

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "B" BENCH: BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos.2484 & 2485/CHNY/2019
Assessment Year : 2014-15 & 2015-16

M/s. Kadavanthara Builders Pvt. Ltd., New No.45, 2 nd Floor, 2 nd Main, 41 st Cross, 8 th Block, Jayanagar, Bangalore-560 070. PAN NO : AADCK 0128 R	Vs.	The Income-tax Officer, Ward-4(1)(2), Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Piyush Agarwal, C.A
Respondent by	:	Shri Ganesh R Ghale, Advocate, Standing Counsel for Revenue

Date of Hearing	:	29.03.2023
Date of Pronouncement	:	12.05.2023

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

These two appeals by the assessee are against the common order passed by the CIT(Appeals)-8, Chennai dated 25/6/2019, filed at Chennai Bench on 27/08/2019 and later on the case was transferred to Bangalore Benches vide order sheet dated 20/08/2020.

2. The issues involved in these two appeals are identical and arise under identical facts and circumstances & heard together. We deem it convenient to pass a common order for the sake of brevity.

ITA No.2484/CHNY/2019

3. The grounds of appeal filed by the assessee is as under:-

“1. General Ground

1. The learned Income Tax Officer, Corporate Ward 4(3), Chennai [‘AO’] erred in passing the order under section 143(3) of the Income-tax Act, 1961 [‘the Act’] in the manner passed by him and the Commissioner of Income Tax (Appeals)-8, Chennai [‘CIT(A)’] erred in upholding the said order of the learned AO, to the extent prejudicial to the appellant. The order of the CIT(A) being bad in law is liable to be quashed in its entirety.

2. Grounds relating to limited scrutiny

2.1. The learned CIT(A) and learned AO erred in concluding the assessment on issues and matters which are different from the reasons for limited scrutiny communicated during the assessment proceedings.

3. Grounds relating to reclassification of land from ‘stock-in-trade’ to ‘capital asset’

3.1. The learned CIT(A) has erred in concurring with the learned AO in re-characterizing the land held by the Appellant from ‘stock-in-trade’ to ‘capital asset’.

3.2. The learned CIT(A) erred in concluding so, without appreciating that:

(a) the appellant is engaged in the business of development, sale, advisory and other real estate development in the accomplishment of which the impugned land was held by it as stock-in-trade.

(b) the said land was classified/treated as stock-in-trade in books of accounts and the audited financial statements.

4. Grounds relating to addition of interest income amounting to Rs. 17,35,627 as income from other sources

4.1. The learned CIT(A) has erred in concurring with learned AO in assessing the interest income of Rs. 17,35,627 under the head 'income from other sources', as opposed to assessing the same under the head 'profits and gains of business or profession; as claimed by the Appellant.

4.2. Even otherwise, the learned CIT(A) and AO have erred in making an addition of interest income from fixed deposits amounting to Rs. 17,35,627 as income from other sources, without appreciating that the FD interest of Rs. 17,35,627 is already included in the returned income and income before adjustment of brought forward loss amounting to Rs. 10,13,411 as per the assessment order; thereby resulting in double taxation of interest income.

5. Grounds relating to disallowance of expenditure

5.1. The learned CIT(A) has erred in not allowing the entire expenditure incurred and claimed by the appellant amounting to Rs. 39,21,033.

5.2. The learned CIT(A) and AO erred in not appreciating

(a) that the appellant had set-up and commenced its business in the earlier years and that the expenditure incurred after the date of setting up of the business is allowable expenditure;

(b) that the expenditure incurred by the appellant neither relate to acquisition of any asset nor is attributable to any asset and therefore cannot be capitalized to the cost of assets;

(c) that the impugned expenditure is revenue in nature;

(d) the judicial precedents relied by the appellant in this regard.

5.3. Assuming without admitting that the said expenditure is not allowable under the head profit and gains from business or loss', the same should be allowed as a deduction under the head 'income from other sources'.

6. Grounds relating to enhancement of income

6.1. The learned CIT(A) erred in enhancing the assessed income by a sum of Rs. 25,46,089 by recharacterizing legal and professional expenditure as capital expenditure.

6.2. On facts and in the circumstances of the case and law applicable, the direction of the learned CIT(A) to enhance the income is contrary to facts, bad in law and liable to be quashed.

7. Ground on set-off and carry forward of business loss

7.1 Without prejudice to the above, the learned AO has erred in not appreciating that the appellant is eligible to set-off brought forward losses as claimed in the return of income.

