 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)(N) 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.*

*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)(ii) of the Act in respect of interest expenditure of Rs. 4,35,36,783*

*6.3.3 Since, the view taken by me on this issue in an earlier order in the case of another group concern as mentioned above did not find favour from the Hon'ble ITAT, as that has been reversed vide the order referred to above, respectfully following the judicial discipline and the decision of the Hon'ble Tribunal in the aforesaid case and other cases relied upon by the assessee, it is held that the assessee is eligible for claiming this deduction, and the learned AO is, accordingly, directed to allow the same. Grounds No.1 and 2 are, accordingly, ALLOWED"*

011. The learned CIT (A) has also considered the decision of Special Bench in M/s Wall Street Construction Limited reported in 102 TTJ 505.

012. On the argument of the revenue that the decision of the Honourable Bombay High Court was rendered prior to insertion of proviso to Section 36 (1) (iii) of the act by the

finance act, 2003 with effect from 1/4/2004 and therefore that decision does not apply to the facts of the case. We have looked at circular number 7/2003 dated 5/9/2003 which is explained the insertion of the above proviso as Under: -

**"28.3** The Act has amended the said clause by way of insertion of a proviso to provide that no deduction will be allowed in respect of any amount of interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not) for the period beginning from the date on which the capital was borrowed for the acquisition of the asset till the date on which such asset was first put to use."

013. On careful reading of the above circular, same applies to an asset which provides for capitalization of interest to the cost of the asset steel it is first put to use. In case of work in progress, it cannot be said that when it has been first put to use. Therefore, the argument of the revenue that decision of the Honourable Bombay High Court cannot be applied to the facts of this case is without any merit.

014. We find that this issue is squarely covered in favour of the assessee by the order of co-ordinate Bench in ITA No. 1539 & 1594/Mum/2019 for A.Y. 2015-16 in case of Lodha Developers Ltd. (successor to Palava Dwellers Pvt. Ltd) dated 30<sup>th</sup> August 2022. That decision was rendered following the decision in ITA No.147/Mum/2018 dated 20<sup>th</sup>

February 2020. The learned CIT (A) has also followed the same. Therefore, respectfully following the decision of the Honourable Bombay High Court as well as of the coordinate benches, we do not find any merit in ground raised by the learned Assessing Officer, hence, dismissed. Accordingly, ground no. 1 & 2 of the appeal is also dismissed.

015. In the result, ITA No. 1893/Mum/2022 of learned Assessing Officer for A.Y. 2014-15 is dismissed.

### **A.Y. 2015-16**

016. ITA No. 1885/Mum/2022 is filed by the Asst. Commissioner of Income Tax, Central Circle 7(3), Mumbai [the learned Assessing Officer] against the appellate order passed by the CIT (A)-49, Mumbai dated 26<sup>th</sup> May 2022 raising solitary grounds of appeal with respect to the deletion of disallowance under Section 36(1)(iii) of the Act.

017. In ITA No. 1864/Mum/2022, assessee has also filed appeal for the same assessment year against the same appellate order raising following three grounds of appeal: -

*"The following grounds of appeal are without prejudice to each other: -*

*1) On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals)-49 [CIT(A)-49] erred in upholding the disallowance of interest to the tune of Rs 9,75,000/- under section 36(1)(iii) of the Income Tax Act, 1961 being difference between interest received on*

*borrowings and interest accrued on loans advanced by the appellant to its sister concern during the year.*

*2) Without prejudice to above, on the facts and circumstances of the case and in law, the learned CIT(A)-49 erred in not appreciating that the disallowance of the interest should be restricted to the sum of Rs. 69,062/- being amount of interest debited to profit and loss account.*

*3) On the facts and circumstances of the case and in law, the learned [CIT(A)-49] erred in not appreciating that no double disallowance of expense could be made by adding the disallowance to total income as well as reducing the same from Work-in-progress of inventories.*

*4) The appellant craves leave to add, amend, alter, or delete the said ground of appeal."*

018. Coming to the facts of the case, assessee filed return of income on 30<sup>th</sup> August 2015 declaring total loss of ₹7,08,642/-. The assessment order was passed in the name of Ishwar Realty and Technologies Pvt. Ltd. which was renamed as Lodha Developers Thane Pvt. Ltd and subsequently, renamed as Bellissimo Developers Thane Pvt. Ltd. merged into Macrotech Developers Ltd.

