

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1473/DEL/2016 [A.Y 2011-12]

M/s Prosperous Buildcon Pvt Ltd  
17-B, MGF House, Asaf Ali Road  
New Delhi

Vs.

The I.T.O  
Ward -14(4)  
New Delhi

PAN: AADCP 4389 H

(Applicant)

(Respondent)

Assessee By : Shri Satyen Sethi, Adv  
Shri A.T. Panda, Adv

Department By : Shri Kanav Bali, Sr. DR

Date of Hearing : 08.12.2022

Date of Pronouncement : 25.01.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 7, New Delhi dated 29.01.2016 pertaining to A.Y. 2011-12.

2. The grievances of the assessee read as under:

**“Ground No. 1:**

*The Ld. Commissioner of Income Tax, (Appeal)-VII, New Delhi (hereinafter referred to as "CIT(A) has erred in law and in the fact & circumstances of the case by passing the order dated 21.06.2016 under section 250 of the Income Tax Act,1961 (hereinafter referred to as 'The Act') in gross violation of the principal of natural justice.*

**Ground No. 2:**

*The Ld. CIT(A) has erred on facts & circumstances of the case and in law by upholding the addition made by the Income Tax Officer, Ward- 14(4), amounting to Rs. 1,75,26,989/- on the ground that the agreement between the appellant and Emaar MGF Land Limited ("EMGF") was silent on the issue of reimbursement of Interest.*

*The appellant contends that an agreement is nothing but an arrangement or term to which both the parties resolve. Therefore, the mutual understanding between appellant and EMGF shall be considered as an agreement. Hence, the additions made by the AO should be deleted.*

**Ground No. 3:**

*The Ld. CIT(A) has erred on facts & circumstances of the case and in law by completely ignoring the fact that EMGF has shown the reimbursement of interest as its income and offered the same for the purpose of tax.*

*According to the principles of natural justice, an income cannot be subject to double taxation. Hence, the additions made by AO should be deleted.*

**Ground No. 3:**

*The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of all of the appeal.”*

3. The representatives of both the sides were heard at length, the case records carefully perused and relevant documentary evidences brought on record duly considered in light of Rule 18(6) of ITAT Rules.

4. Briefly stated the facts of the case are that, during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has shown interest on FDR at Rs. 1,78,76,896/-. The Assessing Officer found that the assessee has reduced interest as “interest reimburse to ultimate holding company”.

5. On perusal of the transactions, the Assessing Officer noticed that the assessee has made time deposits exceeding Rs. 2 lakhs amounting to Rs.140.40 crores. The assessee was asked to furnish bank certificates with respect to FDRs made during the year and interest earned thereon. The assessee was further asked to show cause as to

why interest expenses of Rs. 1,75,26,989/- to M/s EMAAR MGF Land Limited be not disallowed since no TDS has been deducted thereon.

6. The assessee furnished copy of bank certificate with respect to FDRs made and interest earned during the period 1.04.2010 to 31.03.2011.

7. The Assessing Officer found that bank interest on FDRs for the period 1.04.2010 to 31.03.2011 was not Rs.1,78,76,896/- but Rs. 1,87,96, 285/-.

8. On being asked to explain, the assessee in its reply, explained that it is a wholly owned subsidiary of M/s EMAAR MGF Land Limited and is engaged in the business of real estate construction and has received business advance from its holding company and paid interest @ 4.38% approximately on advance received/borrowed funds. The assessee explained that since interest paid by the assessee to M/s EMAAR MGF Land Limited does not qualify as interest income in the hands of M/s EMAAR MGF Land Limited, since the nature of interest paid is reimbursement and therefore, Section 194A of the I.T. Act is not applicable in the present case.

9. Explanation of the assessee was dismissed by the Assessing Officer who was of the firm belief that the amount of Rs.1,75,26,989/- cannot be reduced from the interest income of the FDRs and accordingly, disallowed the same.

10. The assessee carried the matter before the Id. CIT(A) but without any success.

11. Before us, the Id counsel for the assessee stated that the money was borrowed from M/s EMAAR MGF Land Limited from which the assessee purchased FDRs, on which the assessee earned interest and, accordingly, paid interest to M/s EMAAR MGF Land Limited, which was nothing but reimbursement of interest received on FDRs. Therefore, no disallowance should be made.

12. Per contra, the Id. DR strongly supported the findings of the Assessing Officer.

13. We have carefully perused the orders of the authorities below. There is no dispute that the assessee has purchased FDRs from the interest free borrowed funds from its parent company M/s EMAAR MGF

Land Limited. It is equally true that on such FDRs, interest was received by the assessee on which bank deducted TDS. It is equally true that the assessee has claimed credit of TDS in its return of income. Therefore, the contention/submissions of the counsel of the assessee is baseless and deserves to be rejected.

14. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the CITA.

15. In the result, the appeal of the assessee in ITA No. 1473/DEL/2016 is dismissed.

The order is pronounced in the open court on **25.01.2023**.

Sd/-

**[C.M. GARG]**  
**JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 25<sup>th</sup> January, 2023

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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