

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

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)
AND
Ms. PADMAVATHY S. (ACCOUNTANT MEMBER)**

**I.T.A. No.1557/Mum/2023 - AY 2014-15
I.T.A. No.1556/Mum/2023 - AY 2017-18
I.T.A. No.1586/Mum/2023 - AY 2018-19**

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| ACIT-3(1)(1), Mumbai Room No.607, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020 | vs | M/s Rustomjee Realty Private Limited, 702, Natraj, MV Road Junction W E Highway, Andheri (E) Mumbai-400 069 PAN : AACCR9804N |
| APPELLANT | | RESPONDENT |

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| Present for the Assessee | Shri Naresh Kumar |
| Present for the Department | Ms.Riddhi Mishra, CIT DR |

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| Date of hearing | 22/08/2023 |
| Date of pronouncement | 28/08/2023 |

ORDER

Per Bench:

These appeals by the revenue are against separate orders of Commissioner of income tax (appeals), National faceless appeal centre (NFAC), Delhi dated 10/03/2023 for assessment year 2017-18 & 2018-19 dated 06/03/2023 for assessment year 2014-15.

2. The only issue contended by the revenue through all these appeals is the deletion of disallowance of interest and other expenses held by the assessing officer as to be capitalised.

3. The assessee is engaged in the business of constructing, purchasing, acquiring, hiring, operating, managing and developing land of any real and personal estate property on ownership basis or on built own lease and transfer basis in India or abroad. For the assessment year 2017-18 the assessee filed the return of income declaring Nil income on 23/10/2017. For the assessment year 2014-15 the assessee filed the return of income on 29/11/2014 declaring the loss of Rs.7,25,80,020 and for assessment year 2018-19 the return is filed on 30/10/2018 declaring the total income of Rs. 22,12,44,860. The assessee's case was selected for scrutiny for the years under consideration and the statutory notices were duly served on the assessee. The assessing officer during the course of assessment noticed that the assessee has debited the P&L account with interest and other expenses as per the details given below:-

| Assessment Year | Other Expenses | Interest |
|------------------------|-----------------------|-------------------|
| 2014-15 | Rs.1,99,51,963/- | Rs.21,31,58,233/- |
| 2017-18 | Rs.14,09,99,616/- | Rs.3,66,17,616/- |
| 2018-19 | Rs.29,36,61,687/- | Rs.1,14,57,169/- |

4. The assessing officer in this regard issued show cause notice to the assessee asking to explain why the above mentioned expenses should not be disallowed and capitalised to WIP. The assessee submitted the detailed breakup of the interest cost before the assessing officer stating that the interest cost which is directly attributable to specific projects is capitalised and that the interest cost on borrowings for business purposes is debited to the profit and loss account. The

assessee further submitted that revenue is recognised on project completion method and the interest cost which is attributable to the revenue recognised during the year under consideration is debited to the profit and loss account. Accordingly the assessee submitted that the interest cost that is debited to the profit and loss account is to be allowed as deduction. The assessee relied on various judicial pronouncements in this regard. With regard to the other expenses debited to the profit and loss account the assessee furnished the details of cost allocated to the project and cost debited to the P&L account and submitted that only those expenses that are not directly incurred towards project are claimed as deduction. The assessee also submitted the details of various expenses that are debited to the profit and loss account.

5. The assessing officer did not accept the submissions of the assessee. The assessing officer held that there is a direct nexus between the borrowed funds and projects undertaken and therefore the interest expenditure should be disallowed and transferred to capital WIP. The assessing officer further held that the other expenses debited to the P&L account should also be transferred to capital WIP and made the disallowance accordingly.

6. Aggrieved the assessee preferred appeal before the CIT(A). Before the CIT(A) the assessee reiterated the submissions made before the assessing officer and also furnished the breakup of expenses that are allocated to the project and claimed as expenses. The assessee further submitted that the allocation of expenses between project cost and revenue is done as per accounting standard 7 and 16. The CIT(A) after considering the submissions of the assessee held that the expenses have been claimed by the assessee against the revenue offered in the year under consideration and therefore the disallowance of the same is not justified. The

CIT(A) further held that based on the details submitted by the assessee such as invoices bills vouchers in support of the expenses and the guidance note on completion method the assessee has correctly followed the accounting standard 7 and 16 and therefore deleted the disallowance made by the assessing officer. Aggrieved the revenue is an appeal before the tribunal.

7. The Ld. AR reiterated the submissions made before the lower authorities. The Ld. AR submitted that the assessee has submitted the detailed breakup of interest and other expenses and also the supporting documents justifying the claim in the profit and loss account. The Ld. AR submitted that the coordinate bench of the tribunal in assessee's own case for assessment year 2012-13 and 2013-14 (ITA Nos.3982 & 6281/Mum/2017 dated 19.01.2023) has considered a similar issue and remitted the same to CIT(A). The Ld. AR prayed for similar direction for the years under consideration also.

8. The Ld. DR on the other hand vehemently argued that the assessee did not provide the necessary details to substantiate the claim of interest and other expenses as a reduction in the profit and loss account instead of capitalising the same as project cost. The Ld.DR also submitted that the CIT(A) has allowed the claim of the assessee based on the submissions without calling for any remand report from the assessing officer. The Ld. DR further submitted that the CIT(A) in the order has not elaborated the evidences submitted giving any specific findings with regard to the merits of the case but has simply stated that the details submitted by the assessee have been verified and found to be in order. Therefore the Ld. DR prayed that the order of the CIT(A) be quashed.

9. We heard the parties and produced the material on record. For all the assessment years under consideration i.e. AYs 2014-15, 2017-18 and 2018-19 the assessee in the profit and loss account has claimed a portion of interest expenses and other expenses such as legal, human resources and administrative expenses etc., as expenses. Before the assessing officer the assessee submitted the breakup of the interest and the expenses between capital and revenue. Before the CIT(A) the assessee further submitted a detailed explanation on the accounting followed by the assessee and also the invoices bills etc., in support of the claim. From the findings of the CIT(A) for all the years under consideration it is not coming out clearly as to the basis on which this CIT(A) has allowed the claim of the assessee since the CIT(A) has not given any elaborate finding with regard to the various details submitted by the assessee. It is also notice that the CIT(A) did not call for any remand report from the assessing officer towards the evidences submitted in the form of invoices, bills and vouchers for all the years under consideration. We further notice that the coordinate bench of the tribunal in assessee's own case (supra) had remitted the issue back to the CIT(A) for the reason that the decision of CIT(A) being perverse on facts. In the given case for all the years under consideration the assessing officer was not given proper opportunity to examine the further details submitted by the assessee since the CIT(A) did not call for any remand report. Therefore the interest of justice and fair play we deem it fit to remand the issue for all the years under consideration back to the assessing officer for a de novo verification of the issue under consideration i.e. interest and other expenses being claimed as a deduction instead of being capitalised to WIP. The assessee is directed to submit all the relevant details to substantiate the claim and cooperate with the proceedings. This ground of the revenue for all the years under consideration are allowed for statistical purposes

10. In the appeal filed for assessment year 2018-19 the revenue raised one more issue pertaining to deleting the disallowance of brought forward losses. This ground is consequential since the revenue has raised the contention for the reason that the brought forward loss was already set off against the income determined for assessment year 2017-18. Accordingly the assessing officer is directed to consider the claim of the revenue for assessment year 2018-19 based on the determination of the income for the assessment year 2017-18 as per the directions given in this order.

11. In result all these appeals of the revenue are allowed for statistical purposes.

Order pronounced in the open court on 28/08/2023

Sd/-

sd/-

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| AMIT SHUKLA | PADMAVATHY S. |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Mumbai, Dt :18th August, 2023

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai