IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 1635/DEL/2020
Assessment Year: 2014-15

Candor Gurgaon One Realty Projects Pvt. Ltd., (Formerly known as Unitech Realty Projects Pvt. Ltd. and earlier known as Unitech Realty Projects Ltd.) **PAN- AAACU8046K**	Vs	ACIT, Circle-5(2), New Delhi.
APPELLANT		**RESPONDENT**

ITA No. 1647/DEL/2021
Assessment Year: 2014-15

ACIT, Circle-5(2), New Delhi.	Vs	**Candor Gurgaon One Realty Projects Pvt. Ltd.,** (Formerly known as Unitech Realty Projects Pvt. Ltd. and earlier known as Unitech Realty Projects Ltd.) **PAN- AAACU8046K**
APPELLANT		**RESPONDENT**

Assessee represented by	Shri K.M. Gupta, Adv.
Department represented by	Shri Vivek Kumar Upadhyay, Sr. DR
Date of hearing	15.02.2024
Date of pronouncement	01.05.2024

O R D E R

PER M. BALAGANESH, AM:

The captioned cross appeals, filed by the assessee as well as the Revenue, are directed against the order of the learned Commissioner of Income-tax (Appeals)-12, New Delhi, dated 06.07.2020, pertaining to the assessment year 2010-11. As

these are cross appeals, they are taken up together and disposed of by this common order for the sake of convenience.

2. Let us take up the assessee appeal first in ITA No. 1635/Del/2020.

3. The assessee has raised the following grounds of appeal before us:-

"1. On the facts and circumstances of the case & in law, the Learned Commissioner of Income- tax (Appeals) ['Ld. CIT (Appeals)'] has erred in confirming the action of the Learned Assessing Officer ('Ld. AO') in re-classifying the income from car parking amounting to INR 3,31,36,739.

2. On the facts and circumstances of the case & in law, Ld. CIT (Appeals) has erred in confirming the action of the Ld. AO in re-classifying the income from sale of food and beverages amounting to INR 7,91,290.

3. On the facts and circumstances of the case & in law, Ld. CIT (Appeals) has erred in confirming the action of the Ld. AO in re-classifying the interest income on fixed deposits amounting to INR 43,64,877 and other income amounting to INR 71,600.

4. On the facts and circumstances of the case & in law, Ld. CIT (Appeals) has erred in confirming the action of the Ld. AO holding that the amount pertaining to car parking of INR 3,31,36,739 is not liable for deduction under Section 80-IAB of the Act despite the assessee being an eligible unit.

5. On the facts and circumstances of the case & in law, Ld. CIT (Appeals) has erred in confirming the action of the Ld. AO holding that the amount pertaining to food and beverages of INR 7,91,290 is not liable for deduction under Section 80-IAB of the Act despite the assessee being an eligible unit.

6. On the facts and circumstances of the case & in law, Ld. CIT (Appeals) has erred in confirming the action of the Ld. AO holding that the amount pertaining to interest income on fixed deposits of INR 43,64,877 and other income of INR 71,600 are not liable for deduction under Section 80-IAB of the Act despite the assessee being an eligible unit.

7. On the facts and in the circumstance of the case & in law, the Ld. CIT (Appeals) has erred in confirming the action of the Ld. AO in

denying direct and indirect benefits of any expense /depreciation resulting from payment of interest on inter-corporate deposits.

8. On the facts and in the circumstances of the case & in law, the Ld. AO has erred in not granting credit of self-assessment tax amounting to INR 5,00,000.

9. On the facts and in the circumstances of the case & in law, the Ld. AO has erred in not granting credit of tax deducted at source amounting to INR 34,19,361 on the payments made to the Appellant.

10. On the facts and in the circumstances of the case & in law, the Ld. AO has erred in not granting credit of tax collected at source amounting to INR 13,317 on purchases made by the Appellant.

11. On the facts and in the circumstances of the case & in law, the Ld. AO has erred in levying interest under section 234B and 234C of the Act amounting to INR 5,91,367.

12. On the facts and in the circumstances of the case & in law, the Ld. CIT (Appeals) has erred in not adjudicating the ground on initiation of penalty proceedings under section 271(1)(c) of the Act."

