

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.860 To 864/Mum/2023
(A.Ys. 2011-12, 2013-14, 2014-15, 2016-17 & 2018-19)**

Shah Construction Company Ltd., 11, Shah Industrial Estate, Opp. Ann Temple, New Link Road, Andheri (W) Mumbai – 400053	Vs.	DCIT, Central Circle-1(3) Room No. 905, 9 th Floor, Pratihtha Bhavan, Old CGO Annexe, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACS5207N		
Appellant	..	Respondent

Appellant by :	M. Subramanian
Respondent by :	Ram Krishna Kedia

Date of Hearing	04.07.2023
Date of Pronouncement	23.08.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These 5 appeals filed by the assessee are directed against the different order of Id. CIT(A)-18, Mumbai. Since these appeals are based on identical issue on similar facts, therefore, for the sake of convenience both these appeals are adjudicated together as follows:

ITA No. 860/Mum/2023 A.Y. 2011-12

- “1 *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in upholding the validity of the proceedings initiated by issuance of notice u/s 148 of the act.*

2. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in upholding the action of the learned AO. in disallowing business expenditure amounting to Rs.5,09,19,758/-.*
3. *On the facts and in the circumstances of the case and in law, the learned A.O. erred in charging interest of Rs.7,90,188/- u/s234B of the act.*

The appellant craves leave to add, alter, amend and/or delete any or all of the grounds of appeal.”

2. Fact in brief is that return of income declaring total loss of Rs.447,85,926/- was filed on 24.09.2011. The assessment u/s 143(3) of the Act was completed on 29.01.2014 determining the total loss at Rs.445,75,676/-. Subsequently, the case was reopened by issuing of notice u/s 148 of the Act on 30.03.2016. The reason for reopening the case is reproduced as under

“The assessee was developing a single property and no other construction activity was being carried on during the period All the expenses were part of work in progress of the assessee. Therefore, that despite offering no income from business, the assessee debited various business expenses of Rs.5,09,19,578/- to its P&L A/c against the other income of Rs.55,80,000/- As there was a single project during the period and as no income was offered, the expenses should have been capitalized and taken directly to the WIP instead of allowing the same as expenses.”

3. During the course of assessment the assessing officer noticed that assessee company was engaged in the business of construction, real estate development, builders and contractor. The assessee was asked to explain as to why the business expenses debited amounting to Rs.509,19,578/- should not be capitalised as there was only one single project and the assessee had earned only income from other sources amounting to Rs.55,80,000/-. The assessee explained vide letter dated 24.10.2016 as under:

“With regard to the various expenses to the tune of Rs.5,09,19,578/- debited in the P&L A/c it is submitted that these expenses have nothing to do with our project expenses for project at New Link Road, Andheri West Mumbai Whatever expenses pertain to the project at New Link Road Andheri have been debited to the Work in Progress (WIP) and they are not claimed as business expense during

the year. As regards, expenses to the tune of Rs.5,09,19,578/-claimed as business expense are properly allowable as claimed for the reasons given hereunder:

It is submitted that the Company was incorporated in 1944. The company is engaged in the business of Construction, Real Estate development. Builders and contractors since then. Our Business has been severally affected due to abandonment of our huge contract in Iraq due to Gulf War and subsequent UN embargo. We have still to incur expenses such as interest on loan and legal and administrative expenses in connection with these projects as well as in connection with other projects undertaken in past. In fact, we are continuing our business by undertaking small contracts In view of this factual position, we are continuing our business as a going concern. However, as mentioned above, we are very old company and have to incur certain expenses such as interest, legal expenses, office expenses and other administrative expenses which have no connection at all with our project of developing property at New Link Road, Andher (west) such as interest paid on loan taken for projects abandoned in Iraq, legal expenses Administrative expenses and office expenses In fact during the year, besides business income, we have also earned income from house property and income from other sources. For earning income from these sources we had to incur expenses such as Rates & Taxes, Lease Rent etc. which are not at all related to our project of developing property at New Link Road, Andheri (west) It is submitted that we are a going concern engaged in the business for last many years. We were always undertaking contract work which is evident from our profit & Loss A/c. for last many years, and, because of which our expenses have always been allowed as business expenses as they are not directly or indirectly connected with our project of developing property at New Link Road, Andheri (west).

It is further submitted that the Company follows Mercantile System of Accounting and recognizes Income and Expenditure on accrual basis Revenue recognition is on the basis of periodical bills made as per contract terms. The accounts are prepared on Historical cost basis and as going concern.

We enclose Statement giving details of expenses capitalized under Work-in-progress (WIP) from which you will observe that all expenses connected with the project at New Link Road, Andheri (west) are capitalized and not claimed as expenses as per the Method of Accounting followed by us. All expenses debited to profit & Loss A/c are not directly or indirectly connected with project at New Link Road, Andheri (west) and are properly allowable as business expenses as claimed in Return of Income During the Assessment Proceedings for regular assessment u/s 143(3), we have given complete details of all expenses as well as work-in-progress based on which our assessment was completed u/s 143(3) as per our claim in the Return of Income.”

It is explained that these expenses were not related to project at New Link Road Andheri. The AO has not accepted the explanation of the assessee for the following reasons:

- (a) *During the year under consideration, the assessee company has undertaken one single project i.e. Project at New Link Road, Andheri West, but has not offered any income against this project.*
- (b) *Further, the company has stated that the expenses pertain to the project have already been debited to WIP account.*
- (c) *On the expenses claimed other than WIP of Rs.5,09,19,578/-, the assessee has stated that these expenses are property related is also not acceptable.*
- (d) *Further, the company is claiming the expenses of interest on loan and legal and administrative expenses in connection with these projects as well as in connection with other projects undertaken in past. This contention of the assessee is not acceptable. The assessee is following mercantile system of accounting and accordingly the expenses pertaining to the other projects which have already been completed have already been booked against the said projects and profits earned has already been booked.*
- (e) *Further, the expenses claimed are relates to interest on loan, legal and administrative expenses which are not acceptable as there is no project pending for completion except the said project i.e. New Link Road project.*
- (f) *Further, the assessee company has claimed expenses to the tune of Rs.5,09,19,578/- against the interest income of Rs.55,80,000/- and shown business loss to tune of Rs. (-) Rs.4,47,85,926/- is also not acceptable. As per Section 37(1) of the I.T.Act, reads as under:*

*37. (1) Any expenditure(not being expenditure of the nature described in sections 30 to 36 [***] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession."*

The AO has not agreed with the submission of the assessee he was of the view that assessee company had undertaken one single project i.e at new link road Andheri (West) but had not offered any income against the project. The assessee also explained that expenses pertained to the Andheri project had already been debited to work in progress account. The AO did not agree with the submission of the assessee stating that assessee had followed mercantile system of accounting and accordingly the expenses pertaining to the other projects which have already been

completed have already booked against the said project and profit earned has already been booked.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee. After referring the finding given on the identical issue on similar fact in the case of the assessee itself for assessment year 2008-09.

5. Heard both the sides and perused the material on record.

5(i). Regarding the ground of appeal pertaining to validity of the proceedings by issuing of notice u/s 148 of the Act, the ld. CIT(A) has dismissed the appeal of the assessee for the A.Y. 2011-12 after applying the findings for AY. 2008-09 mutatis mutandis on the ground no. 1 of the appeal filed by the assessee. However, we find the facts and issues for reopening the assessment for the AY 2011-12 are different from the A.Y. 2008-09. In the A.Y. 2008-09 the case was reopened on the basis of information received from the office of DDIT(Inv.) Mumbai that the assessee had gone for one time settlement with the Bank of India by paying Rs.97,84,00,651/-. Therefore the ld. CIT(A) held in that year that there was new tangible material on record of the AO on the basis of which the re-assessment proceedings have been initiated.

However, for the year under consideration A.Y. 2011-12 the AO has not reopened the assessment on the basis of any such material as evident from the reasons recorded by the AO given at para 2 of the assessment order. The AO simply mentioned that despite offering no income from business the assessee debited various expenses of Rs.509,19,578/- in the P.S.L A/c against the other income of Rs.55,80,000/- as there was a single project during the period and no income was offered therefore the expenses should have been capitalised and taken directly to the WIP instead of allowing the same as expenses.

The ld. Counsel referred the copies of the submission made during the course of original assessment proceedings u/s 143(3) of the Act on different dates i.e 28.12.2012, 09.01.2014, 17.01.2014, 27.01.2014 and 29.01.2014 vide which details pertaining to work in progress and various expenses debited to P.S.L A/c were submitted. The ld. Counsel has also placed reliance on the decision of Hon'ble Bombay High Court in the case of Aroni Commercials Ltd. Vs. DCIT 101 DTR 244 (Bom) and in the case of CIT vs. Prima Paper and Engineering Industry 364 ITR 222 (Bom). He also referred the decision of Hon'ble Bombay High Court in the case of Prashant S. Joshi Vs. Income Tax Officer 234 ITR 154 (Bom) and the case of NDT System and Another Vs. ITO & Other 363 ITR 605 (Bom). After perusal of the reason recorded as referred supra in this order the AO has simply stated that assessee has debited various expenses in the P.S.L A/c but the AO has not made any basis to form a belief that any income chargeable to tax had escaped assessment within the meaning of Sec. 147 of the Act. The Hon'ble Bombay High Court in the case of NDT System and Another as referred above held tht where all materials facts necessary for determination of the income have been disclosed by the assessee and AO has taken a particular view on those disclosed facts as reflected in the assessment order passed in regular proceedings, then without anything more it would not be open to him to reopen those assessment proceedings. In the case of the assessee for the year under consideration there was no new tangible material on record like A.Y. 2008-09. The assessee has demonstrated from the various submission made during the course of assessment proceedings u/s 143(3) of the Act as referred above in this order that details of business expenditure were submitted during the course of regular assessment proceedings.

In view of the above facts and findings we consider that ld. CIT(A) has incorrectly applied the findings of A.Y.2008-09 to the A.Y. 2012-13

on the issue of validity of re-assessment proceedings initiated u/s 147 of the Act. Therefore, we are not inclined with the decision of the Id. CIT(A) and ground no. 1 of the appeal of the assessee is allowed.

Since, reopening of assessment is held as invalid therefore, other grounds of appeal raised by the assessee left open. Accordingly, appeal of the assessee is allowed.

ITA No. 861/Mum/2023 A.Y. 2013-14

7. Fact in brief is that assessment u/s 143(3) of the Act was completed on 01.03.2016. During the course of assessment the AO has made disallowance out of various expenses claimed by the assessee. The further fact of the case are discussed while adjudicating various ground of appeal filed by the assessee.

Ground No. 1: Disallowance of brokerage expenses of Rs.5,00,000/- :

8. The AO noticed that assessee has claimed Rs. 5,00,000/- on account of payment of commission brokerage. On query the AO found that these amount was paid on account of arranging extension of license usage of the premises belonging to the assessee with enhanced rates to M/s Auto Wahan. In this regard, the AO observed that assessee has shown the income received from Auto Wahan on account of Licence fees under the head Income from house property but these expenses have been debited to the profit and loss account. Therefore, the AO has disallowed the claim of such expenses debited to the P.S.L A/c.

9. The assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

10. Heard both the side and perused the material on record. We have gone through paper book filed by the assessee. In the paper book the ld. Counsel has referred annexure A pertaining to debit note it is noticed that brokerage charges were paid in respect of arranging extension of license for the premises of the assessee at Sewri to M/s Auto Wahan Enterprise Ltd. The assessee could not demonstrate that how the payment of this brokerage amount is pertained to the business of the assessee since the assessee has shown the rental income from the lease premises under the head income from house property therefore, we don't find any infirmity in the decision of ld. CIT(A) accordingly this ground of appeal of the assessee stand dismissed.

Ground No. 2: Disallowance of Conveyance expenditure Rs.80,267/-:

10. During the course of assessment the assessing officer noticed that assessee has claimed Rs.80,267/- as conveyance expenses incurred for arbitrator pertaining to the joint venture entered into by the assessee company during the year under consideration. The AO has disallowed 50% of these expenses treating the same as personal expenses. The ld. CIT(A) has sustained the disallowance.

11. Heard both the side and perused the material on record. As per the Annexure placed in the paper book by the ld. Counsel it is noticed that assessee has given day to day detail of expenses incurred along with break-up of the amount and similar details were also submitted before the lower authorities which was not controverted. The AO has not brought any material on record to demonstrate that such expenses are incurred for personal purposes therefore action of the lower

authorities in disallowing these expenses is not justified. Therefore we allow this ground of appeal of the assessee.

Ground No. 3: Disallowance of Rs.82,618/- out of motor car expenses of Rs.165,237/-:

12. During the course of assessment the AO has disallowed 50% of remaining conveyance expenses of Rs.165,237/- to the amount of Rs.82,618/- for want of proper verification.

13. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

14. Heard both the sides and perused the material on record. We have perused the annexure wherein the assessee has given the nature and detail of expenses. Looking to the nature of expenses for want of proper verification and vouchers we consider 10% disallowance of such expenses to the amount of Rs.16,523/- is appropriate as against 50% disallowance of Rs.82,618/- made by the assessing officer. Therefore, this ground of appeal of the assessee is partly allowed.

Ground No. 4: Disallowance of Rs.3,04,414/- out of miscellaneous expenses of Rs.608,828/-:

15. During the course of assessment the assessing officer disallowed 50% of miscellaneous expenses to the amount of Rs.304,414/- paid in cash on the basis of self made vouchers on the ground that assessee has not furnished documentary evidences to prove that these expenses were incurred for the purpose of the business of the assessee.

16. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

17. Heard both the side and perused the material on record. As per annexure C of the paper book filed by the assessee detail of various miscellaneous expenses i.e advertising festival expenses, printing and statutory brokerage, water charges office expenses etc, along with break up of all these expenses were given alongwith addresses of the parties to whom these expenses were made. Since such expenses were mostly incurred in cash therefore for want of proper verification we consider that disallowance of 10% of such expenses to the amount of Rs.60,882/- as against 50% disallowance is justified. Therefore, we direct the AO to restrict the disallowance to the extent of Rs.60,882/- only. Accordingly, this ground of appeal of the assessee is partly allowed.

Ground No. 5: Disallowance of Rs.293,957/- out of motor car expenses of Rs.587,914/-:

18. During the course of assessment proceedings the AO noticed that assessee has incurred motor car expenses to the amount of Rs.587,914/- in cash on the basis of self made vouchers.

19. Aggrieved the appeal filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

20. We have considered the detail of such expenses provided in the Annexure C placed in the paper book. After considering the nature of expenses which were mostly incurred in cash we restrict the disallowance to the extent of 10% of such expenses to the amount of

Rs.58,791/- as against 50% disallowance made by the AO of Rs.293,957/- for want of proper verification. Therefore, this ground of appeal is partly allowed.

Ground No. 6: Disallowance of Rs.158,307/- out of staff welfare expenses incurred of Rs.316,615/-:

21. During the course of assessment the AO has disallowed 50% of staff welfare expenses to the amount of Rs.158,307/- out of Rs.316,615/- for want of verification. After considering the detail filed and nature of expenses provided in annexure C in the paper book we find that AO has made the disallowance at higher side, therefore, we restrict the disallowance to the extent of 10% of such expenses to the amount of Rs.31,662/- for want of proper verification as there expenses were based on self made vouchers. Therefore, this ground of appeal is partly allowed.

Ground No. 7: Disallowance of telephone expenses of Rs.65,158/- out of total expenses of Rs.130,317/-:

22. The AO has made disallowance at 50% of telephone expenses of Rs.65,158/- out of total expenses of Rs.130,317/- for want of verification.

23. After considering the nature of expenses we find that disallowance made by the AO is not justified. Therefore, we restrict the disallowance to the extent of 10% of such expenses as personal element in these expenses cannot be ruled out. Accordingly, disallowance is restricted to Rs. 13,032/-.

Ground No. 8: Disallowance of Rs.47,017/- out of festival expenses of Rs.94,034/-:

24. The Assessing Officer disallowed 50% of festival expenses of Rs.47,017/- out of Rs.94,034/- for want of proper detail and verification.

25. The assessee has placed detail of such expenses in the annexure C placed in the paper book. The Id. Counsel submitted that these expenses were already included in the miscellaneous expenses and the same has already been considered for disallowance by the assessing officer. Accordingly, we direct the AO not to make any disallowance as these expenses have already been included in the miscellaneous expenses. Therefore, this ground of appeal of the assessee is allowed.

Ground No. 9: Disallowance of Rs.114,448/- out of office expenses of Rs.228,897/-:

26. During the course of assessment the AO has disallowed 50% of office expenses of Rs.114,448/- out of total expenses of Rs.228,897/- on the similar ground that these expenses are not verifiable.

27. The Id. Counsel explained that detail of such expenses has been provided in Annexure C placed in the paper book. These expenses has already been included in the miscellaneous expenses of Rs.608,828/- which has already been considered by the AO for disallowance. Considering the same we direct the AO to delete the said disallowance accordingly this ground of appeal of the assessee is allowed.

Ground No.10: Disallowance of Rs.69,08,330/- being amount paid towards interest on earned income to Government of India:

28. During the course of assessment the AO noticed that assessee has debited an amount of Rs.69,08,330/- under the head interest paid to others. The assessee explained that amount was paid as per the notice received from the revenue department of Government of Maharashtra and same is properly allowable as revenue expenses as no new asset is generated or no addition to asset is made on account of these expenses.

29. During the course of appellate proceedings before us the Id. Counsel referred Annexure D placed in the paper book and after referring letter of the District Collector, Mumbai the assessee explained that interest was paid for 10 plot of land at Andheri as per demand notice of the State Revenue Department and these are the revenue expenditure which are allowable. We find that neither AO nor CIT(A) has verified this claim of the assessee that these expenses were of the revenue nature as the assessee was engaged in the business of real estate development, therefore, we restore this issue to the file of the assessing officer for deciding afresh after examination of the relevant supporting documents after affording adequate opportunity to the assessee. Therefore this ground of appeal is allowed for statistical purposes.

Ground No. 11: Disallowance of Rs.575,179/- being amount paid towards interest on unearned income to Government of Maharashtra:

30. The AO has disallowed the amount of Rs.575,179/- as prior period expenses debited to the profit and loss account. The Id. Counsel has explained from the Annexure D of the paper book that this amount was paid on account of unearned income on sale of plot in earlier years to

the Government of Maharashtra as per the notice of demand of Revenue Department of Government of Maharashtra.

31. We consider that this claim of the assessee is also required to be examined by the AO on the basis of relevant supporting document to be furnished by the assessee whether these expenses accrued during the year under consideration or these expenses pertained to the earlier years, therefore this issue is restored to the file of AO for deciding a fresh as directed above. Therefore, this ground of appeal of the assessee is also allowed for statistical purposes.

Ground No. 12: Disallowance of Rs.48,290/- being 50% of depreciation of plant and machinery:

32. During the course of assessment the assessing officer has disallowed an amount of Rs.48,290/- being 50% of depreciation on plant and machinery on the ground that justification for addition of Rs.209,984/- to plant and machinery was not given.

33. After hearing both the side and considering detail and copy of invoices placed as per annexure E of the paper book, we consider that the disallowance of depreciation on estimated basis without disproving the claim of expenses supported with relevant invoices is not justified. Therefore, we direct the AO to delete this addition of disallowance of depreciation. This ground of appeal of the assessee is allowed.

Ground No. 13: Disallowance of Rs.31,37,488/- being amount debited to work in progress:

34. During the course of assessment the assessing officer has disallowed the claim of work in progress of Rs.31,37,488/- on the

ground that genuineness of the transaction was not proved and TDS was not deducted.

35. After hearing of both the sides and perusal of material on record, we find that as per annexure F the assessee placed in the paper book the assessee has given the detail/break-up of work in progress along with purpose/nature of expenses/amount of expenses and TDS deducted on the payment made. The Id. Counsel submitted that such detail has been also furnished at the time of assessment proceedings. The Id. Counsel further submitted that these expenses were incurred towards supply of labour and Transportation charges for removing excavated earth and TDS was done wherever the payment exceed the prescribed limit of Rs.20,000/-. We find that AO has neither considered the relevant detail nor pointed out deficiency in the detail furnished therefore this ground of appeal of the assessee is restored to the file of the AO for deciding afresh after examination of the detail and after providing adequate opportunity to the assessee. This ground of appeal is allowed for statistical purposes.

Ground No. 14: Erred in charging interest of Rs.299,766/- u/s 234B of the Act:

36. This claim of the assessee is required verification. Therefore, this ground of appeal of the assessee is restored to the file of the AO for charging interest u/s 234 as per law after due verification. Accordingly, this ground of appeal is allowed for statistical purposes.

37. In the result, the appeal of the assessee is partly allowed for statistical purposes.

ITA No.862/Mum/2023 A.Y. 2014-15

Ground No. 1: Disallowance of interest expenses of Rs.563,298/-:

38. During the course of assessment AO has disallowed interest expenses of Rs.56,32,981/- by treating the same as work-in-progress (capital expenses).

39. The Id. CIT(A) has dismissed the appeal of the assessee.

40. During the course of appellate proceeding before us the Id. Counsel filed paper book comprising details pertaining to nature of work-in-progress and detail of expenses shown in the WIP. The assessee explained that these expenses were incurred as interest on loan and legal and administrative expenses in connection with projects undertaken in past and these expenses have no connection at all with assessee's project under taken at New Link road Andheri. We find that AO has not considered all these fact in his finding and also not controverted the submission made by the assessee vide letter dated 27.12.2016 before the assessing officer. Therefore, we restore this issue to the file of the assessing officer for deciding afresh after examination of the relevant supporting detail furnished by the assessee and after affording adequate opportunity to the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 2: Disallowance of Rs.40,200/- as prior period expenses.

41. During the course of assessment the AO has disallowed an amount of Rs.40200/- as prior period expenses.

42. After hearing both the side it is noticed that assessee has explained that these were the expenses pertained to the payment for municipal property tax claimed on actual payment basis u/s 43B of the Act. Considering the submission of the assessee we direct the AO to

allow the claim of this expenses. Therefore, this ground of appeal of the assessee is allowed.

Ground No. 3: Disallowance of Rs.53,595/- out of motor car expenses of Rs.535,953/-:

Ground No. 4: Disallowance of Rs.21,554/- out of conveyance and travelling expenses:

Ground No. 5: Disallowance of Rs.12,632/- out of telephone expenses:

Ground No. 6: Disallowance of Rs.62,051/- out of miscellaneous expenses:

Ground No. 7: Disallowance of Rs.52,719/- out of staff welfare expense:

43. The assessing officer has made disallowance of 10% of the aforesaid expenses on the ground that personal element cannot be ruled out for want of proper verification and relevant evidences.

44. After hearing both the side and considering the nature of expenses mostly incurred on cash basis we find that 10% disallowance is reasonable in respect of such expenses for want of proper bills etc. Therefore, these ground of appeal no. 3 to 7 are dismissed.

Ground No. 8: Charging interest of Rs.42,760/- u/s 234B of the Act:

45. As decided vide ITA No. 861/Mum/2023 these ground of appeal is restored to the file of the AO for deciding afresh as per law after verification. This ground of appeal of the assessee is allowed for statistical purpose.

ITA No. 863/Mum/2023 A.Y. 2016-17

Ground No. 1: Disallowance of interest expenditure amounting to Rs.137,59,668/-:

46. The AO has disallowed interest expenditure amounting to Rs.137,59,668/- on the ground that loan taken during the year under were utilised towards the work-in-progress of the Amboli project and not towards purchase of land. Therefore, the AO has added the interest on loans borrowed to the existing work-in-progress and disallowed the claim of interest expenditure under section 36(1)(iii) of the Act.

47. The AO has not brought on record any material to establish that the impugned interest expenditure were pertained to the loans borrowed which was utilized for its Andheri Project before treating the same as WIP of that project. In this regard the assessee has provided detailed submission that such interest payment were pertained to the old business loans taken and utilized for business purposes other than the project at Andheri. The AO is required to examine the loan documents and supporting material/financial statements/loan transactions/project detail/bills etc. regarding the claim of the assessee that loan borrowed was not utilised for Andheri project but the same was utilized for other old projects on which the interest payment was made. Therefore this ground of appeal is restored to the file of the AO for deciding a fresh as directed above after examination/verification and after affording adequate opportunity to the assessee. Accordingly this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 2: Disallowance of interest expenditure amounting to Rs.14,49,526/- by treating the same as work in progress:

48. During the course of assessment the AO has disallowed interest expenses of Rs.14,49,526/- by capitalising the same as WIP of Andheri Mumbai project.

49. Since, we have adjudicated similar issue on identical facts as per Ground no. 1 therefore, applying the finding as mutatis mutandis this ground of appeal is also restored to the file of the AO for deciding afresh

after verification. Accordingly, ground of appeal of the assessee is allowed for statistical purpose.

Ground No. 3: Disallowance of electricity expenses amounting to Rs.48,670/- incurred in respect of godown:

50. During the course of assessment the AO has disallowed of Rs.48,670/- towards electricity expenses incurred for godown which was not let out during the year:

51. During the course of appellate proceedings before us the Id. Counsel explained that these electricity expenses were incurred for the godown during the period which was let out. Therefore, we restore this issue to the file of AO for deciding afresh after verification and examination of relevant supporting document to be furnished by the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

Ground No. 4: Charging of interest of Rs. 11,81,235/- u/s 234B of the Act:

52. As the facts and the issue involved in this ground of appeal are similar to the ground no. 14 vide ITA No 861/Mum/2023, therefore applying the finding of ITA No. 861/Mum/2023 as mutatis mutandis this ground of appeal of the assessee is restored to the file of the AO for deciding a fresh as per law after verification. Therefore, this grounds of appeal is allowed for statistical purpose.

ITA No. 864/Mum/2023 A.Y. 2018-19

Ground No. 1: Disallowance of interest expenditure of Rs.554,84,195/-:

53. As discussed supra the AO has disallowed these interest expenses on the similar ground that business in Iraq in respect of which loan were taken originally was abandoned and there was no business activity and the expenses related to the Andheri Project were capitalized.

54. Since, we have adjudicated similar issue on identical facts vide ground no. 1 of the ITA 863/Mum/2023 applying the finding as mutatis mutandis this ground of appeal is also restored to the file of the AO for deciding afresh after verification. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

Ground No. 2: Charging interest of Rs.91,707/- u/s 234A:

Ground No. 3: Charging interest of Rs.33,01,452/- u/s 234B:

55. As discussed supra in the other appeal of the assessee we restore these two issue to the file of the AO for deciding afresh after verification as per law.

56. Therefore, these ground of appeal are allowed for statistical purposes.

57. In the result, all the appeals of the assessee are partly allowed.

Order pronounced in the open court on 23.08.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 23.08.2023

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.