

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3326/Mum/2019

(A.Y: 2013-14)

Ankur Energy; Resources Pvt Ltd., Plot No. 115/IT-03, Raj Chambers, RK Parmhans, Andheri (E), Mumbai - 400 069.	Vs.	DCIT, Range 9(1)(2) Mumbai - 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICA9929M		
Appellant	..	Respondent

Appellant by :	Shri. Yogesh Joigode.AR
Respondent by :	Smt. Shailja Rai, CIT DR

Date of Hearing	26.07.2022
Date of Pronouncement	21.10.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-16, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised following grounds of appeal:

- 1. On the facts and circumstances of the case and in 1,78,17,195 law, the Hon'ble CIT(A) has erred in confirming the capitalization of the Interest expenses of Rs.5,49,15,072/- which was debited to the Profit and loss account on the pretext that only asset in the balance sheet*

of the assessee is a flat or advance against flat which is shown under Inventory or other current assets and hence shall be capitalised by virtue of Accounting Standard 16 Borrowing Cost.

2. On the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the disallowance of the interest expense of Rs.12,00,41,951/- u/s 36(1)(iii) of the Income Tax Act, 1961 on the pretext that loans and advances are given interest free and interest bearing funds are utilised for granting such interest free loans and advances.

3. Your appellant craves to add, alter, or amend any NA of the grounds of appeal on or before the date of hearing of appeal

2. The brief facts of the case are that the assessee company is engaged in the business of providing facilities for distribution / generation of all forms of energy. The assessee has filed the return of income electronically for the A.Y 2013-14 on 29.03.2013 disclosing a total loss of Rs.17,51,49,472/- and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected scrutiny and notice u/s 143(2) of the Act was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and furnished the details and the case was discussed. On perusal of the facts found that the assessee has debited Rs.17,54,54,926/- to the P & L

account which includes finance cost and other expenses. Further the only asset in the balance sheet of the assessee is a flat / advances against the flat which is shown under inventory / other current assets, hence should be capitalized as per the Accounting standard AS 16 treatment of borrowing cost, as the flat is a qualifying asset which is still under the construction, but the AO found that the assessee has not correctly disclosed in the financial statements. Whereas, the assessee is of the opinion that it has rightly claimed in view of the fact that the flat was under development and was attributed to interest debited to inventory. The AO has dealt on the facts with respect to the nature of expenses, income and expenses claimed. Whereas the assessee has disclosed the long term borrowings and the assessee has made submissions referred in the assessment order where the assessee has attributed the interest debited to inventory under the development. The AO has dealt on the facts and is of the opinion that the assessee is not entitled for claim and dealt at page 5 Para 5 to 7 as under and made disallowance of Rs.5,49,15,072/-;

5. The submissions of the assessee have been considered but are not acceptable. The reasons for the same are discussed hereunder: Attribution of development: the Interest Debited to "Inventory still under:

A) It is seen that the assessee has taken a plea that interest has been expended for the purpose of business and profession. It is apparently clear from the balance sheet that the only asset is a flat or advance against flat, flats which though shown under the head of 'inventory' or other current assets are incomplete and the assessee has not been given its possession even as on date. Thus, such a classification of advance given for purchase of an asset (22 SE Palaise Royale, 24 NW Palaise Royale, 26SW Palaise Royale) as inventory being developed by its sister concern, Shree Ram Urban Infrastructure Private Limited which the assessee does not have possession of, is incorrect. Since the borrowings of the assessee company has been utilized to purchase the aforesaid flats which are still incomplete, therefore the claim of interest as revenue expense to that extent is not correct.

B) Accounting standard AS 16 deals with and prescribes the treatment for borrowing costs. The objective of this Standard is to prescribe the accounting treatment for borrowing costs. The following terms are used in AS 16 with the meanings specified:

"Borrowing costs are interest and other costs incurred by an enterprise in connection with the borrowing of funds.

A qualifying asset is an asset that necessarily takes a substantial period of time to get ready for its intended use or sale.

Further as per Explanation to the definition of the AS16: What constitutes a substantial period of time primarily depends on the facts and circumstances of each case. However, ordinarily, a period of twelve months is

considered as substantial period of time unless a shorter or longer period can be justified on the basis of facts and circumstances of the case.

Borrowing costs may include:

Interest and commitment charges on bank borrowings and other short term and long-term borrowings;

Amortization of discounts or premiums relating to borrowings;

Amortization of ancillary costs incurred in connection with the arrangement of borrowings;

finance charges in respect of assets acquired under finance leases or under other similar arrangements; and

Exchange differences arising from foreign currency borrowings to the extent that they are regarded as an adjustment to interest costs." Examples of qualifying assets are manufacturing plants, power generation facilities, inventories that require a substantial period of time to bring them to a saleable condition, and investment properties.

