

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER

AND

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 3007/MUM/2023 (A.Y: 2016-17)

DCIT – Central Circle – 5(4) Room No. 1927, 19 th Floor Air India Building, Nariman Point Mumbai – 400021	v.	M/s. Technotrade Impex India Pvt. Ltd. 19/40/C-2, Seksaria Industrial Estate S. V. Road, Malad (W) Mumbai 400062 PAN: AACCTT000G
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Jay Bhansali
Department Represented by	:	Shri R.R. Makwana
Date of conclusion of Hearing	:	27.03.2024
Date of Pronouncement	:	03.04.2024

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals)-53, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 22.06.2023 for the A.Y. 2016-17.

2. Brief facts of the case are, assessee filed its return of income for the A.Y.2016-17 declaring total income of ₹.Nil on 29.11.2016. The case was selected for limited scrutiny under 'CASS' and notices under section 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response assessee filed its written submissions through ITBA Portal.

3. The assessee is engaged in the business of Government supplies, trading in various goods and contract for garden maintenance alongwith construction work for Municipal Corporation. The Assessing Officer observed that assessee in its submission dated 27.12.2018 submitted that it has erroneously claimed loss from Partnership Firms as deduction. The break up loss is given below: -

Sr. No.	Name of Party	Loss (Amount in Rs.)
1	Middle Earth Enterprises	3,80,355/-
2	Technotrade Gurukrupa JV	30,92,654/-
Total		34,73,010/-

4. Assessing Officer observed that assessee submitted that, assessee is a partner in the above said Firms and Profit/Loss from partnership firm is exempt under section 10(2A) of the Act. As per law any loss incurred on partnership firm, the same cannot be claimed as a deduction. Thereby the assessee cannot claim deduction on account of loss from its

partnership firms. The assessee has also agreed to the same vide its submission dated 27.12.2018.

5. Further, during the assessment proceedings, assessee has furnished revised computation vide its submission dated 03.12.2018. The assessee in its submission has claimed that business income has been reported higher by ₹.1,93,72,062/- and it wants to claim deduction for the same. The claim of the assessee is rejected by the Assessing Officer by relying on the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. v. CIT [2006] (284 ITR 323 SC). Further, Assessing Officer observed that without prejudice to the above, the claim of the assessee is not acceptable on merits. The Assessee has received interest income of ₹.2,28,45,072/- on capital from partnership firm namely M/s. Lucky Developers. The same is taxable in the hands of assessee. Assessee in its submission has stated that M/s. Lucky Developers has capitalized the interest on capital amounting to ₹.2,28,45,072/- in capital Work-in-Progress and the firm has disallowed the same under section 40(b) of the Act. However, assessee has not furnished any documentary evidences for which it can be established that the firm has made disallowance of the same. Mere certificate by the firm M/s Lucky Developers that the interest expense has been disallowed is not satisfactory. Accordingly, he rejected claim of the

assessee for reduction of total income to the extent of ₹.1,93,72,062/- in revised computation.

6. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions in this regard, for the sake of clarity it is reproduced below: -

"2.2 The brief facts are that during the year, the assessee is a partner in the firm M/s Lucky Developers. The assessee has earned interest on capital from Partnership Firm M/s Lucky Developers of Rs.2,28,45,072/-. M/s Lucky Developers is assessed to tax under the charge of DCIT, Circle- 31(2), Mumbai under PAN- AABFL6349Q. M/s Lucky Developers has three partners – the assessee having 70% share, Mr Bimal Agarwal having 20% share and Mr Rajan Prabhu having 10% share. During the year, the partnership firm did not make any profit. Copy of Income Tax Return, Balance Sheet set of M/s. Lucky Developers for Assessment Year 2016-17 is enclosed herewith at page 38 to 42 of the compilation.

2.3 M/s Lucky developers has not claimed such interest as expenses. The interest has been credited to Partner's Capital a/c and debited to Capital WIP being not eligible expenditure as the same was disallowed u/s 40(b) of the Income Tax Act 1961. A certificate from M/s Lucky Developers stating that they have not claimed deduction for the interest paid is enclosed herewith at page 46 of the compilation. Since M/s Lucky Developers has not claimed as expenses, therefore, such interest income is not taxable in the hands of the assessee.

2.4 In the financial statements, the assessee has reduced the interest income from financial expenses. Such interest income has been shown in Note -20 "Financial Expenses" and reduced from the interest expenses incurred to the extent of total interest income earned during the year. As a result, the net profit of the assessee has increased. In the return of income, the assessee did not reduce the interest income due to oversight. In other words, the assessee offered the interest income to tax. During the assessment proceedings, the assessee vide submission No 3 (refer page 28 to 34 of the compilation) made a detailed submission to the Id Assessing Officer intimating him of the error in offering the interest income to tax. A revised computation was filed before the Id Assessing Officer

which is at page 35 to 37 of the compilation. In the same Submission No 3, the assessee separately intimated the AO of share of loss of partnership firms which remained to be added to total income. The Id AO in the Assessment Order has at para 4 page 2 accepted that the share of loss of Rs 34,73,010/- was to be disallowed. However, the Id AO has rejected the claim of reduction of interest income of Rs 2,28,45,072/- following the Supreme Court judgment in the case of Goetze India Ltd v CIT (2006) 284 ITR 323 wherein it was held that a fresh claim could be made only by way of a revised return. Thus, the AO has conveniently made addition for share of loss but has not allowed deduction for interest income.

2.5 As per the provisions of Section 28(v) of the Income Tax Act, interest is taxable in the hands of the partner. However, if the interest is not deductible in the hands of the firm, then the same is not taxable in the hands of the partner. The text of Section 28(v) of the Act is as follows:

"(v) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm :

Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted ;"

Since M/s Lucky Developers has not claimed interest on capital as expenses, therefore, such interest income is not taxable in the hands of the assessee.

M/s Lucky developers has not claimed such interest as expenses and has given an undertaking that they have not claimed the same as an expense in the return of income for Assessment Year 2016-17. M/s Lucky Developers has not claimed the interest paid as expenses and the same has been disallowed u/s 40(b) of the Act. Since the interest paid has been disallowed u/s 40(b) of the Act in the hands of the partnership firm, it cannot be taxed in the hands of the assessee.

2.6. The assessee submits that such interest received was just a provision made by the partnership firm and no interest was actually received in the bank account of the assessee. Similar provision for interest income was also made in the earlier years ie from AY 2013-14 to AY 2015-16. The entire interest income was reversed in AY 2020-21. A chart of interest received over the years is as follows:

Assessment Year	Provision for Interest Income credited to P&L a/c (Rs.)	Treatment in the Computation by assessee	Treatment in the Assessment Order by AO
2013-14	1,06,25,706	Reduced from the Business Income ie not offered for tax.	Treatment given in the Return of Income accepted by the AO
2014-15	1,04,96,389	Reduced from the Business Income ie not offered for tax.	Treatment given in the Return of Income accepted by the AO
2015-16	1,53,05,994	Reduced from the Business Income ie not offered for tax.	Treatment given in the Return of Income accepted by the AO
2016-17 (Year under consideration)	2,28,45,072	Erroneously offered for tax.	Assessee's plea to reduce the same from business income was not accepted by AO ie the interest was taxed by the AO.
Total	5,92,73,161		

2.7 In Assessment Year 2013-14, the assessee has credited its Profit and Loss account by interest received from Lucky Developers of Rs 1,06,25,706/-. In the computation of total income (refer page 47-57 of the compilation), the assessee has claimed deduction for interest income of Rs 1,06,25,706/-. The Assessment Order was passed on 18.03.2016 u/s 143(3) of the Act and the treatment given in the return of income was accepted.

2.8 In Assessment Year 2014-15, the assessee has credited its Profit and Loss account by interest received from Lucky Developers of Rs 1,04,96,389/-. In the computation of total income (refer page 58-67 of the compilation), the assessee has claimed deduction for interest income of Rs 1,04,96,389/-. The Assessment Order was passed on 21.12.2016 u/s 143(3) of the Act and the treatment given in the return of income was accepted.

2.9 In Assessment Year 2015-16, the assessee has credited its Profit and Loss account by interest received from Lucky Developers of Rs 1,53,05,994/-. In the computation of total income (refer page 68-71 of the compilation), the assessee has claimed deduction for interest income of Rs 1,53,05,994/-. There was no scrutiny assessment for this year.

2.10 In the current Assessment Year 2016-17, the assessee has credited its Profit and Loss account by interest received from Lucky Developers of Rs 2,28,45,072/-. However, the assessee has erroneously not reduced the same in the computation of total income. During the assessment proceedings, the assessee made a plea to reduce the interest from total income. However, this request was not accepted by the Assessing Officer.

2.11 In Assessment Year 2020-21, the assessee has reversed interest provision by debiting its Profit and Loss account by an amount of Rs 5,92,73,161/-. In the computation of total income (refer page 72 to 75 of the compilation), the assessee has disallowed the interest income of Rs 5,92,73,161/- and added the same to business income. Since the interest reversed was disallowed for Assessment Year 2020-21, the interest earned during Assessment Year 2016-17 cannot be taxed.

2.12 The assessee submits that the interest was erroneously offered to tax by the assessee in the return of income filed. The assessee has made a fresh claim for deduction of interest during the assessment proceedings."

7. After considering the submissions of the assessee, Ld. CIT(A)

allowed the claim of the assessee by observing as under: -

"5.3 As per section 28(v) of the Act, an amount disallowed u/s.40(b) shall be suitably adjusted while computing the income of the partner. The appellant has pointed out that such interest income was not offered to tax in the earlier years as well. It has also pointed out that the appellant's claim has been accepted in both A.Y. 2013-14 & A.Y. 2014-15 after scrutiny assessment u/s 143(3). Further, in A.Y. 2020-21, the appellant reversed the entire interest provision of Rs.5,92,73,161/- by debiting its Profit & Loss Account. The appellant has further stated that the partnership firm M/s. Lucky Developers has also reversed this entire amount in A.Y. 2020-2021 and that no benefit has been claimed by it whatsoever. Under these circumstances, I am of the view that section 28(v) does come into play and that the appellant is entitled to succeed on merits.

5.4 In the case of CIT v/s Pruthvi Brokers & Shareholders (2012) 23 taxmann.com 23, the Hon'ble Bombay High Court held that the Appellate Authority could consider such claim if a deduction was not claimed in the return of income inadvertently. Similarly, in the case of Sesa Goa Ltd. vs. Addl.CIT 430 ITR 114, the Hon'ble Bombay High Court held that the assessee could make additional claim for deduction before the appellate authorities which ought to be considered. The Hon'ble High Court also held that while the AO was right in rejecting the claim for such a deduction, the appellate authorities were duty bound to consider it. The case of Goetze India, 284 ITR 323 was considered in this.

5.5 Considering these facts, the claim of the appellant is allowed. The AO is directed to not consider the interest income of Rs.2,28,45,072/- offered by the appellant in its return of income for the purpose of computing income under regular provisions. This ground stands allowed."

8. Aggrieved, revenue is in appeal before us raising following grounds

in its appeal: -

"(i) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in allowing reduction in business income by Rs.2,28,45,072/- being interest income from partnership firm M/s. Lucky Developers not taxable in the hands of the assessee company M/s. Technotrade Impex India Private Limited?"

(ii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in allowing reduction in business income by Rs. 2,28,45,072/- being admitted a fresh claim of assessee company that interest income from partnership firm M/s. Lucky Developers is not taxable in the hands of the assessee company, despite the fact that not such claim was made in Return of income and no revised Return of Income for such claim was filed?"

(iii) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is right in admitting a fresh claim, however, no such claim was made in Return of Income and no revised Return of income for such claim was filed which goes against the spirit of the Hon'ble Supreme Court's decision rendered in the case of M/s. Goetze (India) Ltd. (2006) 284 ITR 323 (SC)?"

9. At the time of hearing, Ld. DR brought to our notice the relevant facts of the case from Page No. 3 of the assessment order and submitted that assessee has received interest income from the Partnership Firm and whether the Partnership Firm creates the provision or making actual payment it is an income of the assessee. Therefore, the findings of the Assessing Officer are proper. He objected to the findings of the Ld. CIT(A) who has allowed the claim of the assessee and he prayed that the addition made by the Assessing Officer may be sustained.

10. On the other hand, Ld.AR of the assessee submitted that the assessee has wrongly claimed the interest income as received from the Partnership Firm. He submitted that it is only a provision created in the books of the Partnership Firm and Partnership Firm has never claimed any interest expenditure and it has only added to the capital Work-in-Progress. He brought to our notice Page No. 41 of the Paper Book which is the Balance Sheet of the M/s. Lucky Developers wherein they have disclosed the capital Work-in-Progress and further, he brought to our notice Page No. 42 of the Paper Book which is the capital account of the Partnership Firm wherein it was only charged to the capital account of the partners and he also brought to our notice Page No. 43 of the Paper Book which is the details of capital Work-in-Progress.

11. Further, he brought to our notice Page No. 51 of the Paper Book which is the submissions made by the assessee before Ld. CIT(A) – 53, dated 14.06.2023 wherein it was submitted that from A.Y. 2013-14 to 2016-17 the interest provision was created in the capital account and charged to the capital Work-in-Progress and in the computation of income the Partnership Firm has disallowed the same. In all the above said years, from A.Y. 2013-14 to 2015-16 the Assessing Officer has accepted the above treatment and only this assessment year the assessee has erroneously offered for tax and Assessing Officer did not accept the same for reduction of income. He submitted that in the A.Y. 2020-2021 the assessee declared total interest income from A.Y. 2013-14 to 2016-17 and was offered to tax for the total value of ₹.5,92,73,161/-. Therefore, he prayed that the findings of the Ld. CIT(A) may be sustained considering the fact that assessee has already offered to tax in the A.Y. 2020-2021 wherein the above said capital work-in-progress was completed.

12. Considered the rival submissions and material placed on record, we observe that the issue of provision of interest on capital for the partners was created from A.Y. 2013-14 to A.Y. 2015-16, assessee has reduced from the business income and not offered for tax, considering the fact that it is only a provision and the same was accepted by the relevant

Assessing Officer. (Relevant assessment orders were placed on record). In the current assessment year, the above said interest income was wrongly offered to tax by the assessee and during the course of assessment proceedings assessee brought to the notice of the Assessing Officer the above said mistake and the same was not accepted by the Assessing Officer by relying on the decision of Goetze India Ltd. v. CIT (supra). However, we observe that the above said fact was appreciated by the Ld. CIT(A) and allowed the same in the Appellate Proceedings.

13. After considering the facts on record, we observe that the Partnership Firm M/s. Lucky Developers has created provision from A.Y.2013-14 to 2016-17 towards the interest on capital of partners to the extent of ₹.5,92,73,161/- and the above said interest are charged to capital Work-in-Progress and they have never claimed the above said expenditure in their computation of income. Accordingly, assessee also not declared the same as its income in its computation of income. However, it is brought to our notice that in A.Y. 2020-2021 assessee has offered the same in its computation of income which is placed at Page No. 59 of the Paper Book and the same interest income was offered to tax for the value of ₹.5,92,73,161/-. Since, M/s. Lucky Developers has not claimed any expenditure during the above period and once the capital

Work-in-Progress was completed and installed the same was offered to tax by the assessee in the A.Y. 2020-21. The same is placed on record. Therefore, there is no loss to the revenue and assessee has properly declared the same for the tax purpose. Accordingly, we do not see any reason to interfere with the findings of the Ld. CIT(A). Accordingly, Grounds raised by the revenue are dismissed.

14. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 03rd April, 2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 03.04.2024
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum