

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2137/DEL/2022 [A.Y. 2018-19]

The A.C.I.T  
Central Circle - 26  
New Delhi

Vs.

M/s Noida Cyber Park Pvt Ltd  
301-A, World Trade Tower  
Barakhamba Lane,  
Connaught Place, New Delhi

PAN - AAACF 5292 Q

CO No. 105/DEL/2023  
[A/o ITA No. 2137/DEL/2023 [A.Y. 2018-19]]

M/s Noida Cyber Park Pvt Ltd  
301-A, World Trade Tower  
Barakhamba Lane,  
Connaught Place, New Delhi

Vs.

The A.C.I.T  
Central Circle - 26  
New Delhi

PAN - AAACF 5292 Q

(Applicant)

(Respondent)

Assessee By : Shri Gaurav Jain, Adv  
Ms. Shweta Bansal, CA

Department By : Shri Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing : 05.02.2024

Date of Pronouncement : 08.02.2024

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned appeal by the Revenue and cross objection by the assessee are directed towards the order of the CIT(A) - 29, New Delhi dated 30.06.2022 pertaining to A.Y. 2018-19.

2. Since the appeal and cross objection were heard together, they are disposed of by this common order for the sake of convenience and brevity.

3. Grievances of the Revenue read as under:

1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of Rs. 1,64,33,2011 under the head 'Delay in security charge on loan' when loan itself was not utilized for business purpose and was given to its sister

concerns without any basis, moreover, it is a capital expenditure.

2. On the facts and in the circumstances of the case and in law CIT(A) has erred in deleting the addition of 36(1)(iii) by holding that the amount was paid to Bhayana Builders on account of retention money on the direction of Hon'ble High Court when no opportunity was provided to the AO under the provisions of section 46A of the Act to confront these evidences

submitted during appellate proceedings.

3. On the facts and in the circumstances of the case and in law, CIT(A) has erred in deleting the disallowance of Rs. 23,92,13,830/

u/s 36( I )(iii) when the assessee failed to brought on record any income from the loan advanced to M/s Logix Infrabuild (P) Ltd.

even in the succeeding years during the appellate proceedings.

4. On the facts and in the circumstances of the case and in law, CIT(A) has erred in deleting the disallowance of Rs. 2.93 Crores on account of professional charges, when the assessee failed to on record any specific services rendered by the M/s Indiabulls Commercial Credit Ltd. for sanction of loan and no such kind of expenditure was incurred on past loans.

5. On the facts and in the circumstances of the case and in law, CIT(A) has erred in deleting the disallowance of Rs. 10,34,53,539/ on account of foreign exchange loss when the assessee failed to submit any termination agreement during the course of agreement, moreover, it is capital expenditure.

6. On the facts and in the circumstances of the case and in law, CIT(A) has erred in deleting the disallowance of Rs. 64,62,073/- on account of 20% of facility management charges when assessee do submit any evidence/satisfactory explanation for its claim.

That the appellant craves leave to add, amend, alter or forego ground(s) of appeal either before or at the time of hearing of Appeal".

4. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

5. Briefly stated, the facts of the case are that the assessee filed its return of Income on 30.10.2018 declaring net taxable income of Rs. 2,69,30,180/-. Return was selected for scrutiny assessment through

CASS and accordingly, statutory notices were issued and served upon the assessee.

6. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed expenditure of Rs. 1,64,33,201/- as delay in security charge on loan. The Assessing Officer found that no such expenditure was claimed in the earlier years. Accordingly, the assessee was asked to explain the same.

7. In its reply, the assessee claimed that the said amount has been paid to M/s India Bulls Housing Finance Ltd for delay in creating security charges on properties mortgaged for loan. It was explained that the assessee has to create a charge on the properties taken from Noida authority in favour of the bank. Since the charge could not be created, bank charged fees of Rs. 1,64,33,201/-.

8. The Assessing Officer was of the opinion that such expenditure cannot be claimed and disallowed the same.

9. The assessee challenged the same before the Id. CIT(A) and once again explained that since the Noida authority has approved the

mortgage in favour of M/s India Bulls Housing Finance Ltd, therefore, any expenditure incurred in putting/creating equitable mortgage of these properties is an allowable expenditure.

10. It was further explained that during the year, the assessee has taken loan of Rs. 112.5 crores and 234 crores from India Bulls Housing Finance Ltd. Further, letter from Noida for granting approval for mortgage was also filed.

11. After considering the facts and submissions and considering the documentary evidences, the ld. CIT(A) was convinced that the impugned expenditure of Rs. 1,64,33,201/- has been made by the assessee wholly and exclusively for the purpose of business and allowed the same.

12. Before us, the ld. DR strongly supported the findings of the Assessing Officer and read the operative part.

13. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

14. We have carefully perused the findings of the Id. CIT(A). We find that the Id. CIT(A) has deleted the addition on proper appreciation of facts and the Id. DR could not bring any distinguishing facts. We, therefore, decline to interfere. Ground No. 1 is dismissed.

15. Ground Nos 2 and 3 are taken together which relate to the deletion of disallowance of the addition on account of interest paid to M/s Bhayana Builders Pvt Ltd and M/s Logix Infrabuild Pvt Ltd.

16. In so far as interest paid to M/s Bhayana Builders Pvt Ltd is concerned, the underlying facts are that the assessee paid interest @ 6% on payment of retention money. The assessee entered into a contract with M/s Bhayana Builders Pvt Ltd with respect to the construction of an IT Park at C-28 & 29, Sector -62, Noida, UP for a sum of Rs. 31 crores with completion period being 12 months. It was agreed that out of each bill 5% of the amount was to be withheld as retention amount and 50% of this retention amount was to be paid to M/s Bhayana Builders Pvt Ltd. within 30 days of giving of the virtual completion certificate and the remaining 50% of the retention money was payable after the expiry of 12 months.

17. Due to certain defects in the project, the assessee refused to pay second 50% of the retention amount to M/s Bhayana Builders Pvt Ltd. and the quarrel travelled upto the Arbitration Tribunal and the Arbitration Tribunal decided the quarrel in favour of M/s Bhayana Builders Pvt Ltd.

18. Thereafter, the assessee carried the matter to the Hon'ble High Court and the Hon'ble Delhi High Court vide order dated 01.08.2017, directed the assessee to return the money alongwith interest @ 6%. This interest has been claimed by the assessee, which has been disallowed by the Assessing Officer.

19. On the given facts, as discussed hereinabove, we do not find any reason/merit in the disallowance as the same has been paid as per the directions of the Hon'ble High Court. The Id. CIT(A) has rightly deleted the same and thus, calls for no interference.

20. Second addition is in respect of interest paid to M/s Logix Infrabuild Pvt Ltd. amounting to Rs. 23,92,13,830/-.

21. It was explained that the assessee had given advance to the said company for the acquisition of land parcels for the development of commercial IT Park and residential projects and it was agreed that the assessee shall contribute towards the consideration for acquisition of such land. The Assessing Officer formed a belief that the assessee has given interest free advance out of borrowed funds and went on to disallow proportionate interest expenditure.

22. There is no denying that the said advance was given for the acquisition of land in furtherance of the objects of the assessee's business. There is also no denying that both the assessee and M/s Logix Infrabuild Pvt Ltd. were engaged in the development of real estate projects. It is also an admitted fact that M/s Logix Infrabuild Pvt Ltd. was allotted land measuring 406109.44 sq. mtrs situated in Plot No. TS-1B, Sector 22D, Yamuna Expressway Industrial Development Area, District Gautam Buddh Nagar, U.P. vide lease dated 26.11.2012 wherein the assessee has been shown as Special Purpose Company of M/s Logix Infrabuild Pvt Ltd.

23. These undisputed facts go on to show that the impugned advance was purely a business advance and by no stretch of imagination it can be considered that the assessee has transferred borrowed funds as interest free advances.

24. Considering the facts of the case in totality, we do not find any merit in the disallowance made by the Assessing Officer. The Id. CIT(A) has rightly deleted the addition which calls for no interference. Ground Nos. 2 and 3 are also dismissed.

25. Ground No. 4 relates to the deletion of disallowance of Rs. 2.93 crores on account of professional charges.

26. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has claimed legal and professional charges of Rs. 5,34,73,865/-. The Assessing Officer further found that out of this amount, the assessee has paid Rs. 2.93 crores to M/s India Bulls Commercial Credit Ltd. The Assessing Officer wrongly assumed that the said company is an associate concern of the assessee. The Assessing Officer accordingly disallowed and made addition of Rs. 2.93 crores.

27. The assessee challenged the addition before the Id. CIT(A) and explained that the loan processing fees was paid to M/s India Bulls Commercial Credit Ltd and both are entirely different expenditure. It was further explained that loan processing fees is charged by the lender from borrower for processing and underwriting an application for a loan. It is a one-time charge paid by a borrower to the bank whereas professional fees have been paid for advisory and other services like documentation, preparing project report etc for getting the loan sanctioned.

28. After considering the facts and submissions and after properly appreciating the evidences, the Id. CIT(A) was of the opinion that any expenditure incurred for obtaining loan is allowable as revenue expenditure and accordingly deleted the addition.

29. Though the Id. DR strongly relied upon the findings of the Assessing Officer, but could not point out any factual error in the findings of the Id. CIT(A).

30. We have given thoughtful consideration to the factual matrix discussed hereinabove. We are of the considered view that the

findings of the ld. CIT(A) cannot be faulted with. Ground No. 4 is accordingly dismissed.

31. Ground No. 5 relates to the deletion of disallowance of Rs. 10,34,53,437/- on account of foreign currency fluctuation expenses.

32. While scrutinizing the return of income, the Assessing Officer found that the assessee has claimed expenditure of Rs. 10,34,53,437/- in its profit and loss account on account of foreign currency fluctuation charges. The Assessing Officer was of the opinion that since the assessee is a real estate developer, there is no question of any import/export transactions. Therefore, any claim on account of exchange difference is not an allowable expenditure.

33. Before the ld. CIT(A), it was strongly contended that the assessee had taken loan from IndusInd Bank and it was agreed that the assessee would hedge the said loan obtained in foreign currency at all time. And in pursuance to such agreement, the assessee into six full currency swap on various dated in F.Y 2015-16 to F.Y. 2016-17 which were to be matured in F.Y. 2018-19, 2019-20 and F.Y. 2020-21.

34. The assessee further explained that it could not continue these deals which resulted into termination of such swap cross currency agreement. In support of its contention, supporting evidences were filed. It was explained that prior to termination of such agreements, the assessee had suffered forex loss though the assessee had also earned forex gain on outstanding amount as on 20.04.2017 and from the gain, loss was set off.

35. After considering the facts and submissions, the Id. CIT(A) analyzed the facts as under:

**"From perusal of the documents submitted by the appellant, it is also found that the impugned termination fees of Rs. 18,32,56,782/- was paid by the appellant to IndusInd Bank. Also, the assessee earned foreign exchange gain of Rs. 7,98,03,242/- on outstanding amount as on 20/04/2017. Therefore, the net amount of Rs. 10,34,53,437/- charged in the P&L A/c of the appellant is the termination. fees paid to IndusInd Bank on termination of loan agreement net of the foreign exchange gain accrued by the appellant due to the loan in foreign currency. From perusal of the assessment order it is also found that the AO did not look into the veracity of the transaction and disallowed the amount of**

Rs. 10,34,53,437/-. Therefore, by looking into the documentary evidences filed the appellant, it is clear that the total expenses incurred by the appellant on account of the termination of loan agreement are Rs. 18,32,56,782 however, due to hedging of loan through swap currency agreements, the appellant got benefit of Rs. 7,98,03,242/- due to foreign exchange rate. Accordingly, net amount of Rs. 10,34,53,437/- (18,32,56,782 - 7,98,03,242) charged by the appellant in P&L A/c is duly allowable. The disallowance of Rs. 10,34,53,437/- made by the AO on account of foreign currency loan is hereby deleted and Ground No. 7 is allowed."

36. The ld. DR could not point out any factual error in the aforementioned factual findings of the ld. CIT(A) and after giving thoughtful consideration to the factual matrix discussed hereinabove, we could not find any reason to interfere with the findings of the ld. CIT(A). This ground is dismissed.

37. Last ground relates to deletion of adhoc disallowance of Rs. 64,62,073/- being 20% of the facility management charges.

38. A perusal of the assessment order shows that the Assessing Officer disallowed 20% on adhoc basis without pointing out any error, infirmity or defect in the books of the assessee.

39. The Id. CIT(A), after verifying the ledger account, audited balance sheet, sample invoices and agreement with respective parties, came to the conclusion that disallowance cannot be made on adhoc basis without identifying specific default and without putting forth any cogent evidence. Addition was deleted.

40. Since the addition was made on adhoc basis without pointing out any defect, we do not find any reason to interfere with the findings of the Id. CIT(A). This ground is dismissed.

41. As a result, the appeal of the Revenue is dismissed.

42. Coming to the cross objection of the assessee, the solitary ground relates to restricting the disallowance of Rs. 25,16,24,782/- made by the Assessing Officer u/s 36(1)(iii) of the Act to the extent of Rs. 13.86 lakhs on account of advance of Rs. 1.15 crore outstanding from Shri Vkram Nath.

43. The underlying facts in this issue are that the assessee had given advance to Shri Vkram Nath in earlier years and no such advance was given during the year under consideration. In fact, the assessee had given money to M/s Unibros Manufacturing Co. Pvt Ltd on 01.04.2014 on account of commission and brokerage expenses on which TDS was deducted.

44. Since no proper services were provided by Unibros Manufacturing Co. Pvt Ltd, the assessee claimed money from Unibros Manufacturing Co. Pvt Ltd and through journal entry, the same amount recoverable from M/s Unibros Manufacturing Co, Pvt Ltd was transferred to the account of Shri Vikram Nath. The Assessing Officer disallowed proportionate interest which was confirmed by the Id. CIT(A) holding that the assessee failed to establish any link of such advance with the business of the assessee.

45. After carefully considering the orders of the authorities below, we find that the undisputed fact is that the said money was given in F.Y. 2014-15 and not in the year under consideration and no adverse interference has been taken in earlier A.Ys. Therefore, on identical set of facts, there is no reason why a different view is taken during the

year under consideration. We, accordingly, direct the Assessing Officer to delete the impugned disallowance.

46. As a result, the cross objection is allowed.

47. In the result, the appeal of the Revenue in ITA No. 2137/DEL/2022 is dismissed whereas the Cross objection of the assessee in CO No. 105/DEL/2023 is allowed.

The order is pronounced in the open court on 08.02.2024.

Sd/-

**[KUL BHARAT]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 08<sup>th</sup> FEBRUARY, 2024

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	