

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA No. 4684/Mum/2013
(A.Y.2007-08)

DCIT, Central Circle-10 Room No. 802, 8 th Floor, Old CGO Annex, M.K. Road, Mumbai – 400 020	Vs.	M/s Success Developers Pvt. Ltd., 3 rd Floor, JMC House, Bislery Compound, Andheri (E) Mumbai - 400099
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCS8030C		
Appellant	..	Respondent

Appellant by :	Dinesh Chourasia
Respondent by :	Naresh Kumar

Date of Hearing	23.02.2023
Date of Pronouncement	16.03.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-13, Mumbai dated 08.03.2013 for A.Y. 2007-08. The revenue has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the interest expenses was in inextricably linked up when earning of interest income on the face of fact that secured loan got reduced during the previous year though the loan advanced given also increased proving that the loan advances given were not out of interest bearing funds.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not relying the decision of Special Bench of Hon'ble ITAT Mumbai in the case of DCIT Vs Times Guaranty Ltd (2010) 41 DTR (Mum) (SB) 193 which is squarely applicable in the instant case.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs 8,06,51,312/- u/s 69C of the IT Act observing that the expenses/purchases declared in trial balance prepared at the time of survey action were reversed in audited accounts without any proper justification thereof.”

4. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred while holding that the project was only 66% complete and rejecting the observation of the AO that the project was almost complete on the face of glaring the fact that the comparison of closing WIP for AY 2007-08 with that of entire project cost clearly shows that 94% of the project cost was incurred by the assessee by AY 2007-08.*
5. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the project was almost complete, was incorrect and that the addition made on the basis of such observation deserved to be deleted.*
6. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.5,30,000/- without appreciating the facts of the case which was only consequential one.
The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”*

Ground No. 1 & 2

2. The fact in brief is that return of income declaring an income of Rs.6,75,19,956/- was filed on 30.10.2007. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 07.08.2008. The assessee was engaged in the business of builder and developer. During the year it has constructed a building named La Sonarisa as a part of SRA project. The assessee claimed it followed project completion method and no income was shown till assessment year 2006-07. The assessee has shown the following income from interest:

(i)	Interest received from individual and companies	Rs.2,68,01,699/-.
(ii)	Interest from bank FD	<u>Rs. 5/-</u>
	Total	<u>Rs.2,68,01,704/-</u>

The assessee has also claimed deduction of interest paid to bank and loan processing charges of Rs.98,45,645/- out of aforesaid interest income and net interest was credited as other income. However, the A.O was of the view that the assessee was not in the business of money lending, therefore, no deduction of the amount of Rs.98,45,645/- was allowed against the interest income and the full amount of interest

received was assessed at Rs.2,68,01,704/- under the head income from other sources.

3. Against the aforesaid disallowance made by the A.O assessee preferred the appeal for the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee holding that interest income was earned by the assessee after the commencement of the business. The funds on which interest income was earned were borrowed for the purpose of the business and part of such funds were temporarily laying idle with the assessee company for a short period. Therefore, the Id. CIT(A) held that interest income earned was assessable under the head business income. The Id. CIT(A) also referred the decision of Hon'ble Bombay High Court in the case of CIT(A) Lok Holding 308 ITR 356 (Bom), Varun shipping company.

4. Heard both the sides on this issue and perused the material on record. During the year under consideration the assessee has obtained loan from the bank for timely completion of its project and also received advance from the sale of flats. These funds were laying idle temporary, therefore, the same were given as temporary loans to the parties from where the assessee had earned interest income. It is undisputed fact that assessee had used the loan funds for the purpose of its business and it had paid interest of Rs.91,29,348/- to the bank. Considering the above facts and circumstances we do not find any error in the decision of the Ld. CIT(A) holding that interest income was assessable under the head business income after allowing claim of interest expense incurred on the borrowed amount on which the assessee had earned interest income. Accordingly, the ground of appeal no. 1 & 2 stand dismissed.

Ground No. 3 to 5:

5. During the course of survey the director of the assessee company had voluntarily offered additional income of Rs. 7 crores for assessment

year 2007-08. The relevant portion of the statement is reproduced as under:

“Q.7 It is seen from the copies of sale agreement of free sale premises as well as the figures appearing in the "Advances Received for La Sonaisa" that the total payments received are at least 80% of the sale amounts (other than for unsold flats). It is also seen on physical verification that the project is substantially completed to 80% of the project is completed. You are, therefore, requested to state why the same should not be taxed in the current financial year and you are also requested to work out the net profit as on

Ans. After considering date the total advances received of Rs.30,83,08,220/- and the WIP amounting to Rs.22,20,38,851/ (the working of the same has been handed over to you separately). The profit works out on an estimate basis to Rs.8,62,69,369/- Out of this amount, I am willing to pay further advance tax in the current financial year upto 80% of the said amount which will work out at Rs.6.90 crores e Rs.7 crores rounded off, since only 80% of the project is complete. The balance 20% of the above mentioned amount as well as the profit, arising out of sales of the remaining unsold flats, will be offered in the next financial year subject to the unsold flats being sold.”

In this regard, the A.O has stated that assessee has only shown profit of Rs.4,92,46,123/- in the return of income whereas it had declared income of Rs.7 crores as referred in the above statement. The A.O stated that during the course of survey proceedings the trial balance of the assessee company as on 23.03.2007 was drawn and comparison of the same was made with the audited accounts submitted during the assessment proceedings which showed several differences. Therefore, reconciliation of the same was filed by the assessee on 30.11.2009 from which the A.O observed that assessee had reversed the following entries of expenses in the trial balance.

“Purchases	Rs.4,12,01,312/-
Expenses	<u>Rs. 39,45,000/-</u>
	<u>Rs.8,06,51,312/-</u>

From the aforesaid reversal entries the A.O observed that assessee had reduced its work-in-progress by Rs.8,06,51,312/- by which assessee had reduced its work-in-progress to Rs.16,41,53,742/-from work in progress of Rs.22,20,38,851/- worked out at the time of survey.

Therefore, A.O was of the view that books of account of the assessee were not correct and the assessee had made expenditure to the amount of Rs.8,06,51,312/- outside the books of account. Consequently, this amount of Rs.8,06,51,312/- was added u/s 69C of the Act.

6. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has deleted the said addition made u/s 69C of the Act.

7. Heard both the sides and perused the material on record. It is noticed that A.O has made aforesaid addition without taking into consideration any relevant material or evidences showing that assessee has incurred the aforesaid expenditure out of books of account. It is undisputed fact that project of the assessee was not completed during the year under consideration. Therefore, assessee had shown taxable profit of the project at Rs.4.92 crores which was 30% of the WIP Rs.16.41 crores by following the percentage completion method. The A.O has not established that assessee had actually incurred the impugned expenses which were not recorded in the books of account. Therefore, we don't find any error in the decision of Id. CIT(A). Accordingly, ground no. 3 to 5 of the revenue stand dismissed.

Ground No. 6:

8. During the course of assessment the AO has added loan processing charges of Rs. 5,30,000/-. In this regard the assessee submitted that loan processing charges was already disallowed vide para 4 of the assessment order while disallowing claim of deduction of interest expenses. The loan processing charges is also pertained to the loan taken from the bank for the purpose of business, therefore, the loan processing charges of Rs.5,30,000/- is allowable as business expenses. The Revenue could not controvert these facts therefore this ground of appeal of the revenue stand dismissed.

9. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 16.03.2023

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 16.03.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.