As per the AS 16, borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalized as part of the cost of that asset. The amount of borrowing costs eligible for capitalization should be determined in accordance with this Standard. Borrowing costs are capitalized as part of the cost of a qualifying asset when it is probable that they will result in future economic benefits to the enterprise and the costs can be measured reliably. Borrowing Costs Eligible for Capitalization are the borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset. When an enterprise borrows funds specifically for the purpose of obtaining a particular qualifying asset, the borrowing costs that

directly relate to that qualifying asset can be readily identified and should be capitalized. The assessee company has entirely ignored this accounting standard even when it is evident that the borrowings have been used for acquiring the "flat- qualifying asset" which is still under construction.

5.1 The interest attributable to the investments made in the flats is thus computed as under:

<i>Total borrowed funds</i>	<i>1,21,18,09,177</i>
<i>Interst paid (a)</i>	<i>17,49,57,023</i>
<i>Inventories and other current assets</i>	<i>23,52,21,888</i> <i>+15,03,81,583</i> <i>38,56,03,471</i>
<i>Proportional interest cost in relation to investment in flats by the assessee</i>	<i>a x b/c</i> <i>=5,49,15,072</i>

Thus the interest attributable to the investments made by the assessee company in flats which are still under construction is computed at 5,49,15,072/-. Hence, amount of 5,49,15,072/- is hereby disallowed and added to the income of the assessee.

3. Similarly the AO found that the assessee has claimed of Rs.12,00,41,951/- as interest expenses and there are interest free loans and advances to subsidiaries. The submissions of the assessee were not accepted by the AO as the assessee has not disclosed the nexus of interest bearing funds are not utilized for the purpose of providing interest free funds. The AO

further found that there are no reserves and surplus of the assessee company. The AO having dealt on the facts found that the transactions made by the assessee are not under commercial expediency and relied on the judicial decisions and made addition of interest u/s 36(1)(iii) of the Act of Rs. 12,00,41,951/- and assessed the total loss of Rs. 1,92,449/- and passed the order u/s 143(3) of the Act dated 08.03.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee, findings of the AO and was not convinced with the explanations and the assessee could not establish with the facts that the amount has been utilized for the purpose of business. Therefore the CIT(A) has confirmed the action of the A.O and dismissed the assessee's appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the AO

in disallowing of the interest expenses in respect of flat which was debited to profit and loss account. Further, the CIT(A) erred in confirming the interest expenditure u/s 36(1)(iii) of the Act that the interest bearing funds are utilized for providing interest free loans to subsidiaries. Further, the assessee has applied the accounting standards and relied on the paper book and prayed for allowing the assessee appeal. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. We found that the assessee has raised the grounds of appeal challenging the action of the CIT(A) in confirming the disallowance of interest expenses which was debited to profit and loss account. The Ld. AR submitted that the assessee has followed Accounting standard 2 of ICAI. On perusal of the paper book at page 1 the assessee has filed the loss return and at page 22 of the paper book the assessee has given the details of share holding and also details of the contracts entered with the subsidiaries. The Ld.AR submitted that the transactions with the subsidiaries

are on the business participation. We found that the assessee could not establish these facts before the lower authorities nor before us with respect that the own funds are not utilized for the purpose of business. Further the transaction of the interest expenses debited which is forming part of the inventory has to be explained. The Ld. AR also emphasized on the facts and information that the assessee has provided interest free advances to its subsidiaries and as on today there is no loan is outstanding. We found that the assessee is in the business of energy solutions and has been maintaining the subsidiary companies, the fact remains that the assessee has to explain the commercial expediency of the claim of expenditure in the books of accounts. Prima-facie it looks like the assessee could not establish the fact of generation of the income and matching expenses. We are of the opinion that the AO has also not pointed out any specific reasons for making disallowance except made some calculations. We considering the facts, nature of business of the assessee are of the opinion that the assessee has to explain in detail on the both the disallowances made by the AO which satisfy the

concept of commercial expediency. Accordingly in the interest of substantial justice, we provide one more opportunity to the assessee to substantiate the transactions with funds flow statement and the requisites details on the claims with the evidences and allow the grounds of appeal of the assessee for statistical purposes.

7.In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21.10.2022

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 21.10.2022
KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

आदेशानुसार / BY ORDER,