

आयकर अपीलीय अधिकरण
मुंबई पीठ " बी", मुंबई
श्री जी. एस. पन्नू, अध्यक्ष एवं
श्री विकस अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI G. S. PANNU, PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 527/मुं/2021 (नि.व. 2016-17)
ITA NO.527/MUM/2021 (A.Y.2016-17)

Macrotech Developers Ltd.

(Successor to Lodha Impression Real Estate
Private Limited,)

412, Floor -4, 17G Vardhaman Chamber,
Cawasji Patel Road, Horniman Circle.

Fort, Mumbai – 400 001

PAN: AAACL-1490-J

..... अपीलकर्ता /Appellant

बनाम Vs.

DCIT, Central Range – 7(3),

Room No.655, 6th Floor,

Aaykar Bhavan, M.K.Road,

Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलकर्ता द्वारा Appellant by : Shri Neeraj Seth

प्रतिवादी द्वारा Respondent by : Dr. Mahesh Akhade

सुनवाई की तिथि/ Date of hearing : 11/08/2022

घोषणा की तिथि/ Date of pronouncement : 09/11/2022

आदेश/ ORDER

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)- 49, Mumbai [in short 'the CIT(A)'] dated 11/2/2021 for the Assessment Year 2016-17.

2. The assessee in appeal has raised four grounds of appeal. Ground No.1 to 3 are in respect of disallowance of assessee's claim of deduction in respect of interest expenditure Rs.32,08,57,607/- u/s. 36(1)(iii) of the Income Tax Act, 1961 [in short 'the Act'] In ground No.4 of appeal, the assessee has assailed disallowance of Rs.7,150/- u/s. 14A of the Act .

3. Shri Neeraj Seth appearing on behalf of the assessee submitted that the assessee is engaged in the business of real estate construction and development. The assessee has launched a project namely " Lodha Eternis", during the period relevant to assessment year 2008-09. The assessee is following percentage completion method for accounting the revenue of the project. As per the method of accounting regularly followed, the interest paid on borrowings for the aforesaid project were added to the work-in-progress in the books of account. In the computation of income deduction for the said interest was claimed u/s. 36(1)(iii) of the Act. Since, interest expenditure was claimed in the year in which in it was paid, the same was added back to the computation by reducing the same from working in progress. Accordingly, higher revenue was offered to tax. The Id. Authorized Representative for the assessee referred to computation of income at page 1 Exhibit-A of the Paper Book. The revenue recognition for the said project started from the Assessment Year 2013-14. The Id. Authorized Representative for the assessee further submitted that in the impugned assessment year the interest expenditure of Rs.3208.58 lacs was inadvertently omitted to be claimed in the return of income The claim for said deduction was made before the Assessing Officer during the course of assessment proceedings. The Assessing Officer at the outset refused to entertain the claim made during assessment proceedings. At the same time the Assessing Officer rejected assessee's claim of deduction u/s. 36(1)(iii) of the Act on merits

as well. The assessee carried the issue in appeal before the CIT(A). The CIT(A) erred in holding that the said claim was not admissible. However, on merits also the CIT(A) rejected assessee's claim of deduction of interest expenditure u/s. 36(1)(iii) of the Act. The Id. Authorized Representative for the assessee submitted that the Assessing Officer has been consistently disallowing the claim in the preceding Assessment Years starting from 2013-14. Even in the subsequent Assessment Years the assessee's claim of deduction was rejected by the Assessing Officer. The CIT(A) in the preceding Assessment Years has allowed the claim of assessee. The Department carried the issue in appeal before the Tribunal, the Tribunal upheld the findings of CIT(A) and dismissed the appeal of Revenue. The Id. Authorized Representative for the assessee referred to the appeal by the Department in ITA No.2148/Mum/2018 for the Assessment Year 2014-15. The Id. Authorized Representative for the assessee pointed that the Tribunal has dismissed the appeal of Department by following the decision in assessee's own case for Assessment Year 2015-16 in ITA No.68/Mum/2016 dated 28/03/2022. The Id. Authorized Representative for the assessee further referred to decision of Tribunal in the case of assessee's sister concern in ITA No.2147/Mum/2018 for Assessment Year 2014-15 in the case of DCIT vs. Palava Dwellers Pvt. Ltd. decided on 20/2/2020 wherein on identical issue the Tribunal dismissed the appeal of Revenue

3.1 In respect of ground No.4 of appeal, the Id. Authorized Representative for the assessee submits that there was no exempt income earned during the relevant period, therefore, no disallowance u/s. 14A of the Act is warranted.

4. Per contra, Dr. Mahesh Akhade representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative submits that the issue is squarely covered by the decision of Special Bench in the case of Wall Street Construction Ltd. vs. JCIT, 101 ITD 156(Mum)-(SB).