4. We have heard the rival submissions and perused the materials available on record. The assessee company is engaged in the business of developing and operating Information Technology (IT) / Information Technology Enabled Services (ITeS) Special Economic Zone (SEZ) at Tikri Gurgaon. The said SEZ was notified by the Government of India in the official gazette and approval of the authorized services was granted to the assessee company on 10.3.2008. The profits and gains derived from business of developing and operating the aforesaid SEZ is eligible for deduction u/s 80IAB of the Act. The dispute involved herein is with regard to the eligibility of deduction u/s 80IAB of the Act in respect of the following receipts:-

(a) Income from operating lease rentals – Rs 31,11,11,232/-

(b) Income from maintenance services - Rs 13,41,33,530/-

Rs 44,52,44,762/-

(c) Interest from car parking	- Rs 3,31,36,739/-
(d) Sale of food and beverages	- Rs 7,91,290/-
(e) Interest income from fixed deposits	- Rs 43,64,877/-
(f) Other income	- Rs 71,600/-
	Rs 3,83,64,506/-
Total	- Rs 48,36,09,268/-

5. The ld. AO was of the opinion that the income referred to in items (c), (d), (e) and (f) would have to be construed as income from other sources not eligible for deduction u/s 80IAB of the Act as the same cannot be construed as income earned from business of developing and operating the SEZ. The ld AO observed that business of the assessee is to develop SEZ in IT / ITeS sector and lease out the premises for rent and maintaining the said SEZ, which implies that only lease rentals for the premises and the maintenance charges can be considered as income from business. Car Parking Rentals are received from even the visitors who come to the offices of the occupants thereof and hence such income cannot be considered as from SEZ activities. Similarly, the interest income on fixed deposits, other income and sale of food and beverages cannot be construed as income earned from SEZ and accordingly all the four receipts would not be eligible for deduction u/s 80IAB of the Act.

6. The assessee submitted that it could not let out such properties without developing car parking areas, food court etc and hence the income derived thereon would have to be part and parcel of the leasing activity carried out by the assessee so as to fall within the ambit of income derived from business. Further it was submitted that the Board of Approvals (BOA) , being the statutory authority under the SEZ Act, has granted various approvals by a statutory process of law after duly considering and examining all the facts available on record in accordance with relevant provisions of SEZ Act and Rules. The ld. CIT(A) however ignored all these contentions and upheld the action of the ld. AO.

7. We find that the issue in dispute was subject matter of adjudication by the co-ordinate bench of Delhi Tribunal in the case of Candor Kolkata One Hi-Tech Structures Pvt Ltd vs ACIT in ITA No. 6937/Del/2018 for Asst Year 2013-14 dated 22.11.2023. The relevant ground raised before the Tribunal is reproduced hereunder:-

> *"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.1,68,66876."*
>
> *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."*

7.1. The findings of the Tribunal are reproduced hereunder:-

> *"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."

8. Further we find that following are the permitted services by Department of Commerce (SEZ Section), Ministry of Commerce and Industry, Government of India vide approval letter dated 10.3.2008 :-

"*M/s Unitech Realty Projects Limited, Gurgaon, Haryana*
Authorized Operations in the Processing Area

S. No.	*ACTIVITY*	*QUANTUM APPROVED*
1	*Power (including Power back up facility)*	*30 MW*
2	*Parking including multi-level car parking (automated or manual)*	
3	*Recreational facilities including club house, indoor or outdoor games Gym etc.*	*1000 sq. m.*
4	*Food services including, cafeteria, food court(s) restaurants, coffee shops, canteens and catering facilities*	*2000 sq m.*
5	*Employees welfare facilities like crèche, medical center and other such facilities*	*1000 sq m.*
6	*Shopping arcade and/ or retail shops*	*1000 sq m.*
7	*Business and/ or retail space*	*1000 sq. m.*
8	*Common data centre with inter-connectivity*	*1000 sq m.*
9	*WiFi and/ or WiMax services*	*1000 sq. m*
10	*Drip and Micro irrigation system*	*750 sq. m.*

For captive use only. The power generated will not be sold outside the SEZ."

9. We find that the Central Board of Direct Taxes had also come out with a Circular No. 16/2017 dated 25.4.2017 to this effect in the context of allowability of deduction u/s 80IA(4)(iii) of the Act in respect of income derived from Industrial Parks / SEZ. For the sake of convenience, the said Circular is reproduced below:-

Circular No. 16/2017 dated 25.4.2017

SECTION 28(*i*) OF THE INCOME-TAX ACT, 1961 - BUSINESS INCOME - CHARGEABLE AS - LEASE RENT FROM LETTING OUT BUILDINGS/DEVELOPED SPACE ALONG WITH OTHER AMENITIES IN AN INDUSTRIAL PARK/SEZ TO BE TREATED AS BUSINESS INCOME CIRCULAR NO.16/2017 [F.NO.279/MISC./130/2015/ITJ], DATED 25-4-2017

The issue whether income arising from letting out of premises/developed space along with other amenities in an Industrial Park/SEZ is to be charged under head 'Profits and Gains of Business' or under the head 'Income from House Property' has been subject matter of litigation in recent years. Assessees claim the letting out as business activity, the income arising from which to be charged to tax under the head 'Profits and Gains of Business', whereas the Assessing Officers hold it to be chargeable under the head 'Income from House Property'.

***2.** The matter has been considered by the Board. Income from the Industrial Parks/SEZ established under various schemes framed and notified under section 80-IA(4)(iii) of the Income-tax Act, 1961 ('Act') is liable to be treated as income from business provided the conditions prescribed under the schemes are met.*

In the case of Velankani Information Systems Pvt Ltd., [2013] 35 taxmann.com 1 (Karnataka) the Hon'ble Karnataka High Court observed that any other interpretation would defeat the object of section 80-IA of the Act and government schemes for development of Industrial Parks in the country. SLPs filed in this case by the Department have been dismissed by the Hon'ble Supreme Court.

In a subsequent judgment dated 30-4-2014 in ITA No. 76 & 78/2012 in the case of CIT v. Information Technology Park Ltd., [2014] 46 taxmann.com 239 (Karnataka) the Karnataka High Court has reaffirmed its earlier views. It has held that, since the assessee-company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Income from Business" and not under the head "Income from House Property". The judgment has been accepted by the Board.

***3.** In view of the above, it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial*

park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

4. *Accordingly, henceforth, appeals may not be filed by the Department on the above settled issue and those already filed may be withdrawn/not pressed upon.*

5. *The above may be brought to the notice of all concerned.*

10. Further we find that the Department of Commerce, Ministry of Commerce and Industry, Government of India vide Notification dated 27.10.2006 had permitted various items as part of IT/ITES in a SEZ. In that notification, item no. (viii) contains Parking including Multi-level car parking (automated or manual) and item no. (xxiii) contains Food Services including Cafetaria, food court(s) , Restaurants, coffee shops, canteens and catering facilities. This notification is enclosed in Pages 100 and 101 of the Paper Book.

11. In view of the aforesaid observations and respectfully following the CBDT Circular, Notifications of Ministry of Commerce and Industry and the judicial precedent relied upon hereinabove, we hold that the income derived from car parking rentals and sale of food and beverages would have to be construed as income derived from business of developing and operating the SEZ and consequentially would be eligible for deduction u/s 80IAB of the Act.

12. With regard to interest income on fixed deposits, the ld. AR at the behest of this Bench had submitted that the assessee company in order to develop and operate the SEZ had placed bank guarantees in the form of fixed deposit to Department of Industries & Commerce, Government of India of Rs 3.10 crores and President of India, State Pollution Board of Rs 1.25 crores in earlier years. The said fixed deposits had fetched interest income of Rs 43,64,877/- to the assessee company during the year. We find that the said fixed deposits were given for the purpose of securing the bank guarantee to commence the business of developing and operating the SEZ from

Government of India and bank guarantees were given only to Government of India. Hence the issuance of bank guarantees to Government of India and for that purpose placing fixed deposits by the assessee, becomes interlined and inextricably linked with the operating business of the assessee. Accordingly, it could be safely concluded that the interest income on fixed deposits would partake the character of business receipts and consequentially eligible for deduction u/s 80IAB of the Act. Our view is further fortified by the decision of Hon'ble Supreme Court in the case of CIT vs Karnal Co-operative Sugar Mills Ltd reported in 243 ITR 2(SC) ; CIT vs Bokaro Steel Ltd reported in 236 ITR 315 (SC). We find that but for the issuance of bank guarantee to the Government of India, the assessee could not have completed the first step of setting up of business of developing and operating the SEZ without the business itself would not have commenced. Hence the first degree nexus of placing fixed deposits for securing bank guarantees qua the business of the assessee stands clearly established. Accordingly, the interest income earned thereon would be eligible for deduction u/s 80IAB of the Act. This view is further fortified by the decision of Hon'ble Supreme Court in the case of CIT vs Meghalaya Steel Ltd reported in 383 ITR 217 (SC). Hence we hold that interest income on fixed deposits would be eligible for deduction u/s 80IAB of the Act in the instant case.

13. However, with regard to other non-operating income of Rs 71,600/- is concerned, the assessee had not furnished any details regarding the same proving the business nexus of such receipt. No arguments were even advanced before us regarding the same proving the nature of receipt. Hence we hold that this sum of Rs 71,600/- being other non-operating income would not be eligible for deduction u/s 80IAB of the Act. To this extent, the order of the ld. CIT(A) is confirmed.

14. Accordingly, the Ground Nos. 1 to 6 raised by the assessee are partly allowed in the abovementioned terms.

15. The Ground No. 7 raised by the assessee was stated to be not pressed by the ld. AR before us. The same is reckoned as a statement made from the Bar and accordingly dismissed as not pressed.

16. The Ground Nos. 8 to 10 raised by the assessee are only seeking proper credit for TDS and TCS. This requires factual verification. Hence we direct the ld. AO to grant the TDS and TCS credit as per law. Accordingly, the Ground Nos. 8 to 10 raised by the assessee are allowed for statistical purposes.

17. The Ground No.11 raised is challenging the levy of interest u/s 234B of the Act which is consequential in nature. With regard to chargeability of interest u/s 234C of the Act is concerned, the law is very well settled that the same should be charged only on the returned income and not on the assessed income.

18. The Ground No. 12 raised by the assessee is challenging the initiation of penalty proceedings u/s 271(1) (c) of the Act which would be premature for adjudication at this stage. Hence dismissed.

19. In the result, the appeal of the assessee is partly allowed for statistical purposes.

ITA No. 1647/Del/2021- Asst Year 2014-15 – Revenue Appeal

20. The only issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in deleting the disallowance made on account of brokerage expenses in the sum of Rs 5,75,71,357/- in the facts and circumstances of the case.

21. We have heard the rival submissions and perused the materials available on record. We find that the ld. CIT(A) had observed that the assessee had submitted ledger account of brokerage expenses along with copies of expenses made during the year. Since the said issue was already decided in favour of the assessee by the order of his predecessor in the case

of Candor Gurgaon Two Developers & Projects Pvt Ltd vide order dated 22.2.2019, the ld. CIT(A) deleted the disallowance made for the year under consideration also, after ascertaining that the factual matrix in both the cases are exactly identical. Further we find that this issue was subject matter of adjudication by the co-ordinate bench of Delhi Tribunal in the case of Candor Kolkata One Hi-Tech Structures Pvt Ltd vs ACIT in ITA No. 6937/Del/2018 for Asst Year 2013-14 dated 22.11.2023, wherein it was held as under:-

"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, Id. 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, Id. 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 Id. Counsel for the assessee has argued that in any case, the whole income of the assessee is tax free by virtue of Section 801AB 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."

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

22. Respectfully following the same, the grounds raised by the revenue are dismissed.

23. To sum up, the appeal of the assessee is partly allowed for statistical purposes and appeal of the revenue is dismissed.

Order pronounced in open court on 01.05.2024.

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:01.05.2024.
MP
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI