

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “A”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2742/M/2022
Assessment Year: 2017-18**

Dy. Commissioner of Income Tax, Central Circle -1(2), 906, 9 th Floor, Pratishtha Bhavan, Old CGO Building (Annexe), M.K. Road, Mumbai - 400021	Vs.	M/s. Antevorta Developers Pvt. Ltd., 511, Dalamal Towers, 211, Nariman Point, Mumbai – 400 021 PAN: AAHCA1092J
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Shloka Shah, A.R.
Revenue by : Shri Manoj Kumar Sinha, Sr. A.R.

Date of Hearing : 10 . 01 . 2022
Date of Pronouncement : 23 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Antevorta Developers Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 23.08.2022 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

“1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of business expenditure of Rs. 2,95,11,720/- being net expenses claimed during the year [i.e. Rs.3,56,79,717/- (-) Rs.61,67,997/-] and capitalization of these expenses by adding the same to Capital Work-in-progress, ignoring that the assessee had only one contract and therefore, entire expenses were liable to be capitalized as work in progress.

2. On the facts and in the circumstances of the case and in law, the CIT(A) has failed to consider that since there was no sales offered for tax during the year and only construction activity had been carried out, no corresponding expenses could be allowed to the assessee.

3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing the AO not to treat the interest income of Rs. 31,27,671/- as 'Income from Other Sources' ignoring that the income earned on surplus funds by the assessee did not have direct and proximate relationship with the business activity of the assessee company.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee a private limited company is into the business of construction and development of real estate projects, have filed return of income for the year under consideration declaring a loss of Rs.2,70,63,702/-. Assessing Officer (AO) disallowed the business loss and capitalised the expenses to the tune of Rs.2,95,11,720/- by adding the same to the work in progress (WIP) of the project being developed by the assessee and computed the business income of the assessee at Rs.nil. The assessee earned interest income from fixed deposit to the tune of Rs.31,27,671/- and has reduced the said income from the WIP. However, the AO by declining the contentions raised by the assessee company considered interest income of Rs.31,27,671/- on FD as income from other sources and thereby framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short 'the Act').

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. At the very outset it is brought to the notice of the Bench by the Ld. A.R. for the assessee company that both the issues are covered in favour of the assessee by order of the Tribunal in assessee's own case which fact has not been controverted by the Ld D.R. for the Revenue nor there is any dispute that the facts of the year under consideration and earlier year having identical issue are not the same.

6. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case decided in favour of the assessee for A.Y. 2014-15 & 2015-16 in ITA No.5064/M/2019 and ITA No.5065/M/2019 order dated 01.11.2021 & 31.03.2022 respectively which is on identical issue that;

"1. As to whether Ld. CIT(A) has erred in deleting the disallowance of business expenditure of Rs.2,95,11,720/- being net expenses claimed during the year and capitalisation of these expenses by adding the same to capital work in progress" and that;

(2) As to whether the Ld. CIT(A) has erred in directing the AO not to treat the interest income at Rs.21,37,671/- (as) income from other sources."

7. Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2014-15 (supra) decided the first issue in favour of the assessee by returning following findings:

“8. We have heard the rival submissions and perused the material available on record. The sole disputed issue emphasised by the Ld. DR that the CIT(A) has granted relief to the assessee by treating the expenses debited to profit and loss account as the revenue expenditure whereas the Assessing Officer in the assessment proceedings has made elaborate discussions on the facts and treated such expenditure as part of the capital work in progress. The CIT(A) has relied on the decision of the Co-ordinate Bench of the Honble Tribunal in the group companies case and allowed the relief. Whereas, the Revenue has not accepted the decision of the ITAT and challenged before Jurisdictional High Court of Bombay in appeal u/s.260A of the Act. Whereas the Ld. AR has supported the order of the Id. CIT(A) and relied on the group company decision of the Hon'ble Tribunal. We consider it appropriate to refer to the observations of the CIT(A) at page 11 Para 8.3 to 8.4 which is read as under:-

"8.3. I have noted that a similar issue had come up for adjudication before the Hon'ble ITAT Mumbai Bench "H" in one of the group concern of the Appellant. The Hon'ble ITAT, Mumbai "H" Bench in ITA No. 4579/M/2013 in the case of M/s Hiranandani Palace Gardens P. Ltd. Vs ACIT(OSD), Circle 3(1), Mumbai for the A.Y. 2009-10, vide order dated 30.12.2015 had held as under:-

"11. We have considered rival contentions and carefully gone through the orders of the authorities below. The percentage completion method of accounting has been regularly followed by the assesses. In the succeeding assessment year 2010- 11. the AO has accepted the deductibility of the identical nature of expenses in the assessment order passed us 143(3) of the IT. Act. We agree with contention of the Id. Counsel for the assessee that the employee cost refers to salary paid to the employees who are looking after the administration of office and not directly related to construction of the project but is part of the administrative expenses. Similarly, the office and administrative expenses and selling and marketing expenses are to be charged to the profit & loss account in the very same year in which they are incurred and have to be excluded from the cost of inventories for working out closing WIP as per the guidelines issued the ICAI, Accounting Standard AS-2 and AS-7. The assessee has regularly and consistently been following the said method of accounting as per the

provisions of section 145A of the LT, Act. The AO has not assigned any cogent reason as to why the method, which has been consistently followed by assessee and accepted by the department in past as well in succeeding assessment years and which is in accordance with the recognized principles of accounting by ICAI, is being rejected. In our view, the action of the Revenue Authorities in rejecting the assessee's accounting method, without assigning any reason is not justified. The accounting method followed by the assessee and thereby excluding the indirect expenses such as office employees' salary, administrative expenses and marketing & selling expenses is as per the recognized principles of accountings and as such the claim of the assessee deserves to be allowed. We hold accordingly. The additions made by the lower authorities on this issue are hereby ordered to be deleted."

6. Both the Ld representatives of the parties have submitted that the issue is squarely covered by the above decision of the Tribunal. We find that rather the case of the assessee is on better footing as the assessee was carrying out different projects though at the same location, hence it was not a case of single project. Even otherwise the resultant income from the project is a loss even after capitalisation of expenditure by the AO to work in progress. Hence, there is no tax implication, so far as the year under consideration is concerned and the loss otherwise also has to be carried forward. Under such circumstances, it cannot be said that the assessee has adopted the above stated accounting method to avoid tax on income for the year under consideration. The assessee, thus, has followed the accounting method which has been consistently followed by it and which is as per the recognized principles of accounting. In view of the above discussion of the matter and following the above decision of the Tribunal for the sake of consistency, this issue is decided in favour of the assessee."

8.4 Thus, this issue is covered in favour of the Appellant by the order of the Hon'ble ITAT, Mumbai in the case of M/s Hiranandani Palace Gardens P. Ltd, referred supra. Accordingly, the Ground No. 1 of the present appeal is allowed."

9. The Ld. DR could not controvert the findings of the CIT(A) with any cogent material or new tangible information and relied on the Assessing officer order. We find the CIT(A) has dealt on the provisions of law, facts, Accounting standards and the Co-ordinate Bench decision of this Hon'ble Tribunal in the group companies case and granted the

relief and passed a reasoned order .We respectfully fallow the judicial precedence and are not inclined to interfere with the order of the CIT(A) and uphold the same and dismissed the grounds of appeal of the Revenue.”

8. So far as second issue is concerned again co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2015-16 (supra) as to the feasibility issue of interest income is also decided in favour of the assessee by returning following findings:

“5.1. We also find that the very same issue was subject matter of adjudication by this Tribunal in the case of DCIT vs. Saudela Constructions Pvt. Ltd., in ITA No.5058-5061/Mum/2019 dated 29/10/2021 wherein it was held as under:-

“12. The issue raised in ground No.5 is against the deletion of Rs.55,04,550/- by Ld. CIT(A) as added by the AO on account of interest income on fixed deposits.

13. The facts in brief are that during the year under consideration the assessee earned income by way of interest on fixed deposits of Rs.55,04,550/- which was reduced from project work in progress. According to the AO the said interest income should be taxed as income from other sources and accordingly a show cause notice was issued. The assessee replied the show cause notice by submitting that the assessee has raised huge funds and there is a gap between raising of funds and deployment of funds. During the intervening period these funds are to be kept in the fixed deposits in order to reduce the interest cost of borrowings. The assessee submitted that the income from these fixed deposits are directly due to capital receipt of the assessee company to meet the requirement of project undertaken at Bengaluru and this is an income which is accrued to the assessee in the course of business and the said interest income is inextricably linked to the business of the assessee and has to be reduced from project cost of inventory. The AO did not accept the contention of the assessee and treated the interest income as income from other sources and brought to tax accordingly.

14. After hearing both the parties and perusing the material on record, we find that the issue has been decided by the co-ordinate Bench of the Tribunal in favour of the assessee in the case of sister concern case M/s. Hiranandani Palace Garden Pvt. Ltd. vs. ACIT (supra) wherein it has been held that interest income from fixed deposits during the intervening period i.e their borrowing and deployment is assessable as business income and thus allowed the appeal of the assessee. Therefore,

we do not find any infirmity in the order of Ld. CIT(A) and accordingly the same is upheld on this issue by dismissing the ground No.5 of the Revenue's appeal."

5.2. Moreover, we also find from the perusal of the balance sheet that similar interest income of Rs.6,45,036/- has been earned by the assessee in A.Y.2014-15 also for which no addition was made by the ld. AO. Hence, even going by the principle of consistency when there is no change in the facts and circumstances of the case as has been held by the Hon"ble Supreme Court in the case of Radhasoami Satsang reported in 193 ITR 321, the interest income earned on fixed deposits in the instant case would only go to reduce the cost of construction of closing work in progress and cannot be taxed separately as income from other sources."

9. In view of what has been discussed about and following the order passed by the co-ordinate Bench of the Tribunal referred to in the preceding paras passed in assessee's own case we are of the considered view that the Ld. CIT(A) has rightly deleted the disallowance of business expenditure of Rs.2,95,11,720/- being net expenses claimed during the year under consideration. The Ld. CIT(A) has also rightly directed the AO not to treat the interest income of Rs. 31,27,671/- as income from other sources as this issue is already decided in favour of the assessee in its own case and the AO has merely taken the contrary view on the ground that assessee has challenged the order passed by the Tribunal in Hon'ble Bombay High Court.

10. So finding no illegality or perversity in the impugned order passed by the Ld. CIT(A), the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 23.01.2023.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai, Dated: 23.01.2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.