7.2. Assuming without admitting that the interest income of Rs. 17,35,627 is to be classified as income from other sources, the resultant loss under the head profits and gains of business or profession' (on account of deduction of interest income) would constitute business loss and would be eligible for set-off against income from other sources'.

8. Grounds relating to levy of interest under section 234B and section 234D).

8.1. The learned AO erred in levying interest under section 234B and section 234D. On facts and circumstances of the case and law applicable, levy of interest under section 234B and section 234D is not leviable. The appellant denies its liability to pay any interest.

The grounds mentioned above are independent and without prejudice to the other grounds preferred by the Appellant. The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or, at the time of hearing of the appeal, so as to enable Income Tax Appellate Tribunal to decide the appeal according to law.”

ITA No.2485/CHNY/2019

4. The grounds of appeal filed by the assessee is as under:-

“1. General Ground

1.1. The learned Income Tax Officer, Corporate Ward 4(3), Chennai ['AO'] erred in passing the order under section 143(3) of the Income-tax Act, 1961 ['the Act'] in the manner passed by him and the Commissioner of Income Tax (Appeals)-8, Chennai ['CIT(A)'] erred in upholding the said order of the learned AO, to the extent prejudicial to the appellant. The order of the CIT(A) being bad in law is liable to be quashed in its entirety.

2. Grounds relating to limited scrutiny

2.1. The learned CIT(A) erred in confirming the validity of the limited scrutiny vide notice under section 143(2) dated 04.05.2016, although the same has been issued without stating the reasons for such limited scrutiny.

2.2. The learned CIT(A) failed to appreciate that the notice under section 143(2) dated 04.05.20 16 is not in consonance with the CBDT Instruction No. 20 of 2015 dated 29.12.2015 which mandates that in 'Limited Scrutiny' cases, the reasons/issues for the scrutiny shall be communicated to the assessee concerned in the notice and in the absence of communication of such reasons, the same is invalid and void-ab-initio.

2.3. Without prejudice to the above, the learned CIT(A) and learned AO erred in concluding the assessment on issues and matters which are different from the reasons for limited scrutiny communicated during the assessment proceedings.

3. Grounds relating to reclassification of land from 'stock-in-trade' to 'capital asset'

3.1. The learned CIT(A) has erred in concurring with the learned AO in re-characterizing the land held by the Appellant from 'stock-in-trade' to 'capital asset'.

3.2. The learned CIT(A) erred in concluding so, without appreciating that:

(a) the appellant is engaged in the business of development, sale, advisory and other real estate development in the accomplishment of which the impugned land was held by it as stock-in-trade.

(b) the said land was classified/treated as stock-in-trade in books of accounts and the audited financial statements.

4. Grounds relating to capitalization of expenditure to cost of project amounting to Rs.15,73,839

4.1. The learned CIT(A) and AO have erred in capitalizing the revenue expenditures incurred and claimed amounting to Rs. 15,73,839 to the cost of project, without appreciating

(a) that the appellant had set-up and commenced its business in the earlier years and that the expenditure incurred after the date of setting up of the business is allowable expenditure;

(b) that the expenditure incurred by the appellant neither relate to acquisition of any asset nor is attributable to any asset and therefore cannot be capitalized to the cost of assets;

(c) that the impugned expenditure is revenue in nature;

(d) the judicial precedents relied by the appellant in this regard.

4.2. Assuming without admitting that the said expenditure is not allowable under the head profit and gains from business or loss', the same should be allowed as a deduction under the head 'income from other sources'.

5. Grounds relating to enhancement of income

5.1. The learned CIT(A) erred in enhancing the assessed income by a sum of Rs. 4,54,400 by recharacterizing legal and professional expenditure as capital expenditure.

5.2. The learned CIT(A) erred in not appreciating that the impugned sum of Rs. 4,54,400 forms part of Rs. 15,73,423 already disallowed by the learned AO in the assessment order, thereby resulting in double disallowance of the same expenditure.

5.3. On facts and in the circumstances of the case and law applicable, the direction of the learned CIT(A) to enhance the income is contrary to facts, bad in law and liable to be quashed.

6. Ground on set-off and carry forward of business loss amounting to Rs. 15,36,408

6.1. On facts and circumstances of the case and law applicable, the learned AO has erred in not appreciating that the loss declared during the year amounting to Rs. 15,36,408 should be allowed to be carried forward (after set-off of interest income of Rs. 37,431).

7. Grounds relating to levy of interest under section 234B

7.1. The learned AO erred in levying interest under section 234B. On facts and circumstances of the case and law applicable, levy of interest under section 234B is not leviable. The appellant denies its liability to pay any interest.

The grounds mentioned above are independent and without prejudice to the other grounds preferred by the Appellant. The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or, at the time of hearing of the appeal, so as to enable Income Tax Appellate Tribunal to decide the appeal according to law.”

ITA No.2484/CHNY/2019

5. The brief facts of the case are that the assessee company filed return of income on 29/11/2014 admitting nil income under the normal provisions of the Act and the income was shown at Rs.9,46,453/- u/s 115JB of the Act. The case was selected for scrutiny under CASS and statutory notices were issued to the assessee. During the course of assessment proceedings, the AO observed that the main source of

income during the impugned assessment year was income from deposits. As per the profit and loss accounts, the assessee had shown interest income of Rs.17,35,627/- and advance written back of Rs.31,99,859/-. The fixed deposits were made out of its capital funds. The AO noted that assessee company has not carried out its main business and not generated any revenue from the main business activities. From the interest income, the assessee company has claimed expenses of Rs. 39,21,033/- which were not connected with the interest income earned since there was no nexus between income admitted and expenditure claimed. According to the AO, the expenditure claimed by the assessee cannot be allowed and the interest income received by the assessee is to be treated as income from other sources and he added the same to the total income of the assessee.

6. From the assessment order, it is culled out that reason for selection of scrutiny was “large difference in the closing stock shown in the balance sheet and profit and loss account of the current year as per the return of income”. In this regard, the assessee was asked to reconcile the differences. The assessee submitted reply vide letter dated 15/11/2016, annexed the break-up of W-I-P and also produced the copies of the documents for purchase of lands. The total cost of land was Rs. 184.43 crores and in addition the following other expenses were also included in the W-I-P of Rs. 193.81 crores which has been reproduced by the AO in his assessment order as under:-

i.	Land improvement expenses:	Rs.6,83,68,480/-
ii.	Land Development expenses	Rs. 71,377/-
iii.	Sundry expenses	Rs. 28/-
iv.	Professional fees – Design – capitalized	Rs.1,65,03,385/-
v.	Professional fees legal capitalised	Rs. 41,79,740/-
vi.	Professional fees other capitalised	Rs. 1,19,052/-
vii.	Security charges capitalised	Rs. 45,98,465/-

7. It was observed by the AO that the company has purchased land to the extent of 74 acres at Siruseri Village in 2007-08 for consideration of Rs.184.48 crores & it was shown under the head Work-in-Progress. The assessee also incurred certain expenses which were included under the head Work-in-Progress, Accordingly, the entire expenses of Rs.193.81 crore were claimed by the assessee as work-in-progress and has not shown any closing stock in the income-tax Act return.

8. Further, the AO also observed that after purchase of land in 2007-08, the assessee has not carried out any business activities on the said land. The Id.AR of the assessee submitted that the assessee is persuading road connectivity but it has not submitted any proof to show that the land has been used as stock and activities have been carried out. The AO noted that the assessee company has also not got approval from the local authorities after a lapse of 9 years and has not done any activity on the said land. The assessee produced evidence for removal of high tension D/C line which was running on the land, which as per the AO will not go to prove that the land is only stock-in-trade. He also noted that even if the assessee has to sell the land as investment, the assessee company has to remove the high tension

electric wire but for which he will not get customer, therefore, the land purchased by the assessee needs to be treated as capital assets and the AO computed the income as under:-

Income from adjustment of brought forward loss	- Rs.10,13,411/-
Addition as interest income	- <u>Rs.17,35,627/-</u>
Total income assessed	- <u>Rs.27,49,038/-</u>

9. Aggrieved from the above order, the assessee filed appeal before the CIT(A). The CIT(A) after examining the entire issue and relying on the judgments of the Hon'ble Apex Court, upheld the order of the AO and he further observed that the assessee debited legal and professional expenditure of Rs.25,46,089/- the for the assessment year 2014-15 and for the assessment year 2015-16 of Rs.4,54,400/-. The CIT(A) after issuing hearing notice treated these amounts as capital expenditure and disallowed from being claimed as capital expenditure and directed the AO to re-compute the income as per the observations at para No. 06, 07 & 08 of the his order.

10. Aggrieved from the above order, the assessee filed appeal before the ITAT.

11. The Id.AR reiterated the submissions made before the lower authorities and submitted that the case was selected for scrutiny only for the limited purpose of "large difference in the closing stock shown in the balance sheet and profit and loss account of the current year as per the return of income". The AO has travelled beyond the notifications issued by the CBDT which are placed at Paper Book

containing page No. 01 to 30 including case laws. He submitted that as per the Instruction NO.7/2014 [F.NO.225/229/201 4-ITA.II], dated 26-9-2014 that the assessment order passed is beyond jurisdiction and it does not survive because case was selected for limited scrutiny and in support of his arguments he relied on the following judgment:-

1. Shri Narendrakumar Rameshbhai Patel Vs. Dy. DCIT in ITA N. 981/Ahd/2019 Dated 20.03.2020.
2. Shri Prabir Das, Karimganj Vs. ITO in ITA No. 395/Gau/2019 dated 26.06.2020.
3. Dev Milk Foods Pvt. Ltd. vs Add. CIT in ITA No. 6767/Del/2019 dated 12.06.2020

12. Further, the ld.AR submitted that the AO has wrongly considered the stock in trade as capital asset and business activity has been carried out by the assessee during the impugned assessment year. He refer to the main objects of the company's MOA which are as under:-

III. The objects for which the Company is established are:

(A) THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:

1. To carry on the business of builders, contractors, dealers in of prefabricated and precast houses, buildings, and erections and materials tools, implements, machinery and metal-ware in connection therewith.
2. To purchase, acquire, take on lease or in exchange or in any other lawful manner any area, land, buildings, structures and to turn the same into account, develop the same and dispose of or maintain the same and to build townships, markets or other buildings residential and commercial or conveniences thereon and to equip the same or part thereof with all or amenities or

conveniences, drainage facility, electric, telephonic, television installations and to deal with the same in any manner whatsoever, and by advancing money to and entering into contracts and arrangements of all kinds with builders, tenants and others.

3. To construct, erect, build, repair, re-model, demolish, develop, improve, grades, curve, pave, macadamize cement and maintain building structures, houses, apartment, hospital's schools, places of worship, highways roads, paths, streets, sideways, courts, alleys, pavements and to do other similar construction, leveling or paving work, and for these purposes to purchase, take on lease or otherwise acquire and hold any lands and prepare lay-out thereon or buildings of any tenure or description wherever situate, or rights or interest therein or connected therewith.

4. To purchase, sell, develop, take in exchange, or on lease, hire or otherwise acquire, whether for investment or sale, or working the same, any real or personal estate including lands, business, buildings, factories, mill, houses, cottages, shops, depots, warehouses, machinery, plant, stock in trade, mineral rights, concessions, privileges, licenses, easement or interest in or with respect to any property and to carry on business as proprietors of flat and buildings and to let on lease or otherwise apartments therein and to provide for the conveniences commonly provided in flats, suites and residential and business quarters.

13. The Id.AR also submitted that the assessee has only capitalized the expenses that are of enduring nature and the expenses that were not of enduring nature were capitalized but charged to revenue account for the year. He submitted that the CIT(A) has wrongly exercised his power and hence the income against these expenses were of the administrative nature which help the company to sustain itself and it is not attributable to any particular asset held by the company. He further submitted that the AO has wrongly capitalized the expenses on the ground that the assessee company has not commenced its business operations whereas there is nothing on record to suggest that the

assessee has not commenced its operations and on the contrary, the operations were undertaken to procure the lands to make it fit for the project. The professionals engaged in the process proved that the operations of the assessee company are being carried out and many other steps have also been taken by the company, the documents were submitted before the authorities below but they overlooked it. The AO is also not justified in stating that business operations have not commenced on the ground that the stock in trade land has not been put to use by the company. However, the assessee company has submitted that all efforts have been made to make the land fit for project work. In this regard, he submitted that land use certificate is placed at paper book page No.220 and copy of conceptual master plan, copy of invoices for advance given towards fencing work of land at Siruseri village, copy of letter issued by the Tamil Nadu Electricity Board, Executive Engineer (Operations) for the removal of high tension electrical wire and payment of Rs.6,83,68,480/- which is placed at paper book page no.335. He further submitted that for the subsequent assessment year 2017-18, the case was under the scrutiny and no question has been raised by the revenue authorities regarding the change of status/character of any closing stock.

14. The Id.AR strongly submitted that the assessee in its wisdom, having regard to the true nature of the expenditure and benefit derived therefrom, has considered it to be not of capital nature as there was no enduring benefit derived therefrom and the AO is not justified in placing himself in the shoes of the assessee and questioning assessee's

judgment. In this regard, reliance is placed on the decision of Hon'ble Apex Court in the case of S.A Builders reported in 288 ITR 1 (SC). The Courts across the country have held that determination of expenses into revenue/capital is the discretion of the assessee and AO cannot sit in assessee's arm chair to re-determine the same.

15. He further submitted that it is settled position in taxation law that whether the money paid is a revenue expenditure or capital expenditure depends upon the purpose for which the payment has been made and expenditure has been incurred. In this regard, the assessee relied on the following judgments.

- i. MK Bross (P) Ltd. Vs. CIT reported in 86 ITR 38 (SC)
- ii. CIT Vs. BN Elias & Co. (P) Ltd. reported in 168 ITR 190 (Cal)
- iii. Gamon Norton Metal Diamond Dies Ltd. Vs. CIT reported in 163 ITR 606 (Bom)

16. He further submitted that the interest received by the assessee on deposits is income from business, the funds were kept for the business purpose. The AO & CIT (A) have wrongly held that it is income from other sources. He further submitted that even if the said interest income is brought to tax under the head income from other sources, the resultant loss under the head business income of Rs. 7,21,174/- would still be eligible for being set-off against income from other sources of Rs. 17,35,627/- and resultant total income for the sake of assessment would still be the same Rs. 10,14,453/-. The ld. AR also relied on number of judgments in support of his arguments which are as under:-

1. Chennai Properties & Investments Ltd. v. CIT 120151 373 ITR 673 (SC)
2. CIT v. Elnet Technologies Ltd [2020] 271 Taxman 25 (SC) approving the Madras High Court in CIT v. Elnet Technologies Ltd. (2013) 30 taxmann.com 63 (Mad.)
4. Kohli Estates (P.) Ltd v. ITo [2020] 183 ITD 650 (Del Trib.)
5. G.Venkataswami Naidu & Co. v. CIT 11959135 FIR 594 (SC)
6. CIT v. Mohakampur Ice & Cold Storage 12-0051281 [FR 354 (Allahabad)
7. Raja J. Rameshwar Rao v. CIT [1961] 42 ITR 179 (SC)
8. CIT v. R. Ramaiah] 9841 146 ITR 39 (Kar)
9. CIT v. Gopal Purohit [2010] 336 ITR 287 (Born.)
10. Suni I Kurnar Ganeriwal v. DCIT [2011] 134 ITD 179 (Mum - Trib.)
11. Principle of consistency should be accepted Radhasoami Salsang v. CIT [1992] 193 ITR 321 (SC)
12. CIT v. Dairnia Promoters Developers (P) Ltd [2006] 281 ITR 346 (Del.)
13. CIT v. Gopal Purohit [2010] 336 ITR 287 (Born.)

Classification of interest income as income from other source
Income cannot be doubly taxed

Laxmipat Singhania v. CIT [1969] 72 ITR 291 (SC)
Jain Brothers v. Union of India [1970] 77 ITR 107 (SC)
CIT v Nagarjuna Fertilizers & Chemicals Ltd [2014] 373 ITR 252 (AP)

Interest income should constitute business income

CIT v Hewlett Packard Global Soft Ltd [2018] 403 ITR 453 (Kar) (FB)
Swire Holdings (P.) Ltd. v ITO [2006] 6 SOT 621 (Bang- Trib.) (SMC)
Eveready Industries India Ltd v. CIT 12010] 323 ITR 312 (Calcutta)
CIT v. Indo Swiss Jewels Ltd. [2006] 284 ITR 389 (Bombay)
CIT v Dalmia Promoters Developers (P) Ltd [2006] 281 ITR 346 (Del.)

Interest income would be a capital receipt

CIT v Bokaro Steel Limited [1999] 236 ITR 315 (SC)
CIT v Karnataka Power Corporation [2001] 247 ITR 268 (SC)
PCIT v Bank Note Paper Mill India (P.) Ltd [2019] 412 ITR 415 (Kar)

Disallowance of expenditure and enhancement of income
Expenditure incurred after setting up of the business is allowable
expenditure

1. Swire Holdings (P.) Ltd. v ITO [2006] 6 SOT 621 (Bang-Trib.) (SMC)
2. CIT v. Dhoornketu Builders & Development (P.) Ltd. [2013] 368 ITR 680 (Del)
3. CIT v. Arcane Developers (P.) Ltd. [2014] 368 ITR 627 (Del)
4. S. L. Plotted Development Projects P Ltd v DCII [2018] IT(TP)A No. 1497/ Bang/2014 (Bang - Trib.)
5. Jindal Realty (P.) Ltd. v. ACIT [2020] 183 ITD 228 (Del Trib.) 6. Superlight Mktg. (P.) Ltd. v ITO [2005] 4 SOT 348 (Del - Trib.)
7. UI Development India (P.) Ltd v. ACIT (2013) 144 ITD 112 (Bang -- Trib.)
8. Western India Vegetable Products Ltd. v. CIT [1954] 26 ITR 151 (Bombay)

Expenditure should be allowed as deduction under section 57(iii)

- East West Hotels Ltd. v. Asst.CIT [2006] 9 SOT 48 (Bang - Trib.)

Brought forward business loss should be eligible to be set-off against interest income

1. CIT v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 206 (SC)
2. Lavish Apartment P Ltd v ACIT [2018] 405 1TR 165 (Del)
3. CIT v S&S Power Switchgear Limited [2019] 415 ITR 376 (Mad)
4. CIT v Ramnath Goenka [2003] 259 ITR 26 (Mad)

17. The Id.DR relied on the order of the lower authorities and he strongly submitted that the lower authorities have rightly decided the issue against the assessee. The assessee invested its surplus capital amounts in fixed deposits and received interest which is clear from the paper book page No. 279, therefore, both the authorities are justified in treating the interest received on Fixed Deposits as income from other sources. In support of his argument, he relied on the judgment of Hon'ble High Court of Allhabad in the case of Pr.CIT Vs. M/s Sangam Power Generation Company Ltd., in ITA No.87 and 88 of 2016 and he submitted that in this case the Hon'ble High Court has considered various judgments rendered by various Hon'ble Courts. He also relied on the judgment of the coordinate bench of Tribunal in the case of Simplex Naigai Costings Pvt. Ltd. in ITA No.690/Bang/2020 vide order dated 1st June, 2022 in which, it has been held that the interest received on fixed deposits during the process of setting up of

plant is an income from other sources, following judgment of the Hon'ble Supreme Court in the case of Tuticorian Alchemic Chemicals and Fertilizers Ltd., 1997 [227 ITR 172] (SC). He further submitted that the assessee purchased the land in the year 2007-08 and thereafter no business activities have been undertaken by the assessee, therefore, lower authorities have rightly changed the characteristic of classification done by the assessee in its books of accounts and have rightly held that it is capital asset and accordingly treated the expenditure as capital expenditure.

17.2 In respect of legal issue raised by the assessee that the case was selected for limited purpose of scrutiny mentioned therein, the Id. DR submitted that that it is clear from the scrutiny notice placed at paper book page No. 68 that the case was selected for CASS and once the scrutiny notice is issued, the AO is free to determine the taxable income of the assessee for the impugned assessment year as per law. The AO has mentioned the reason for selection of scrutiny in the assessment order only, however there is nothing to suggest that the case was selected for limited scrutiny. He also relied on the judgment of the co-ordinate bench of the Tribunal in the case of Mohammad Sharq vs ITO in ITA No. 1818/Bang/2019 order dated 07.04.2021. He submitted that the Instructions issued by the CBDT will not apply in this case. He also submitted that the various case laws relied by assessee are on distinguishable on the facts of the present case. Therefore, there is no illegality in the assessment order passed by the AO.

18. **Heard both the sides, perused the entire material available on record and orders of the authorities below.** The Id. AR submitted that ground No.1 and 2 was not pressed, but later pressed these grounds stating that it is a legal issue. However, **Ground 1 is general in nature and does not require for adjudication.**

19. In respect of Ground No. 02, it is noted that the assessee has challenged the case selected under the scrutiny but on perusal of the copy of notice issued u/s 143(2) of the Act, which is placed at paper book page No.68 dated 28/08/2015, I do not find any where in the scrutiny notice that the case has been selected under "CASS". I am in agreement with the arguments advanced by the Id.DR on this issue and the CBDT Instruction and letters issued on different dates relied by the assessee (Supra) are in regard to the cases selected under limited scrutiny under CASS on the basis of AIR/CIB/26AS. On going through the instruction No.7/14, at para No.2 it has been clarified that the scope of enquiry in the cases selected for scrutiny during the financial year 2014-15 on the basis of AIR/CIB/26As and in para No.2 it has been clarified that the scope of enquiry should be limited to verification of these particular aspects only. Further on instruction No.20/2015 dated 29/12/2015, as per No.2(ii) the said instruction is applicable only to the cases selected under CASS on the parameters (Supra) of AIR/CIB/26AS. Instruction No.5/2016 dated 14/7/2016 is applicable on the basis of CASS selection under limited scrutiny. As

per letter F.No.DGIT(VIG)/HQ/SI/2017-18 dated 30.11.2017 placed at page No.2, the instructions dated 26.09.2014, 29.12.2015 & 14/07/2016 are applicable for the limited scrutiny. On perusal of the copies of notice u/s 143(2) of the Act, as stated earlier, I do not find anywhere that the case was selected under the limited scrutiny. The Id.AR of the assessee stated that the AO has given reason for selection of scrutiny in the assessment order which says as *“the CASS reasons for selection of scrutiny where there is large difference in the closing stock shown in the balance sheet and profit and loss account for the current year as per the return of income.”* The Central Board of Direct Taxes had framed certain reasons for selection of scrutiny assessment under which, the case has been selected and reason for selection for scrutiny is assuming the jurisdiction for scrutiny assessment. In view of this, the arguments advanced by the Id.AR of the assessee are rejected. Accordingly, this ground is rejected.

20. The assessee has raised ground No.3 in regard to recharacterizing the land held by the assessee from stock in trade(Work-in-Progress) to capital asset. I notice from the documents furnished by the assessee that the assessee company was incorporated on 02/03/2007 and has purchased the land. As per the MOA, the object clause as mentioned above, the assessee is engaged in real estate business since its incorporation. The assessee purchased 74 acres of land for Rs.184.43 crores and has incurred certain expenditures, accordingly, the total amount of closing stock of project work- in-progress shown in the financial statement is of Rs.193.81 crores.

During the impugned assessment year, the assessee has received interest from bank deposits of Rs.17,35,627/- and written back of advance of Rs.31,99,854/-. The details of work in progress has been given in the paper book page No.114. I also note that in the subsequent assessment year, the AO has not re-characterized the work-in- progress as fixed assets shown in financial statement. I also note that the assessee has incurred some expenditure towards legal and professional expenses. The CIT (A) has re-characterized these expenses as capital asset. In the Assessment year 2007-08, there is no dispute that the assessee is engaged in real estate business and it is continuously maintaining same. During the course of appellate proceedings, the assessee submitted land development status, which is placed at paper book 318, where it has been given details of status of the land as under:-

Kadavanthara Builders Pvt Ltd		
Date	Event	Description
2007 to 2010	Acquisition of Land	74 Acres (Sale deeds) bought out of 138 acres
2010-11	Shifting of HT Line	Rs.683,68,480- paid to Tamilnadu Electricity Board, receipt enclosed
2011-16	Trying to buy further land	as per Framework agreement
2012-18	working for main Access Road	to be acquired
2016	JDA entered with Pacifica	Rs.10,00,00,000 - security deposit received
2017	Fencing Land	Photo attached
2017	Alternative Road (side) access	Gift Deed enclosed
2012-18	8 acres of pockets of land to be acquired	in-between our land
2018	Working on Litigation	Summay attached

21. The assessee has also submitted gift deed dated 02/05/2017 by Mrs. Soumadaram, Siruseri in favour of the Special Officer Siruseri Panchayat Thirupour for the public use of the land. Earlier there was no approach road for the assessee. The assessee has also received letter from Tamil Nadu Electricity Board, which is placed at paper book 335. I further observe from the paper book submitted by the assessee dated 08/10/2021 that the case has been completed u/s 143(3) of the Act for the assessment year 2017-18 and 2018-19 but no additions/discussions has been done by the AO on this issue, whereas on perusal of the financial statement for the year ending 31/03/2017 & 2018, the inventory at Schedule No.12 of the Financial statement are appearing under the head current asset.

22. The Id.DR submitted that res judicata is not applicable in the Income-tax proceedings, every year is independent and separate assessment year, therefore, the decision for the one assessment year cannot be considered for the subsequent or prior assessment years. This argument of the Id. DR will not apply in this case. I observe from the arguments of both the sides and the documents submitted by the assessee that the assessee has not re-characterized the work-in-progress. It is continuously showing its financial statement as it is and copy of the MOA is placed on record. The assessee has also not changed its main object clause as stated in the MOA. In view of this it cannot be said that the assessee had changed its business activity or re-

characterized the assets from the current asset into capital asset. The assessee has taken steps in getting land converted and the lands in question have classified as urbanized land in 2007 as per letter dated 03/08/2007 issued by the Member Secretary, Malaphuram Town Local Planning Committee. The lands were already converted and classified for imposing development [commercial and residential] and no further conversion was warranted. The AO noted after expiry of 9 years, the company has not done any activity in this regard. It has been observed that after acquiring land, the assessee approached the Electricity Department for removal of high tension electric wires and paid fee of Rs.6,83,68,480/-. The high tension wire was eventually shifted from assessee land. Thereafter the assessee has tried to acquire adjacent land in order to give needful access to the road. Therefore, it cannot be said that the assessee is not doing business activity.

23. Considering the entire judgments cited by both the sides & facts of the case, I hold that the lower authorities have taken wrong view that no any business activities have been done after the purchase of the land and the value appearing under the head work-in-progress are capital assets. The expenditure incurred by the assessee are revenue expenditure and allowed as deduction u/s. 37 of the Act. Ground No. 3 is allowed.

24. In ground No.4, the assessee has challenged the interest income received of Rs.17,35,127/- is business income & it should be assessed as business income of the assessee. However, the revenue authorities

considered it as income from other sources, which has been received by the assessee from the fixed deposits of the unutilized funds. In this regard, the arguments and judgments cited by the Id.AR of the assessee will not apply. The various courts have decided that the interest income received during the construction period/setting up of business process is to be taxed as income from other sources. The case law relied by the Id.DR are clearly applicable in this case and following the judgments relied by the Id.DR of Hon'ble High Court of Allahabad, I uphold the order of the CIT(Appeals) that the interest received on fixed deposits by the assessee is to be treated as income from other sources, therefore, ground No. 04 raised by the assessee on this issue is rejected.

25. In ground Nos.5 and 6, the assessee has challenged the entire expenditure of Rs.39,21,033/-, which has been considered by the revenue authorities as capital expenditure. I note that the assessee has started its business in the earlier years and the business has already been set up. The assessee has incurred huge amounts towards legal and professional charges and the lower authorities have not disputed the expenditure incurred by the assessee. The only dispute is whether these are a capital or revenue expenditure.

26. During the course of hearing, the Id.AR submitted that the legal and professional charges has been incurred towards business of the assessee for maintaining the peaceful possession of the land acquired. Since I have uphold ground No.3 in favour of the assessee, therefore,

these expenditure also would be treated as revenue expenditure. Accordingly, I allow these grounds raised by the assessee on this issue.

27. Through ground No.7, the Id.AR of the assessee submitted that the assessee is eligible for setting off of the loss arising from the business carried on by the assessee during the year under consideration and the interest received on Fixed Deposits as income from other source. Since in ground No.4 it is held that the interest received from investment of surplus funds is income from other sources, accordingly the business loss to that extent is eligible for set off from other heads of income as per the provisions of the Income Tax act. In view of this, AO is directed to give benefit for setting - off the business loss from the interest income as per law. Accordingly this issue is partly allowed for statistical purpose.

28. Ground No. 4.2 & 8 are consequential in nature.

29. The appeal of the assessee is partly allowed for statistical purposes.

ITA No.2485/CHNY/2019

30. Both the parties have not disputed that the issue involved in this appeal in ITA No.2485/CHN/2019 is identical to ITA No.2484/CHNY/2019, accordingly, the decision rendered therein shall be applied mutatis - mutandis in ITA No.2485/CHNY/2019 for the AY 2015-16 in the same terms wherever applicable. Accordingly, this appeal is also partly allowed.

31. To sum up, both the appeals of the assessee are partly allowed for statistical purposes. Copy of common order passed shall be kept in the respective cases.

Pronounced in the open court on this 12th day of May, 2023.

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 12th May, 2023.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.