

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

ITA NO. 1419/MUM/2018 (A.Y: 2014-15)

M/s. Rajesh Estate Ventures Pvt Ltd., R.B. House, MIDC X Road B Andheri Kurla Road, Andheri (E) Mumbai - 400059 PAN: AAFCR9631Q	v.	Income Tax Officer – Ward – 2(3)(1) Aayakar Bhavan Mumbai
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Rajiv Khandelwal
Department Represented by	:	Smt Mahita Nair
Date of conclusion of Hearing	:	17.04.2024
Date of Pronouncement	:	17.04.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal filed by the assessee is preferred against the order of Learned Commissioner of Income-Tax (Appeals)-6, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 25.01.2018 pertaining to A.Y.2015-16.

2. The solitary grievance of the assessee is that the Ld. CIT(A) erred in confirming the addition of ₹.76,85,401/- disallowed by the Assessing Officer on account of interest paid on capital overdrawn.

3. Briefly stated the facts of the case are that the, assessee is in the business of builders and developers and filed its return of income on 27.09.2014 declaring NIL income. The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of the scrutiny assessment proceedings and on perusal of profit and loss account, the Assessing Officer noticed that assessee has claimed interest on capital at ₹.76,85,401/-. The assessee was asked to justify its claim. In its reply, the assessee claimed the said payment to be in the interest of business of builders and developers. The Assessing Officer found that the assessee has unsecured loans of ₹.19,33,85,000/- received during the year and the same was advanced to its subsidiary company M/s. AUR Holdings AG of ₹.31,25,34,532/- and ₹.11.60 crores to others. The Assessing Officer was of the opinion that the interest claimed ₹.76,85,401/- has no nexus with the business activity of the assessee and went on to disallow the same.

5. Assessee carried the matter before Ld. CIT(A) but without any success.

6. Before us, counsel for the assessee vehemently stated that both the lower authorities have grossly erred in not understanding the facts in true prospective. It is the say of the counsel that once the assessee has explained the amount given to its subsidiary company thereafter no query was raise by the Assessing Officer and therefore, the assessee did not explain any further. The counsel further stated that even the Ld.CIT(A) did not raise any query and simply confirmed the addition by holding that the assessee has not explained the purpose of commercial and business expediency.

7. Per contra, Ld. DR supported the findings of the lower authorities.

8. We have carefully considered the orders of the authorities below. As per memorandum of association the main object of the assessee company is as under: -

"As per Memorandum of Association, the main object of the company is -

i) "To carry on business of real estate developers, to deal in, manage, acquire, undertake and venture into infrastructure projects, construction projects, estate agents, realtors, land

development, property development, real estate development, area estate and site development and to carry on the business as planners, builders and civil engineers, contractors.

The object incidental or ancillary to the attainment of the main object is -

*ii) To acquire by purchase, exchange
.....*

The company may also invest in or acquire companies inside or outside India that are engaged in similar activities or may set-up subsidiaries or joint ventures inside or outside India for conducting similar activities.”

9. It can be seen from the main objects that the company can also invest in or acquire companies inside or outside India that are engaged in similar activities. The assessee may also setup subsidiaries or joint ventures inside or outside India. The facts on record show that AUR Holdings Overseas Limited is a subsidiary of AuR holding (AG) and step down subsidiary of the assessee. AUR Holdings Overseas Limited had entered into an exclusive agreement with Noomadi Resorts AG to purchase the island rights along with all the land and service titles on the Dhapparau Island. AUR Holdings Overseas Limited has made payments till 31.12.2013 totaling to USD 85,81,400. Since no specific query was raised by the lower authorities the assessee did not explain the true nature of transactions. Therefore, in the interest of justice and fair play, we deem it fit to restore the quarrel to the file of the Assessing

Officer. The assessee is directed to furnish all the relevant details of transactions of lending/advancing money to its subsidiary and step down subsidiary to justify the business exigencies and the Assessing Officer is directed to examine the same and decide the issue afresh as per the provisions of the law after affording the reasonable and adequate opportunity of being heard to the assessee.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17th April, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai / Dated 17.04.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
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