019. The learned Assessing Officer noted that assessee has unsecured loan of ₹1,13,242 lacs as on 31<sup>st</sup> March 2015. Assessee has also given advance of ₹8,000 lacs on which no interest was charged. Assessee has paid interest of ₹8.49 lacs out of which ₹1,485 lacs is reduced from interest income and ₹6,932 lacs was allocated to the cost

of project. The assessee was questioned as to why the interest expenses related to the construction should not be considered as work-in-progress. Assessee replied on 28<sup>th</sup> December 2017 as under: -

*"5.2 The assessee has made its submission vide letter dated 28.12.2017. The relevant part is reproduced hereunder:*

*1.1 The assessee is a private limited company engaged in the business of construction and development of real estate properties. The assessee company is developing a project named as "Amara" at Thane. During the year under consideration, the assessee has purchased land for construction of its project and in order to meet the construction cost, the assessee company has borrowed Rs. 450 Crores from M/s. Indiabulls Housing Finance Limited (IHFL) at the interest rate of 14.94% and it has also borrowed funds from its holding company M/s. Lodha Developers Private Limited from time to time at the interest rate of 13.40%. As stated above, the above funds have been utilised for construction activity which is evident from the audited financial statement wherein work in progress (WIP) as on 31.03.2015 is shown at Rs. 1,525 Crores (refer schedule 10 of the audited financial statement) which has been carried forward to subsequent years.*

*1.2 From the audited financial statement, it is also apparent that the assessee company's own*

*fund is Rs. 350 Crores and its borrowed fund is Rs. 1,132 Crores aggregating to Rs. 1,482 Crores which has been utilised for acquisition of land as stated above (inventory is Rs. 1,525 Crores). The assessee submits that pending the utilisation of fund the same has been parked with a group company named as M/s. Jwala Realities Private limited (JRPL) with a view to minimise the interest cost. The assessee submits that the borrowed funds have been advanced for a short period to its group company at the interest rate of 13.40%. These funds were returned back in the month of March 2015 and deployed for business purposes. In view of the above facts, the assessee respectfully submits that excess of interest as reduced by interest income has been added to WIP and carried forward to the subsequent years.*

*1.3 The assessee further submits that its business has already been set up as it has bought the land at Thane and presently on the said land the assessee company is developing project Amara. Therefore, the assessee submits that interest income on commercial exploitation of fund after setting off of its business has been correctly netted off against the interest expenses and carried forward to the WIP.*

*1.4 While on the subject, the assessee also submits that funds advanced by the assessee company to JRPL has been used for the*

*business purposes by JRPL. During the year under consideration, JRPL has declared the book profit of Rs. 158.89 Crores and paid the taxes of Rs. 33.30 Crores; therefore, the assessee submits that the by utilizing the borrowed fund the JRPL has earned the huge income and paid the taxes thereon; thus, there is no leakage to the revenue due to advance given by the assessee to JRPL. Therefore, the assessee submits that in view of the circumstances, the assessee has rightly netted off the interest income against the interest expenses.*

*its support the assessee has also relied on the following judicial pronouncements to establish that it has correctly netted off the interest expenses -*

*Eveready Industries India Limited vs CIT 323 ITR 0312 (Cal)*

*CIT vs Producin (P) Ltd (290 ITR 0598 Kar HC]*

*CIT vs Madras Refineries Limited (228 ITR 0354 Mad HC)*

*CIT vs Tirupati Woolen Mills Limited (193 ITR 0252 Cal HC)*

*Further, the assessee has submitted as under: -*

*2.1 In the alternative and without prejudice to the above submission the assessee submits that there is a direct nexus between the*

*interest expenses and interest income; thus, if the interest income is assessed as income from other sources, then the interest expenses shall be allowed an deduction u/s 57) of the IT Act. Under the circumstances, the assessee respectfully submits that section 57) of the Act reads as under 57. The income chargeable under the head "Income from other sources shall be computed after making the following deductions, namely:..*

