

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA Nos. 2377 & 2379/Mum/2021

(Assessment Years 2013-14 & 2017-18)

ITA Nos. 1423, 1436 & 1424/Mum/2022

(Assessment Years 2011-12 & 2012-13 & 2014-15)

The Asst. Commissioner of
Income Tax,
Central Circle-6(4),
Room No.1925, 19th Floor,
Air India Building,
Nariman Point
Mumbai-400021

(Appellant)

Juventus Estate Limited
Mumbai-400 -62 & 63, 1st
Floor, Connaught Place,
New Delhi- 110001

vs.

(Respondent)

PAN No. AABCJ7161M

Assessee by

: Sh. K Gopal, AR

Revenue by

: Sh. Dharamveer Singh, CIT DR

Date of hearing: 28.09.2022

Date of pronouncement: 27.10.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are five appeals filed by the Deputy Commissioner of income tax central circle – 6 (4), Mumbai (the learned AO) in case of one assessee Juventus estates Ltd, New Delhi for assessment year 2011 – 12, 2012 – 13, 2013 – 14 2014 – 15 and 2017 – 18.

02. We first take up the appeal for assessment year 2011 – 12 filed by the learned assessing officer against the order passed by the Commissioner of income tax, appeals – 54, Mumbai dated 20/10/2021 (which is a consolidated order for assessment year 2011 – 12, 12 – 13, 14 – 15, 15 – 16 and 2016 – 17). By this order, the learned CIT – A passed an order in appeal filed by the assessee against the assessment order passed u/s 143 (3)/153A of the income tax act 1961 dated 31/12/2018 passed by the learned assessing officer.
03. Briefly stated the facts shows that assessee filed original return of income on 24/9/2011 declaring loss of ₹ 115,515/-. Search was carried out in the case of India Bulls group on 13/7/2016 and the case of the assessee company was also centralized. Therefore notice u/s 153A was issued on 25/7/2017 in response to which the assessee filed return of income on 12/8/2017 declaring a net loss of ₹ 115,515/- on to that the assessment order was passed u/s 143 (3) on 31/12/2018 assessing the total income of the assessee at a loss of ₹ 35,515.
04. The only issue involved in this appeal is the as per balance-sheet submitted by the assessee it has earned interest income of ₹ 5,492,847 and has also incurred the interest expenditure of ₹ 50,585,023/- both these income and expenses have been charged to the inventory on net basis. However, in the return of income the assessee has shown interest income of ₹ 5,492,847 u/s 56 of the

income tax act and further has claimed deduction of interest expenditure of ₹ 50,585,023 as business expenditure. However same was restricted to the extent of interest income the learned assessing officer was of the view that sees the net interest expenditure of ₹ 4,50,92,176 is not an allowable expense the value of inventory has not been reduced by the same amount and therefore it is being carried out at the inflated amount therefore he reduced the closing stock of the inventory by a sum of Rs 4 50,92,176. Accordingly, the closing inventory was valued at ₹ 967,494,001/- which was carried forward to the subsequent year and claimed as deduction accordingly.

05. The learned AO further found that during search action u/s 132 of the act various loose papers on pen drive were found and seized. Statement u/s 132 (4) of the act was recorded on the seized material and it was found that same were not recorded in the regular books of accounts. Assessee was asked to explain the source of such cash expenditure. Assessee submitted that before the settlement commission in the group cases the above expenditure have been owned and same have been disclosed therefore no separate addition is required to be made in the case of the assessee. The learned assessing officer rejected the same and found that unexplained money u/s 69A of the act has been used to the extent of ₹ 80,000. Accordingly, he made the addition. The assessment order u/s 143 (3) read with Section 153A of

the act was passed on 31/12/2018 determining total income of the assessee at a loss of ₹ 35,515/-.

