

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 25/GAU/2021
Assessment Year: 2012-2013**

***M/s. Dream Buildcon Pvt. Limited,..... Appellant
51/86, Naya Ganj, Kanpur,
Uttar Pradesh, PIN Code No. 208001
[PAN:AABCD9370N]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-2(1), Guwahati,
Aayakar Bhawan, G.S. Road,
Christian Basti, Guwahati-781005, Assam***

Appearances by:

*Shri S.P. Bhati, FCA, appeared on behalf of the assessee
Shri N.T. Sherpa, JCIT, appeared on behalf of the Revenue*

Date of concluding the hearing : February 02, 2023

Date of pronouncing the order : May 02, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax

(Appeals), Guwahati-1, dated 31.12.2019 passed for Assessment Year 2012-13.

2. The assessee has raised three grounds of appeal, out of which Ground No. 1 is the substantial ground of appeal. In this ground, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the disallowance of following expenditure:-

- (a) Interest on loan - Rs.23,20,402/-
- (b) Watch & Ward Expenses - Rs. 6,34,958/-
- (c) Electricity Expenses - Rs. 4,59,227/-.

3. Brief facts of the case are that the assessee-company has filed its return of income electronically on 28.09.2012 showing total income at 'NIL' after claiming loss of Rs.3,58,100/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer and that the assessee company has claimed interest expenses of Rs.23,20,402/-. On the other hand, it has given interest-free loan and advances of Rs.4,50,000/- to Windchimes Constructions (P) Limited and Rs.1,75,00,000/- to Shri Surender Modi. Hence, ld. Assessing Officer has construed that advancement of Rs.1,79,70,000/- was for non-business purposes. The ld. Assessing Officer further observed that

a notional interest is to be computed on this loan and advances and equivalent to that amount, the interest expenditure claimed by the assessee is to be disallowed. In this way, the ld. Assessing Officer has worked out an addition of Rs.23,20,402/-.

4. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

5. The ld. Counsel for the assessee while impugning the orders of Revenue Authority took us through paragraphs no. 17 to 21 of the ld. CIT(Appeals)'s order. He submitted that written submission of the assessee has been reproduced by the ld. CIT(Appeals). In paragraph no. 20 of the ld. CIT(Appeals)'s order, the details of interest-free funds available with the assessee have been noticed. On the strength of this, he pointed out that assessee was having far more interest-free funds than the advances given by it.

6. On the other hand, ld. D.R. contended that break-up of this fund has not been given by the assessee. It is not ascertainable whether this fund has been used in some other business or not.

7. We have duly considered the rival contentions and gone through the record carefully. The ld. Assessing

Officer has nowhere recorded a finding about the nature of funds available with the assessee. At the most, it can be concluded that the funds were mixed funds. The assessee has submitted that it has borrowed a sum of Rs.5,73,00,000/-, whose details have been noticed in paragraph no. 17 by the ld. CIT(Appeals). A perusal of these details would indicate that some of the funds were available with the assessee from F.Y. 2005-06 and F.Y. 2010-11. The funds are far more than the interest-free advances made by the assessee. In this situation, it is to be construed that interest-free advances must have been given from interest-free funds and no disallowance out of the interest expenditure incurred by the assessee for business purposes is to be made. These interest-free funds can easily take care of all interest-free advances, therefore, disallowance of Rs.23,20,402/- is deleted.

8. The next item of disallowance impugned by the assessee is Electricity Expenditure of Rs.4,59,227/- and Watch & Ward Expenses of Rs.6,34,958/-. The case of the assessee is that it had purchased a property at Vasant Vihar, New Delhi, which was ultimately sold in F.Y. 2009-10 for a total sale consideration of Rs.15 crores. Thereafter a new property at the same place was purchased in the same year, i.e. 2009-10 for an amount of Rs.25.44 crores by utilizing the entire sale

consideration and refund of loans and advances. On this property, the assessee has incurred Watch & Ward Expenses and Electricity Expenses. The property is comprised at 61, Vasant Vihar, New Delhi. According to the assessee, this property was used for business purposes as the office of the assessee. The Revenue Authorities have recorded a finding that neither this property has been shown towards assets side nor depreciation was claimed by the assessee. Therefore, it cannot be construed that the property was used for the purpose of business and accordingly the claim of expenses has been disallowed.

9. On due consideration of the finding recorded by both the authorities below, we do not find any error in the order of the ld. CIT(Appeals). Though the assessee has argued that these expenditures were incurred for the purpose of business but in the accounts, it has not been demonstrated as to how these properties were treated as a business asset and not as an investment. Unless the properties are being used for the purpose of the business expenditure attributable on maintaining them cannot be allowed. Accordingly these two sub-grounds are rejected, whereas first sub-ground is allowed.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 02.05.2023.

**Sd/-
(Manish Borad)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President**

Kolkata, the 2nd day of May, 2023

*Copies to :(1) M/s. Dream Buildcon Pvt. Limited,
51/86, Naya Ganj, Kanpur,
Uttar Pradesh, PIN Code No. 208001*

*(2) Income Tax Officer,
Ward-2(1), Guwahati,
Aayakar Bhawan, G.S. Road,
Christian Basti, Guwahati-781005,
Assam*

*(3) Commissioner of Income Tax (Appeals),
Guwahati-1, Guwahati,*

*(4) Commissioner of Income Tax- ,
(5) The Departmental Representative
(6) Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.