

आयकर अपीलिय अधिकरण
मुंबई पीठ "ए", मुंबई

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 7866/मुं/ 2019 (नि.व. 2016-17)
ITA NO. 7866/MUM/2019(A.Y.2016-17)

Atithi Building Commodities Pvt.Ltd.
8th Floor, Aristo, N.S.Phake Road,
Andheri (East), Mumbai – 400 069.
PAN:AAACA-5696-D

..... अपीलार्थी /Appellant

बनाम Vs.

The Asstt. Commissioner of Income Tax,
Central Circle – 2(4)
802, Prathishtha Bhavan, Old CGO Annexe,
M.K.Road, Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Kumar Kale

प्रतिवादी द्वारा/Respondent by : Shri Ajay K.R.Kesari

सुनवाई की तिथि/ Date of hearing : 28/10/2022

घोषणा की तिथि/ Date of pronouncement : 23/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-48, Mumbai [in short 'the CIT(A)'] dated 23/10/2019 for the Assessment Year 2016-17.

2. The assessee in appeal has raised solitary issue assailing disallowance of Rs.130,00,00,000/- towards Debenture Redemption Premium paid to HDFC

Asset Management Company Ltd. (In short "HDFC AMC") and included in Work-in-Progress of "Aurora Project"

3. Shri Kumar Kale appearing on behalf of the assessee submitted that the assessee is engaged in the business of real estate development. The assessee filed its return of income for the impugned assessment year declaring 'Nil' income. The Id. Authorized Representative for the assessee submits that the assessee was developing a housing project by the name, "Aurora Project". The assessee had taken loan for the said project from Central Bank of India and other group companies. The assessee issued 13 lac Optionally Convertible Debentures (OCDs) of Rs.1000/- each to HDFC AMC in financial year 2009-10. During the period relevant to the assessment year 2015-16 and 2016-17 the assessee paid debenture redemption premium Rs.31,96,13,000/- and Rs.98,03,87,000/-, respectively to HDFC AMC. The entire premium aggregating to Rs.1,30,00,00,000/- paid by the assessee was not debited to the Profit and Loss Account but was added to the Work-in-Progress of "Aurora Project", in the respective Assessment Years. The assessee is following Project Completion Method to recognize the profits from the said project. Accordingly, the appellant computed its Work-in-Progress as on 31/03/2016 Rs.156,57,16,308/- including debenture redemption premium. The funds raised through OCDs were utilized to repay the loan from Central Bank of India and loans from various group companies for "Aurora Project". The Id. Authorized Representative for the assessee in order to substantiate that the assessee had taken loan from its group companies for "Aurora Project" referred to the ledger account of Atithi Building Commodities Pvt. Ltd. at page 33 and 50 of the Paper Book. The Id. Authorized Representative for the assessee further

referred to statement of payments made for acquisition of land/admin expenses for "Aurora Project" at page 21 of the Paper Book. The Id. Authorized Representative for the assessee pointed that the cost of land is also reflected in capital Work-in-Progress of "Aurora Project" at page 94 of the Paper Book.

3.1 The Id. Authorized Representative for the assessee contended that in assessment proceedings, the Assessing Officer noted that the debentures were issued to HDFC AMC in 2009, whereas project was stalled in the beginning of Financial Year 2005-06. therefore, funds obtained from HDFC AMC through issue of debentures were not used for the purpose of "Aurora Project", hence, the redemption premium paid thereon is not attributable to the project. Consequently, the redemption premium of Rs.1,30,00,00,000/- was not allowed to be capitalized in work-in-progress. The Id. Authorized Representative for the assessee submits that the Assessing Officer has erred in not taking into consideration that the OCDs were utilized for repayment of loans specifically taken for "Aurora Project". The amount collected from issue of OCDs was utilized for repayment of earlier loans used for the business purpose, hence, premium paid on redemption of debentures, which is akin to interest has been rightly capitalized in the work-in-progress. The Id. Authorized Representative for the assessee fairly admitted that part of the OCDs were utilized for the purpose other than "Aurora Project", therefore, premium on redemption of debentures can be disallowed to the extent OCDs not utilized for the purpose of "Aurora Project".

4. Per contra, Shri Ajay K.R.Kesari representing the Department vehemently defended the impugned order and prayed for dismissing the

appeal of assessee. The Id. Departmental Representative submits that no work was being carried out in "Aurora Project" since Financial Year 2005-06, hence, there was no bonafide reason for the assessee to issue OCDs for the said project. Even after issuance of OCDs no substantial work has been carried out for completion of the said project.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The fact of issuance of OCDs and redemption of OCDs on premium of Rs.130,00,00,000/- is not under dispute. The issue before us is; Whether the premium on redemption of debentures, which is akin to payment of interest is eligible for capitalization in work-in-progress?

6. The assessee had taken loans from bank as well from group concerns for "Aurora Project". In the year 2009, the assessee issued OCDs to HDFC AMC. The amount garnered from issuance of OCDs was utilized by the assessee purportedly for repayment of term loan from Central Bank of India and other group concerns. It is not disputed by the Revenue that the loan from Central Bank of India and other group concerns were taken specifically for "Aurora Project". The fresh loan taken for repayment of the earlier loans which were undisputedly for the purpose of business, would for all intent and purpose be considered as loan for the purpose of business to the extent they are utilized for repayment of earlier loans or infused as fresh funds for the current business of the assessee. Taking into consideration entire facts of the case, we deem it appropriate to restore this issue back to the file of Assessing Officer for the limited purpose to examine the extent of OCDs utilized for payment of the earlier loans(including loan from the bank and other group concerns) taken for the "Aurora Project". To the extent OCDs are used for

repayment of old loans taken for the purpose of assessee's business, premium on redemption of debentures is to be allowed for capitalization in work-in-progress.

7. In the result, appeal by the assessee is partly allowed, with the aforesaid directions.

Order pronounced in the open court on Monday the 23rd day of January, 2023.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 23/01/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy 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.

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BY ORDER,

(Dy./Asstt. Registrar) /
Sr.Private Secretary
ITAT, Mumbai