06. The assessee challenged the same before the learned CIT – A. The first contention of the assessee is that the learned assessing officer should not have disturbed the valuation of the inventory for the reason that there is no incriminating material found during the course of search with respect to the above addition/adjustment the learned assessing officer could not have incurred the assessment for impugned assessment year 2011 – 12 whereas the search was carried out on 13/7/2016 and therefore the impugned assessment year is concluded assessment year. This could have been adjusted only on the basis of the incriminating material found during the course of search. It was also stated that with respect to the above adjustment in the closing inventory made by the learned assessing officer there is no material available/found during the course of search. The learned CIT – A following the decision of the Honourable Supreme Court in case of where the continental warehousing Corporation is Ltd 374 ITR 645 and the decision of the Honourable Supreme Court in case of Sinhgad technical education society accepted the contention of the assessee and allowed the same. He also dealt with this issue on the merit of the case and wide paragraph number 6.3 he deleted the adjustment to the closing inventory because the learned assessing officer has not given any reason as to why the net interest expenses not allowable as an expenditure as according to him the interest paid on loan utilized for

business purposes is an allowable expenditure. He held that there is a direct nexus between interest income and corresponding interest expenditure. Accordingly he held that the assessee has rightly claimed deduction of interest expenditure u/s 57 of the income tax act. He directed the learned assessing officer to allow net interest expenditure of ₹ 45,092,176 as business expenditure and capitalize the net interest of the same amount in cost of project inventory. With respect to the addition of ₹ 80,000 on account of unaccounted income he allowed the claim of the assessee following his own decision in another group concern for the same assessment year.

07. The learned AO aggrieved with the above order has preferred this appeal. The learned departmental representative vehemently submitted that that issue involved in this case is whether the interest expenditure can be allowed as Under the head income from business or profession or under the head income from other sources. And whether the said interest expenditure can be claimed as cost of inventory. However as per ground number 3 the learned departmental representative submitted that the learned and CIT - A wrongly applied the decision of continental warehousing Corporation Ltd in 58 taxmann.com 78 to the facts of the assessee in ignorance of the decision of another decision of the Honourable Bombay High Court in case of CIT versus Murli Agro products Ltd 49 taxmann.com 172. He extensively referred to the paragraph number 11 and 12 of the decision wherein it has been held that even the material



gathered during the proceedings u/s 150 3A of the income tax act can also be used for disturbing the concluded assessment. He further referred to paragraph number 12 of that decision wherein it has been held that that the AO while passing the independent assessment order u/s 153A hundred with Section 143 (3) of the IT act could not have disturbed the assessment/reassessment order which has attained finality, unless the materials gathered in the course of the proceedings u/s 153A of the income tax act establish that the relief granted Under the finalized assessment/reassessment were contrary to the facts are not during the course of 153A proceedings. Therefore, he submitted that the Honourable Bombay High Court has categorically held that during the course of assessment proceedings u/s 153A any material found, the concluded assessment can also be disturbed on basis of that material/information. Therefore he submitted that it is a myth propagated that the material should only be unearthed during the course of search which is indirect contradiction to the decision of the Honourable Bombay High Court in that case. He further stated that the order of Honourable Bombay High Court in CIT versus Murli Agro Ltd [supra] has been followed in the decision of CIT versus Continental warehousing Corporation (supra). Therefore he submitted that the learned CIT – A has grossly erred in holding that there is no material available/unearthed during the course of search based on which the adjustment in the closing inventory of the assessee could have been made. Therefore, according to

him, information that comes into the possession of the learned assessing officer while framing an assessment order u/s 153A of the income tax act though not found during the course of search, the concluded assessment can be disturbed by making assessment based on that material. Therefore, the sum and substance of the argument of the learned departmental representative is that if the information comes into the possession of the assessing officer while framing an assessment order u/s 153A, based on that material, assessment of the assessee can be upwardly revised even in unabated assessment. He further submitted that the learned CIT – A has not given any reason why the fixed deposit interest should be considered as business income.

08. The learned authorized representative vehemently supported the order of the learned CIT – A on the issue that there is no incriminating material found during the course of search and therefore the adjustment of closing value of the inventory could not have been made in the case of the assessee in absence of any incriminating material found during the course of search. He further stated that now the decision has been rendered of the Honourable Supreme Court where in *Sinhgad technical education society* the Honourable Supreme Court has categorically held that without incriminating material found during the course of search, the concluded assessment cannot be tempered with. He further submitted that now decision of the Honourable Supreme Court will cover the issue in favour of the assessee.



Therefore, there is no reason to tinker with the concluded assessment even on the basis of the material which has been unearthed during the course of assessment proceedings u/s 153A of the income tax act. Even otherwise he submitted that reading of the decision of the Honourable Bombay High Court in case of Murli Agro products Ltd by the learned departmental representative is incorrect.

09. We have carefully considered the rival contention and perused the orders of the lower authorities. On reading of the assessment order, we do not find any material which was unearthed during the course of search on 13/7/2016 related to the adjustment made by the learned assessing officer with respect to the adjustment in the closing inventory of the assessee. Now it has been fairly concluded by the Honourable Supreme Court that without reference to incriminating material seized during search, the concluded assessment cannot be enhanced. Therefore ground number 1 and 3, 4 of the appeal of learned assessing officer are dismissed.
010. As ground number 2 is on the merits of the 11 is of net interest expenditure of ₹ 45,092,176 as cost of inventory is merely an academic in view of our decision in holding that there is no incriminating material with respect to the above adjustment, therefore there is no requirement of going into the merits of the addition. Therefore, ground number 2 is dismissed.



011. Ground number 5 – 7 are with respect to the addition of ₹ 80,000 u/s 69A of the act wherein addition of ₹ 80,000 has been made on account of seized material found during search. We find that identical issue in ITA number 496/2022 for assessment year 2012 – 13 in case of India Bulls housing finance Ltd dated 22/6/2022 has been decided wherein it has been found that the above sum has been included in the income offered by the assessee group before the settlement commission. Paragraph Number 4 of that decision also notes that merely because the order of the settlement commission has been challenged before the Honourable High Court there is no reason to this regard that order unless upset by the higher appellate forum. It was also not shown before us that the above sum has also not been included in the petition before the settlement commission. Therefore, as the amount has already been taxed in the settlement petition of the assessee group, making addition once again in the hence of this assessee will amount to double taxation of the same income. Therefore, ground number 5 – 7 of the appeal are dismissed.
012. In the result ITA number 1423/M/2022 filed by the learned assessing officer for assessment year 2011 – 12 is dismissed.
013. ITA number 1436/M/2022 filed by the learned assessing officer against the same appellate order passed by the learned CIT – A wherein ground number 1, 2,4 & 5 are



with respect to the adjustment of interest expenditure in the closing inventory. This issue is identical to the issue involved in the appeal of the learned assessing officer for assessment year 2011 - 12 wherein we have held that in absence of any incriminating material valuation of closing stock cannot be tinkered with. In the present case appeal for assessment year 2012 - 13 was on account of return of income filed by the assessee on 24/9/2012 wherein at the time of search on 13/7/2016 the assessment was concluded. Therefore as per our decision in assessment year 2011 - 12 wherein we have dismissed the grounds of appeal raised by the learned assessing officer with respect to this addition applies squarely. Accordingly ground number 1, 2, 4, 5 of the appeal are dismissed.

014. Ground number 3 is with respect to the addition of differential interest income of ₹ 190,799 whereas the in trust income offered in the return of income is only ₹ 6,012,515 whereas as per the form 26AS the same was shown at ₹ 6,203,314. We also find that with respect to the above addition was found during the course of assessment proceedings and the same was made only on the issue of 3 verification of form number 26AS. Therefore, for the same reasoning given by us that concluded assessment can only be tinkered with incriminating material found during the course of search. Same is absent with respect to this addition. Accordingly, ground number 3 of the appeal is dismissed.