*(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;"*

*2.2 The assessee respectfully submits that what section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. The assessee respectfully submits that in its case there is a direct nexus between the funds borrowed and utilization of same. The assessee therefore submits that the interest on borrowed fund was laid out or expended wholly and exclusively for the purpose of earning the interest income. Under the circumstance, entire interest expenses of Rs. 15,48,74,589/- on loan borrowed shall be allowed as deduction u/s 57(iii) of the Act. In support of the above submission, the assessee rely upon the following judicial pronouncements wherein under the identical facts the hon'ble*

*High Courts have allowed deduction u/s 57(mi)  
if the Act:*

*In this respect, the assessee has relied on the  
following judicial decisions -*

*CIT vs Rajendra Prasad Mody [115 ITR 0519  
SC]*

*CIT VS. Modi Pvt. Ltd [208 ITR 31] (Bombay)  
CIT Vs. South India Corporation (Agencies) Ltd  
[290 ITR 217](Madras)*

*R.K. Kabel Ltd Vs. Addl. CIT [66 DTR 250]  
(Mumbai)*

*The assessee has also further made the submission  
as under: -*

*3.1 The assessee would humbly submit that  
reducing the interest income from the WIP and  
taxing the same under the head income from  
other sources shall be tax neutral. The assessee  
submits that the reduction of interest income  
from WIP will result into increase in the value of  
WIP which shall be claimed in the respective  
years against the proportionate revenue  
recognized following percentage completion  
method of accounting. There would be only  
deferment in the year i.e. it would be taxed as  
income from other sources in the subjected  
year and shall be allowed as deduction. in  
respective years forming part of WIP. In view of  
the above facts, the assessee submits that its  
claim is duly allowed under the law; therefore,*

*the same shall be allowed in the subjected year.*

*4.1 In the alternative and without prejudice to the above submission, the assessee submits that if at all the disallowance is to be made, then the same shall be restricted to Rs. 1,73,75,903/- which works out as under:*

Particulars	Amount	Interest Rate	Avg Amount
Interest paid to IHFL	154,874,589	14.94%	1,036,643,835
Interest paid to Lodha Developers Limited	<u>415,103,077</u>	13.40%	<u>3,097,784,157</u>
	569,977,666		4,134,427,991
Average interest rate on borrowing		13.79%	
Interest rate on lending		<u>13.40%</u>	
Difference in borrowing rate and lending rate		0.39%	
Funds borrowed from IHFL and used for lending			<u>4,500,000,000</u>
Applying the differential interest rate on borrowing (i.e. ₹450 Crores X .39%)			17,375,903

*5.3 The assessee's submission has been perused carefully; however, same is not acceptable due to the reasons stated herein below. Assessee submitted that pending the utilization of borrowed fund, it has lent Rs. 450 Crores to M/s. Jawala Realities Private Limited (JRPL) for the period from January to March, 2015. It had borrowed funds at the interest rate of 14.94% whereas it has lent the fund at the interest rate of 13.40%. It is appropriate to state that to the extent of borrowed funds lent to JRPL, the borrowed fund has not been utilized by the assessee for its business purposes (i.e. construction activity) and also the fact that the assessee is not into lending business. Accordingly, Interest expenses of*

*Rs.17,375,903/- is disallowed u/s.36(1)(ii) of the Act, being interest expense paid in respect of capital borrowed not utilized for business purpose.”*

020. Based on this, the learned Assessing Officer disallowed ₹1,73,75,903/- under Section 36(1)(iii) of the Act being interest on capital borrowed not used for business purposes.
021. The learned Assessing Officer further decreased the work-in-progress of ₹1,52,523/- lacs by the above sum and determined revised work-in-progress at ₹1,52,349/-lakhs. Assessment order under Section 143(3) of the Act was passed on 29<sup>th</sup>December 2017 determining the total income of the assessee at ₹1,66,67,260/- against the return loss of ₹7,08,643/- whereby the solitary addition is disallowance of interest expenditure of ₹1,73,76,903/-.
022. Assessee aggrieved with the above preferred the appeal before the learned CIT (A). The learned CIT (A) considered the explanation of the assessee that assessee has owned non-interest-bearing funds of ₹6,952 lacs as well as ₹350 crores from zero coupon redeemable preference shares and therefore, the above amount is far more than interest free advance given to other parties. Therefore, following the decision of the Hon'ble Bombay High Court in CIT Vs. Reliance Utilities 313 ITR 304 and CIT vs. HDFC Bank 366 ITR 505, the disallowance only of ₹9,75,000/- was confirmed.



023. With respect to the reduction from WIP of the interest disallowed, the learned CIT (A) held that the interest which would not be allowable cannot be claimed as work in progress, however, the disallowance shall be restricted in work-in-progress to the extent of disallowance confirmed.
024. Both the parties are aggrieved with the above order.
025. On the appeal of the learned Assessing Officer the learned Departmental Representative relied on the order of the learned Assessing Officer, whereas he relied on the order of the learned CIT (A) on appeal of the assessee.
026. The learned Authorized Representative on the appeal of the learned Assessing Officer relied upon the orders of the learned CIT (A) and of the orders of co-ordinate Benches in case of group concern as well as assessee. With respect to the appeal of the assessee, the learned Authorized Representative submitted that learned CIT (A) has restricted the disallowance to ₹9,75,000/- whereas the interest debited by the assessee only ₹69,062/- to the profit and loss account and therefore, disallowance cannot exceed more than that. He further stated that double disallowance of expenses also including the disallowance on the WDV from work-in-progress is not proper.
027. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also carefully considered the decision of the co-ordinate Benches relied upon.

028. Coming to the appeal of the learned Assessing Officer, against the deletion of disallowance under Section 36(1)(iii) of the Act. The facts clearly show that during the year the learned Assessing Officer has Rs 350 crores from the zero-coupon redeemable preference shares and further the loan to Jawala Real Estate Pvt. Ltd. of ₹450 crores has been given out of the above sum leaving only ₹100 crores on which disallowance at 0.39% being the difference between the average borrowing rate and interest charged to Jawala Real Estate for a period of 3 months is only ₹9,00,075/-. The learned CIT (A) following the decision of the Hon'ble Bombay High Court in CIT Vs. Reliance Utilities 313 ITR 304 and 366 ITR 505 have confirmed the disallowance of the above amount.
029. The learned Departmental Representative could not show us that the loan given to Jawala Real Estate of ₹450 crores was not financed partly out of 350 crores of zero interest preference shares and further interest rate charged to Jawala Real Estate and interest rate for payment is only less by 0.39%. The learned CIT (A) has given benefit of presumption to the assessee that interest free funds are available to the assessee for the advance. Therefore, the disallowance worked out by the learned CIT – A cannot be found fault with as it is based on the decision of the Honourable Bombay High Court. Therefore, the order of the learned CIT – A deserves to be confirmed and hence confirmed.

030. In the result, the solitary ground of appeal of the learned Assessing Officer is dismissed, Accordingly, the appeal filed by the learned Assessing Officer is dismissed.
031. Now, coming to the appeal of the assessee. Ground no. 1 and 2 is with respect to the disallowance to be restricted to the extent of only ₹69,062/- which is the interest expenses debited to the profit and loss account. We find that there is a proper justification for the same as assessee has only debited the interest expenditure of ₹69,062/-. As assessee has only claimed interest expenditure to the extent of ₹ 69,062/-, the disallowance cannot exceed that amount, unless any other reasons are demonstrated. Accordingly, we direct the learned Assessing Officer to restrict the disallowance only to the extent of amount claimed as deduction by the assessee. Accordingly, ground no.1 and 2 are allowed.
032. Ground no.3 is with respect to the claim of the assessee that if the disallowed sum is also reduced from the work-in-progress then it will amount to double disallowance. We disagree with the contention of the assessee and agree with the finding of the learned CIT (A) on this issue. The reason for the same is that if the work-in-progress is not reduced by the disallowance, the cost of WIP becomes deductible expenditure in the next year. Therefore, whatever is not allowable in the year number 1, becomes automatically allowable in the year number 2. Accordingly, ground no. 3 of the appeal of the assessee is dismissed.



033. In the result, for A.Y. 2015-16, the appeal of the learned Assessing Officer is dismissed, and appeal of the assessee is partly allowed.

034. In the result, all the appeals of learned Assessing Officer are dismissed and appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.10.2022.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 26.10.2022

*Sudip Sarkar, Sr.PS*



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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai