

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

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

**ITA No.2822/Mum/2023
(A.Y. 2013-14)**

Lalani Constructions Private Limited Lalani Aura, 7 th Floor, 34 th Road, Bandra West, Mumbai – 400050	Vs.	ITO 12(3)(2) Aayakar Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACL0768P		
Appellant	..	Respondent

Appellant by :	Neha Paranjpe
Respondent by :	Manoj Kumar Sinha

Date of Hearing	09.01.2024
Date of Pronouncement	15.01.2024

अदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, Delhi, dated 13.07.2023 for A.Y. 2013-14. The assessee has raised the following grounds before us:

- “1. The Ld. CIT (A) erred in not appreciating the details and submissions submitted by the assessee and confirmed the additions made by the AO in the impugned assessment order*
- 2. The Ld. CIT(A) erred in adding interest income of Rs. 2,19,704/- without appreciating the fact that the same was offered in the previous assessment year.*
- 3. The Ld. CIT (A) erred in adding Rs.11,70,218/- as income from other source*
- 4. The Ld. CIT (A) erred in not accepting the fact that the same was business income and not income from other source*

5. *The Ld. CIT (A) erred in adding interest of Rs.2,23,976/- under sec. 36 (1) (iii) of the IT Act.*
6. *The Ld. CIT (A) erred in reducing the above interest from WIP*
7. *The Ld. CIT (A) erred in not considering the fact that excess interest paid to directors was out of free non-interest-bearing funds lying with the company.”*

2. Fact in brief is that return of income declaring total loss of Rs.15,86,747/- was filed on 21.09.2013. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 04.09.2014. The assessment u/s 143(3) of the Act was finalised on 18.03.2016 assessing the total loss at Rs.12,63,119/- after making various additions/disallowances. Further facts of the case are discussed while adjudicating the ground of appeal filed by the assessee as follows:

Ground No. 1: This ground of appeal is general in nature and is not required any adjudication, therefore the same stand dismissed.

Ground No.2 Addition of interest income of Rs.219,704/-:

3. During the course of assessment the assessment officer noticed that as per ITS details the assessee has received interest income amounting to Rs.11,70,218/- however, the assessee had shown interest income of Rs.9,50,514/- in the profit and loss account. The assessing officer stated that assessee has not given any explanation with regard to the difference of receipt of interest income to the amount of Rs.219,704/-, therefore, the said difference of interest income was added to the total income of the assessee under head income from other sources.

4. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) dismissed this ground of appeal of the assessee holding that in spite of providing multiple opportunities, the assessee has failed to submit the

reconciliation statement to explain the difference of interest income amounting to Rs.219,704/- .

5. During the course of appellate proceedings before us, the ld. Counsel filed paper book comprising copies of form no. 26AS and consolidated bank statement of DCB Bank in respect of interest income earned by the assessee from the surplus amount kept with the bank in fixed deposit. The ld. Counsel submitted that difference of Rs.219,690/- as interest amount was not received by the assessee and same was reversed and debited subsequently by the bank due to prematurity of FD and net income of interest income of Rs.950,514/- was only offered to tax in the year under consideration. He further submitted that such submission from page no. 1 to 52 on this issue placed in the paper book along with the detailed written submission dated 22.12.2021 was filed before the ld. CIT(A) however the same was not considered by the lower authorities.

On the other hand, the ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. Regarding short credit of F.D. interest and mismatch of 26AS interest the assessee submitted that during the financial year 2012-13 interest of Rs.219,690/- earned on fixed deposit was pertained to the three pre-matured fixed deposit maintained with DCB Bank and the assessee had only received interest of Rs.950,514/- as interest on FD. However, the bank in the TDS details of the assessee company in form 26AS showed entire interest of Rs.11,70,218/- without considering the fact that assessee was given less interest after reducing the interest amount of Rs.2,19,690/- due to premature fixed deposit. After taking into consideration the aforesaid facts and material placed on record we consider that the whole issue is required to be examined to decide the

issue of interest receipt on merit. Therefore, this issue is restored to the file of the assessing officer for deciding afresh on merit after examination and verification of the supporting material filed by the assessee as discussed above in this order. Therefore, this ground of appeal the assessee is allowed for statistical purpose.

Ground No. 3 & 4: Addition of Rs.11,70,218/- as income from other sources:

7. During the course of assessment proceedings on perusal of profit and loss account the assessing officer noticed that assessee has credited an amount of Rs.9,50,514/- as interest received as business income. On query, the assessee explained that it had received interest on the fixed deposit made out of surplus earned from its business activity. The assessing officer stated that assessee was in the business of development of real estate and the interest income earned by the assessee from the fixed deposit was not from the activity of their business. Consequently, the AO has assessed the interest income earned from the fixed deposit maintained with the Bank as income from the other sources.

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

9. Heard both the sides and perused the material on record. It is undisputed fact that assessee was in the business of development of real estate and it had earned income on the fixed deposit maintained with the bank. The assessee was not in the business of moneylending and the investment made in the fixed deposit with the bank was shown under the head investment in the balance sheet of the assessee as evident from the schedule no. 12 as a notes to the financial statement for the year ended 31.03.2012 showing fixed deposit to the amount of Rs.605,99,016/-. In view of the above facts and circumstances We don't

find any reason to interfere in the decision of Id. CIT(A) holding interest income earned from the fixed deposit as income from other sources. The other part of the interest income of Rs.219,704/-we have already set aside to the file of the assessing officer for adjudicating afresh after verification of the relevant supporting detail to be furnished by the assessee during the course of set aside proceedings. However, grounds of treating the same as business income are dismissed as discussed above. Therefore, grounds no. 3 & 4 of the assessee are rejected.

Ground No. 5 to 7: Addition of interest of Rs.2,23,976/-u/s 36(1)(iii):

10. During the course of assessment the assessing officer observed that assessee has shown interest on loan to the amount of Rs.24,00,000/- as cost of work-in-progress of Kadri Project. The AO further noticed that assessee has also advanced interest free loans to its director as under:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount</i>
1.	<i>Shoukat Lalani</i>	<i>Rs. 4,85,000/-</i>
2.	<i>Hussein Lalani</i>	<i>Rs.23,27,227/-</i>
3.	<i>Shamsuddin Lalani</i>	<i>Rs. 97,990/-</i>
4.	<i>Laila Lalani</i>	<i>Rs.58,30,000/-</i>
	<i>Total</i>	<i>Rs.87,40,217/-</i>

The assessee was asked to justify the interest paid and to explain by the same should not be disallowed u/s 36(1)(iii) of the Act. The assessee explained that it has taken loan of Rs.26,00,000/- from Jamaluddin Merchant which was utilised in the Kadri Project, therefore, interest paid on the loan amount was treated as cost of project as WIP.

In respect of payment made to the directors of the assessee company the assessee explained that same were paid out of non-interest bearing funds available with the assessee company. However, the assessing officer stated that assessee has failed to furnish the fund flow

statement and to establish the nexus of interest free borrowed funds to the interest free advances, therefore, the assessing officer has computed interest amount of Rs.2,23,976/- on the amount given as advances to the aforesaid three directors and the same was disallowed u/s 36(1)(iii) of the Act.

11. During the course of appellate proceedings before us, the ld. Counsel submitted that assessee company has invested the whole amount of loan received in the Kadri Project, therefore, it has added the interest cost paid on the said loan to the work in progress of the Kadri Project. Further, the ld. Counsel submitted that assessing officer has not verified the claim of the assessee that it had not paid any amount to the directors of the assessee company out of the borrowed fund and whatever the payment was made to the directors was made out of the interest free fund available with the assessee.

On the other hand, the ld. D.R supported the order of lower authorities.

12. Heard both the sides and perused the material on record. We find that the claim of the assessee company that the whole amount of loan of Rs.3 crores received from Jamaluddin Merchant was invested in the work-in-progress of Kadri Project was required to be verified by the assessing officer. Further the claim of the assessee that no part of the loan amount was given as advance to the any director of the assessee company is also required to be examined after considering the relevant supporting details to be furnished by the assessee. The ld. CIT(A) has also held that assessee has not brought on record any reconciliation statement with documentary evidences in support of its claim. We consider that this issue is also required to be verified and examined by the AO from the relevant supporting reconciliation statement and documentary evidences to be furnished. The assessee is also directed to

furnish the relevant reconciliation statement alongwith documentary evidences before the assessing officer without any failure. These grounds of appeal are allowed for statistical purpose.

13. In the result, the ground no. 2 & 5 are allowed for statistical purpose and ground no. 3 & 4 are dismissed.

Order pronounced in the open court on 15.01.2024

Sd/-
(Aby T Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 15.01.2024

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.