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. Undisputedly, the assessee failed to make claim of deduction in respect of interest expenditure u/s. 36(1)(iii) of the Act in the return of income or by way of revised return of income. The claim was first made by the assessee during assessment proceedings. The Assessing Officer was right in rejecting to entertain the claim made during assessment proceedings. However, the powers of the Appellate Authority are not impinged to entertain the additional claim made by the assessee [Re: Goetze (India) Ltd. CIT, 284 ITR 323]. Although, the claim was rejected by the Assessing Officer being not maintainable, still the Assessing Officer gave findings on merits as well, rejecting the same. A perusal of the impugned order reveals that the CIT(A) in para 6.3.21 of the order has recorded the fact that in the preceding Assessment Years the claim was allowed by the CIT(A) and the Tribunal, however, the CIT(A) took a different view following the decision of Special Bench in the case of Wall Street Construction Ltd. vs. JACIT(supra).

6. Disallowance of interest expenditure u/s. 36(1)(iii) of the Act is a perennial issue in assessee's case. It is not in dispute that the assessee after claiming interest expenditure u/s. 36(1)(iii) of the Act in the year it is paid reduces the same from the work-in-progress. We find that in assessee's own case in appeal by the Revenue in ITA No.2148/Mum/2018 for Assessment Year 2014-15 (supra)

identical issue was raised. The CIT(A) had deleted the addition made by Assessing Officer u/s 36(1)(iii) of the Act. The Co-ordinate Bench following the order of Tribunal in assessee's own case in ITA No.68/Mum/2019 (supra) dismissed the ground raised by the Revenue. Similar issue was dealt with by the Co-ordinate Bench in the case of DCIT vs. Palava Dwellers Pvt. Ltd. (supra). The Tribunal following the decision rendered by Hon'ble Jurisdictional High Court in the case of CIT vs. Lokhandwala Construction Industries Ltd., 260 ITR 579 and various other decisions of the Tribunal concluded as under:-

"7. On a careful perusal of the order of Ld.CIT(A), we do not see any infirmity in allowing the claim of the assessee as the claim of the assessee is in tune with the decision of the Hon'ble Jurisdictional High Court in the case of Lokandwala Construction (supra) wherein it has been held that when the project constructed by the assessee is its stock in trade and not a fixed asset of the assessee the interest paid on loans obtained for stock in trade is an allowable deduction u/s. 36(1)(iii) of the Act. We also find that in the proceedings before the settlement commission the assessee claimed interest expenses and as per the order dated 28.07.2014 of the settlement commission and during verification proceedings u/s. 245D(3) of I.T. Act, the assessee informed the Assessing Officer that interest of ₹.124.02 crores as claimed in the computation of income on ground of interest expenses retained in inventory is deductible under provisions of section 36(1)(iii) of the Act. It was further informed that the said amount of interest paid was in respect of capital borrowed for the purpose of business or profession. It was further submitted that the construction and development having commenced, the business is in operation, therefore, interest is allowable u/s. 36(1)(iii) of the Act. It was also further brought to the notice of the Assessing Officer that in the case of CIT v. Lokandwala constructions Industries Ltd., [131 Taxman 810] the assessee's claim for deduction of interest, although the revenue was recognized only on project completion basis in subsequent year, was allowed in the year in which the claim of interest was made. Thus, it was contended that the interest expenditure incurred during the year is claimed and allowable as expenses even though the same has been inventorised in the Books of Accounts. These contentions were accepted by the revenue and no objection has been raised by the Assessing Officer and the settlement commission has accepted these contentions of the assessee. This fact was also taken note by the Ld.CIT(A) in allowing the claim of the assessee. Therefore, since the revenue could not controvert the findings of the Ld.CIT(A) that the project constructed by the assessee for which the loans have been taken is not a stock in trade and also the other findings of the Ld.CIT(A), we do not find any valid reason to interfere with the findings of the Ld.CIT(A) and accordingly we sustain the order of the Ld.CIT(A) on this issue. Grounds raised by the revenue are rejected"

We see no reason to take a contrary view. Accordingly, ground No.1 to 3 of the appeal are allowed.

7. In ground No.4 of appeal, the assessee has assailed disallowance of expenditure u/s. 14A of the Act. The Id. Authorized Representative for the assessee submitted that the assessee has not earned any exempt income during the relevant period. It is no more res-integra that where the assessee has not earned any exempt income, no disallowance u/s. 14A is to be made. In the light of settled legal position, ground No.4 of the appeal is allowed.

8. The ground No.5 of the appeal is general in nature, hence, require no adjudication.

9. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on Wednesday the 09th day of November, 2022.

Sd/-
(G.S. PANNU)

अध्यक्ष / PRESIDENT

मुंबई/Mumbai, दिनांक/Dated: 09/11/2022

VM Sr.PS

Sd/-
(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai