

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.6937/Del/2018
(Assessment Year: 2013-14)**

Candor Kolkata One Hi-Tech Structures Pvt. Ltd., vs. ACIT, Circle 5 (2),
(formerly known as Unitech Hi-Tech Structures New Delhi.
P. Ltd. And earlier known as Unitech Hi-Tech
Structures Ltd.),
1102, Tower – B, 11th Floor,
Peninsula Business Park,
Senapati Bapat Road, Lower Parel,
Mumbai – 400 013 (Maharashtra).

(PAN : AAACU7918A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K.M. Gupta, Advocate
Ms. Saloni Shital, AR

REVENUE BY : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 20.11.2023

Date of Order : 22.11.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT
(Appeals)-33, New Delhi dated 19.07.2018 for the assessment year 2013-14.

2. Grounds of appeal taken by the assessee read as under :-

“1. On the facts and in the circumstances of the case, & in law,
the Ld. CIT (A) has erred in upholding a disallowance of brokerage

expense amounting to Rs.1,58,22,131/- under section 37 of the Income Tax Act, 1961 ('Act').

The Appellant prays that the Ld. AO be directed to delete the said disallowance of Rs.1,58,22,131.

2. On the facts and in the circumstances of the case, & in law, the Ld. CIT (A) has erred in confirming the denial of deduction under section 80-IAB of the Act on car parking income of Rs.38,53,200, income from health club of Rs.33,93,477, income from food court of Rs.48,56,499 and interest income of Rs.47,63,700 totalling to Rs.1,68,66,876.

The Appellant prays that the Ld. AO be directed to delete the denial of deduction of Rs.1,68,66,876 under section 80-IAB of the Act.

3. On the facts and in the circumstances of the case, & in law, the Ld. CIT (A) has erred in not adjudicating the ground on initiation of penalty proceedings under section 271(1)(c) of the Act without discussing the grounds on merit.

The Appellant prays that the Ld. AO be directed to drop the penalty proceedings initiated under section 271(1)(c) of the Act.

4. On the facts and in the circumstances of the case, & in law, the Ld. CIT (A) has erred in upholding disallowance of interest liability on share application money shown under other current liability amounting to Rs.53,93,786.

The Appellant prays that the Ld. AO be directed to delete such disallowance.”

3. Ld. Counsel of the assessee submitted that he shall be pressing Grounds No.1 & 2 only, hence other grounds are dismissed as not pressed.

4. Apropos brokerage expenses : The AO disallowed the claim of brokerage paid by the assessee amounting to Rs.1,58,22,131/- for enabling it to lease part of the SEZ premises to three parties. Assessee provided names and addresses of the parties along with invoices. However, AO was not satisfied. He wanted the copy of agreement or documentary evidence in

support of the claim for payment of brokerage and services rendered by the parties. In absence of the same, AO disallowed the claim. Upon assessee's appeal, ld. CIT (A) referring to its earlier order, confirmed the same.

5. Against the above order, assessee has filed appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee submitted that in assessee's group concern, on similar facts and circumstances, ITAT had decided the issue in favour of the assessee.

7. Per contra, ld. DR for the Revenue did not dispute this proposition.

8. We note that ITAT in bunch of appeals being ITA No.7839/Del/2018 & ors. in the case of M/s. Candor Gurgaon Two Developers and Projects Pvt. Ltd. vide order dated 14.06.2023 has decided the similar issue as under:-

“8. As with regard to the issue no.5 being ground of brokerage in ITA No.3879/Del/2018, it can be observe that the invoices produced on behalf of the appellant at page no.1 and 3 of the paper book clearly mention the details of the premises let out and the party to whom the lease was made. The copies of lease deed have also been placed on record. Ld. Tax Authorities have fallen in error in want of more evidences. When assessee is engaged in the business of rental of the properties then engaging brokers for procurement of the tenants is a common practice and the expenses of brokerage thus, have to be considered to have been incurred in ordinary course of business.

9. Apart from that ld. Counsel for the assessee has argued that in any case, the whole income of the assessee is tax free by virtue of Section 80IAB of the Act so the disallowance of expenditure makes the issue revenue neutral. Thus, the ground raised in ITA No.3879/Del/2018 is decided in favour of the assessee.”

9. We find that the aforesaid case is fully applicable in the present case and accordingly, this issue is decided in favour of the assessee.

10. Apropos issue of deduction under section 80-IAB : On this issue, AO disallowed 80-IAB deduction on car parking income, income from health club, income from food court and interest income. Ld. CIT (A) confirmed the disallowance.

11. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

12. Ld. Counsel of the assessee submitted that these sources of income are linked to the main activities of the assessee and referred to Paper Book Page No.89 where by Notification of the Government of India dated 27th October 2006, certain operations were listed to be used by the Board of Approval while approving authorised operations in the SEZ. This list included parking, club house, shopping arcade, convention centre, etc. Furthermore, Ld. Counsel of the assessee referred to the ITAT decision in assessee's group cases (supra) where similar disallowances have been decided in favour of the assessee.

13. Per contra, Ld. DR for the Revenue could not dispute the aforesaid proposition.

14. Upon careful consideration, we find that these activities, which were denied by the authorities u/s 80-IAB, are linked to main activities which are duly covered by the above Notification in this regard. Furthermore, this ITAT in bunch of appeals being ITA No.7839/Del/2018 & ors. in the case of M/s. Candor Gurgaon Two Developers and Projects Pvt. Ltd. (supra) has allowed 80-IAB deduction in similar circumstances by holding that the issue is covered in favour of the assessee by Hon'ble Supreme Court judgement in the case of Meghalaya Steels Ltd. Vs. CIT (2016) 67 taxmann.com 158 (SC). In the same order, in para no.5, ITAT has allowed deduction towards section 80-IAB towards car parking rental in favour of the assessee. We find that the above instances are assessee's group cases and cover the issue in favour of the assessee. Accordingly, we hold that assessee is entitled to deduction u/s 80-IAB towards car parking income, income from health club, income from food court and interest income. This issue is decided in favour of the assessee.

15. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on this 22nd day of November, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 22nd day of November, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-33, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**