015. Ground number 6 – 8 is with respect to the addition u/s 69A of ₹ 42,000/- which is identical to ground of appeal for assessment year 2011 – 12, wherein it has been held that the above sum has been included in the settlement petition filed by the group before the settlement commission and has also been included in the disclosure. Therefore, same amount has already been taxed in the hands of group entities, it would amount to double addition, therefore, following the reasoning given by us for assessment year 2011 – 12 in the appeal of the learned AO, for the similar reasons ground number 6 – 8 of the appeal are dismissed.
016. Accordingly, ITA number 1436/M/2022 filed by the learned assessing officer for assessment year 2012 – 13 is dismissed.
017. ITA number 2377/M/2021 is filed by the assessing officer for assessment year 2013 – 14 wherein ground number 1 – 47 with respect to the claim of the interest expenditure and adjustment in value of the closing stock inventory. This ground is identical to the appeals of the learned assessing officer for assessment year 2011 – 12 and 2012 – 13 wherein we have held that in the concluded assessment, adjustment/addition can only be made on the basis of incriminating material found during the course of search. In the present case the return of income was filed

on 26/11/2013 and search took place on 13/7/2016 and therefore the impugned assessment year is concluded assessment, which could have been upwardly adjusted only on account of incriminating material found during the course of search. We find that no such incriminating material has been referred to in the assessment order and no such incriminating material has been produced before us during the course of hearing. In view of this following our reasoning given in the appeal of the learned assessing officer for assessment year 2011 – 12 and 2012 – 13 as above, we dismiss ground number 1-4 of the appeal of the learned assessing officer for assessment year 2013 – 14.

018. Accordingly ITA number 2377/M/2021 for assessment year 2013 – 14 filed by the learned assessing officer is dismissed.

019. ITA number 1424/M/2022 is filed by the learned assessing officer for assessment year 2014 – 15 against the order of the learned CIT – A – 54, Mumbai who passed an consolidated order for assessment year 2011 – 12 to 2016 – 17.

020. In the present case the return of income was filed on 27/11/2014 whereas the search took place on 13/7/2016, therefore, assessment year 2014 – 15 was a concluded assessment at the time of search.

021. Ground number 1 – 4 of the appeal are with respect to the adjustment of interest expenditure in the closing value of the inventory by a sum of ₹ 32,730,007/-. This ground is identical to the ground of appeal of the learned assessing officer in earlier assessment year i.e. AYs 2011-12 to 2013-14, wherein we have dismissed this ground of appeal because of the reason that there is no incriminating method found during the course of search with respect to the above addition. There is no change in the facts and circumstances of the case and no incriminating material has been shown before us. Therefore, following reasoning given by us for those appeals, we also hold that for this year too, there is no incriminating material found during the course of search and therefore such adjustment could not have been made by the learned assessing officer, which is been rightly deleted by the learned CIT – A, therefore, we confirm the order of the learned CIT – A and dismiss ground number 1 – 4 of the appeal.

022. With respect to ground number 5 – 7 of the appeal on account of addition u/s 69A of ₹ 624,000/- on the basis of incriminating material found during the course of search, the learned assessing officer has made the addition which has been deleted by the learned CIT – A4 the reason that in the settlement petition filed before the settlement commission the above amount has been owned by the group and therefore, same could not have been added



once again in the hence of this assessee. This is also covered in the cases of the group concerns on identical facts and circumstances. We have also in this order for assessment year 2011 - 12 and 2012 - 13 has decided this issue upholding the order of the learned CIT - A respect to the deletion of the above addition. Therefore, we do not find any reason to deviate from the same. Accordingly ground number 5 - 7 of the appeal are dismissed.

023. Accordingly ITA number 1424/M/2022 filed by the learned assessing officer for assessment year 2014 - 15 is dismissed.

024. ITA number 2379/M/2021 is filed by the learned assessing officer for assessment year 2017 - 18 against the order passed by the learned CIT - A - 54, Mumbai (the learned CIT - A) dated 20/9/2021 wherein the learned AO is aggrieved that the interest income comprised of interest received from fixed deposit which is rightly considered by the learned assessing officer Under the head income from other sources has been allowed by the learned CIT - A to be considered as taxable Under the head income from business and profession. The learned assessing officer is further aggrieved that appellate authority failed to appreciate the fact that the assessee failed to substantiate with documentary evidence the business expediency of the loan given from which interest expenses was earned and therefore the same is allowable u/s 57 of the income tax act but not u/s 36 (1) (iii) of the act.



025. The briefly stated the facts of the case shows that assessee filed its return of income on 30/10/2017 declaring loss of ₹ 21,722,719 which was revised on 2/05/2018 at same figure. Searched place on India Bulls group on 13/7/2016 and consequently the assessment order was passed u/s 143 (3) of the act on 30/12/2018 as it is not a concluded assessment year and therefore same was abated.
026. During the course of assessment proceedings the learned assessing officer noted that assessee has earned interest income of ₹ 11,525,992 which is offered to tax as business income. The AO questioned that why the above income should not be taxed Under the head income from other sources. The assessee submitted that a sum of ₹ 79,241/- is already offered to tax u/s 56 of the act. It was stated that the balance interest income of ₹ 11,446,751/- was rightly offered to tax u/s 28 of the act because the above income was derived from the fixed deposits made in the normal course of its business and has absolute commercial expediency while doing so. The learned assessing officer disagreed with argument of the assessee and held that with respect to the interest on income tax refund, the same has already been offered to tax Under income from other sources. However interest income from fixed deposit cannot be treated as income from the business accordingly, interest income of Rs 115,25,992/- was the characterized as income from other sources. It was further noted that assessee has incurred interest expenditure of ₹ 48,806,022 which was claimed by the assessee is a

deductible expenditure u/s 37 of the act. The AO questioned that same is required to be justified for deduction u/s 36 (1) (iii) of the act. Assessee submitted that it has been incurred for the sole purpose of the business, learned AO disagreed with the same and disallowed the above sum as business expenditure but allowed the same Under the head income from other sources to the extent of interest income on taxed u/s 56 of the income tax act amounting to ₹ 11,525,992/- resulting the income from other sources resulted into a loss of ₹ 37,280,030/- which was adjusted against the business income of ₹ 15,557,311 and consequently the loss of ₹ 21,722,719/- arising out of loss Under the head income from other sources was not allowed to be carried forward. Consequent assessment order was passed on 30/12/2018.

027. Assessee preferred appeal before the learned CIT – A held that the appellant has explained that the assessee company is following the percentage completion method of accounting and in the assessment year 2011 – 12 the interest expenditure was included in work in progress as per accounting standard issued by the Institute of chartered accountants of India. During the year the assessee company has paid interest on loan taken for its real estate project and as per the accounting standard the appellant company has charged interest on loan to profit and loss account as the development activities was interrupted. He further looked at accounting standard 16 and held that in case of the assessee, the appeal the end of financial year 2010 – 11 the interest cost has been

capitalized. However from financial year 2011 – 12 the assessee company has debited the interest cost directly to the profit and loss account as the development activities were interrupted. He further noted that the assessee company has explained the reason why the accounting treatment of interest income for the year Under consideration is different from the act in assessment year 2011 – 12 accordingly he held that income from interest from fixed deposit is held to be business income. With respect to the disallowance of interest expenditure of ₹ 48,806,022 u/s 36 and allowing the same u/s 57, it was held that as the interest income on fixed deposit has been held as business income and the learned assessing officer has not given any reason as to why interest is not allowable as a business 6 expenditure where the assessee has claimed to have obtained the loan for business purposes, he held that interest of ₹ 48,806,022 is allowable as deduction u/s 36 (1) (iii) of the act.

028. The learned assessing officer is aggrieved with the same. The learned departmental representative vehemently submitted that the assessing officer has considered the interest on fixed deposit as income from other sources whereas the assessee is claiming business income. The learned CIT – A in paragraph number 5.3 has not given any reason why the fixed deposit interest is to be considered as business income. With respect to the granting of 11/assessee of interest expenditure Under the head business income he stated that onus is on the assessee to prove that such expenditure is allowable



Under the head business income. He referred to paragraph number 6.3 of the order of the learned CIT – A and stated that he has not given any reason why he is allowing the claim of the assessee Under the head business income with respect to the deductibility of interest expenditure.

029. The learned departmental representative also referred to the paper book filed by the assessee and referred to page number 63 of the paper book to show that only revenue from operation and by the assessee is ₹ 550 lakhs which is merely income from advisory services as per note number 24. He further referred to note number 25 of the balance-sheet to show that assessee has no other income except interest on fixed deposits. He therefore submitted that there is no business activity carried on by the assessee, therefore there cannot be any business income classified being interest received from fixed deposit receipts. He further referred to the fact that for assessment year 2011 – 12 onwards also assessee did not have any business activity for last 5 years. He further referred to note number 12 and not number 13 and 2 show that as on 31st of March 2017 the assessee does not have any investment. Note number 12 also shows that except the borrowing cost capitalized in the inventory there is no other adjustment. He further referred to the cash flow statement and submitted that there is no business activity carried burden by the assessee and therefore there cannot be any claim of business being carried out by the assessee. Accordingly the order of the learned CIT – A holding that interest on fixed deposit receipt should be



considered as business income and consequently allowing the claim of the assessee of deduction of interest of ₹ 488 lakhs is incorrect.

030. The learned authorized representative referred to page number 80 of the paper book to show that as per note number 19 assessee has borrowed debentures to the extent of Rs. 1,09,68,000 930,000/- which were issued in the year ended on 31 March 2009. He further referred to the annual accounts for financial year 2012 - 13 and submitted that the project court started in financial year 2012 - 13 and because of the legal dispute, the funds were kept in the fixed deposit receipt. He referred to the agreement dated 25th day of August 2016 where the assessee is one of the party for development of group housing colony. Therefore, when the interest expenditure on the debenture is considered as business expenditure, the interest on fixed deposit receipt should also be considered as business income. It was stated that the order passed by the learned CIT - A is correct.

031. The learned departmental representative vehemently opposed the above submission and stated that the funds kept in the fixed deposit receipts are the surplus funds and therefore, interest arising from that cannot be considered as business income.

032. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the assessee was questioned on this issue during the course of assessment proceedings which were replied by



the assessee as per letter dated 7/12/2018 placed at page number 101 – 104 of the paper book. At page number 106 in para number 12 the assessee replied the same. The reply was on the legal issues wherein only the provisions of Section 56 were discussed. It was stated that the fixed deposit receipts made by the assessee is in the normal course of its business and had absolute commercial expediency while doing so and thus the nature of the income of the assessee company must be treated as business income. Further this issue was replied before the learned CIT – A which is also placed at page number 1 to 5 onwards. Therein also did not discuss any of the facts as stated before us with respect to the agreement entered into by the assessee. The learned CIT – A has also did not give any justifiable reason to hold that the income and by the assessee on interest from fixed deposit receipt should be considered as business income but merely believed the written submission of the assessee. The arguments of the learned authorized representative with respect to the stalled project was not considered by any of the lower authorities as emanating from the assessment order or appellate order. In view of this we set-aside appeal of the learned assessing officer back to the file of the learned assessing officer for the purpose of determination whether the interest income earned by the assessee on fixed deposit receipt is a business income or income from other sources. The assessee is also directed to justify the same that interest on fixed deposit receipt should be considered as business income and consequently the deduction of



interest expenditure is also required to be examined by the learned assessing officer. Accordingly ground number 1 – 4 of the appeal of the AO is restored back to the file of the learned assessing officer.

033. As ground number 5 is consequential in nature, same is also restored to the file of the learned assessing officer.

034. In the result appeal filed by the learned assessing officer for assessment year 2017 – 18 is allowed for statistical purposes.

035. In the result appeal of the learned assessing officer for assessment year 2011 – 12 to 2014-15 are dismissed and for assessment year 2017 – 18 is allowed for statistical purposes. Accordingly all the 5 appeals are disposed of by this common order.

Order pronounced in the open court on 27.10.2022.

Sd/-
(MS. KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27.10.2022

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,



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