

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.1602/Mum/2024
(Assessment Year: 2013-14)**

DCIT-CC-7(3), Room No-655, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400 020	vs	Arihant Premises Private Limited 412, Floor-4, Vardhaman Chamber Cawasji Patel Road, Horniman Circle, Fort, Mumbai-400 001 PAN : AAACA7260K
APPELLANT		RESPONDENT

Assessee by : Shri Neeraj Sheth
Respondent by : Shri Manoj Kumar Sinha (SRDR)

Date of hearing : 11/07/2024
Date of pronouncement : 24/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The instant appeal of the revenue was filed against the order of the Learned Commissioner of Income-tax (Appeals)-49, Mumbai [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2013-14, date of order 23.01.2024. The impugned order was emanated from the order of the Learned Deputy Commissioner of Income-tax, Central Circle 7(3), Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act date of order 30/03/2016.

2. The revenue has taken the following grounds of appeal:-

"1. "Whether on facts and circumstances of the case and in law, the Ld CIT(A) was right in deleting the disallowance of Rs.7,40,79,767/- mad by Assessing Officer u/s 36(l)(iii) and capitalizing the same t inventory?"

2. "Whether on facts and circumstances of the case and in law, the Ld CIT(A) was right in deleting the disallowance of Rs.7,40,79,767/-, without considering the fact that the auditor has allocated the said interest cost of Rs.7,40,79,767/ -to the cost of project.?"

3. "Whether on facts and circumstances of the case and in law, the L CIT(A) was right in deleting the disallowance of made by Assessing Officer u/s 36(l)(iii) and holding that the assessee is eligible j claiming the deduction on interest ignoring the decision of its sped bench in the case of 'Wall Street Construction Ltd. ?"

4. "Whether on facts and circumstances of the case and in law, the L CIT(A) is justified in deleting the disallowance of Rs.77,621/- made u/s 14A of the Act in the light of CBDT Circular No.5 of 2014 dated 11.02.2014?"

5. "Whether on facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance of Rs.77,621/-made u/s 14A of the Act while computing the book profit u/s, 115JB of the Act as the AO made disallowance based on calculation as per section 14A r.w.Rule 8D"

6. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance of Rs.8,14,064/-made u/s. 36(l)(iii) of the Act without considering the fact that the assessee claimed huge interest for borrowed funds however not charged any proportionate interest on advance given to M/s. Poonam Fast Foods Put Ltd?"

3. The brief facts of the case are that the assessee is a developer of residential project named 'Lodha Aristo' and a commercial project name 'Lodha Experia' at Majiwada, Thane, during the impugned assessment year. The assessment was completed under section 143(3) with an addition in various heads. Finally, the

total income was assessed amount to Rs. 4,13,47,204/- after adjusting the loss of the assessee claimed during the filing of return under section 139(1) of the Act. Aggrieved, assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) allowed the assessee's appeal and the additions were deleted. Being aggrieved on the appeal order, the revenue has filed the appeal by challenging the following deletion by the Ld.CIT(A), which are as below:-

1) Interest claimed as revenue expenses	Rs.7,40,84,000/-
2) Interest expenses disallowed u/s 36(1)(iii)	Rs. 8,14,064/-
3) Disallowance u/s 14A r.w.r.8D	Rs. 77,621/-

4. The Id.DR vehemently argued and fully relied on the assessment order.

5. The Id.AR argued and filed a written submission which is kept in the record (in short, 'APB'). The Ld.AR proceeded with the argument ground-wise.

Grounds 1 & 2

6. The Ld.AR placed that the assessee claimed the expenses of interest as revenue expenses amount to Rs.7,40,84,000/- related to the loan from the bank. The assessee is following the project completion method. The entire amount of interest was treated as work-in-progress as the loan amount is invested in the work-in-progress by the Id. AO. The Ld.AR invited our attention in appeal order which is reproduced as below:-

“10.1 During the course of assessment proceedings, the AO noticed that the appellant company was developing a residential project named 'Lodha Aristo' and a commercial project named 'Lodha Experia' at Majiwada, Thane, during the year. The company was following mercantile system of accounting and for the purpose of recognizing the revenues from the above projects, it was following

percentage completion method of accounting. For the purpose of construction of the above projects, the appellant company had borrowed interest-bearing funds from bank as also from group concern and the loan outstanding as on 31/03/2013 was Rs.4319 lakhs. The appellant had paid total interest of Rs.820.64 lakhs on the aforesaid loans during the year, and after reducing the interest income of Rs.79.84 lakhs earned during the year, the net interest expenditure of Rs.740.80 lakhs was debited to the Profit & Loss Account and claimed as deduction by the appellant. When queried about allowability of the said interest expenditure by the AO, the appellant submitted that the interest being a periodic cost, the expenditure was claimed as deduction in the year to which it pertained. The appellant also contended before the AO that the deduction is allowable u/s. 36(1)(iii) of the Act, since the interest pertained to its stock in trade. Reliance was placed by the appellant in this regard on the judgement of Hon'ble Supreme Court in the case of Taparia Tools Pvt. Ltd. v. JCIT (Civil Appeal No. 6366/2003 SC) and the decision of Hon'ble Bombay High Court in the case of CIT v. Lokhandwala Construction Inds Ltd. [260 ITR 0579 (Bom.)]. The contention of the appellant was not found to be acceptable by the AO. He observed that the appellant was developing only one project. The accounting of the construction activity is governed by Accounting Standard 7 and guidance note on accounting for real estate transactions issued by the Institute of Chartered Accountants of India (ICAI), as per which all expenses directly related to the project have to be carried over and debited to the cost of the project and such expenses can be claimed as deduction in the year in which the corresponding income of the project is credited in the books of accounts and offered to tax. The appellant has added all other expenses except interest to the work-in-progress. Though expenditure on account of salary is also a periodic fixed cost, the appellant has not claimed the expenditure as deduction like interest expenses and has added the same to the work-in-progress. Thus, the appellant has given different treatments to the expenses and has not followed the correct method for accounting the expenses which are directly related to the project. Accordingly, the AO held that the entire interest expenditure claimed by the appellant should be added to the work-in-progress during the year and the same will be allowable as deduction only in the year in which the revenue pertaining to the said interest is offered to tax. The AO placed reliance in this regard on the decision of Hon'ble Special Bench of ITAT, Mumbai, in the case of M/s. Wall Street Construction Ltd. (102 TTJ 505). The AO also stated that the decisions relied upon by the appellant are distinguishable on

facts. Accordingly, the AO disallowed appellant's claim of deduction of interest amounting to Rs.740.84 lakhs.

10.2 *It is an undisputed fact that the appellant has followed percentage completion method for the purpose of recognizing revenue from its project. The funds were borrowed for the purpose of construction and have gone into the project of the appellant which constitute stock-in-trade. The interest paid on these borrowed funds have been claimed as expenditure in the P&L Account instead of capitalizing the same to WIP. On perusal of appellant's submission, I find that, this issue is covered by the decision of the Hon'ble Mumbai Tribunal in case of appellant's group companies in following cases.*

Sr. No.	Name of group company	ITAT Appeal No.	Date of ITAT order	Assessment Year
1	National Standard (India) Limited	3048/M/2019	05/04/2021	2013-14
2	Macrotech Developers Limited	68/Mum/2019	28/03/2022	<u>2015-16</u>
	Macrotech Developers Limited (Successor to Bellissimo Crown Build Mart Pvt Ltd)	2336/Mum/2019		<u>2013-14</u>
3	MMR Social Housing Private Limited	1310/M/2021	08/04/2022	2014-15
4	Sanathnagar Enterprises Ltd	792/M/2019 & 793/M/2019 & 794/M/2019	12/04/2022	2013-14
	Sanathnagar Enterprises Ltd			
	Sanathnagar Enterprises Ltd			
5	Cowtown Infotech Services Pvt Ltd (earlier known as Cowtown Land Development Private Limited)	4053/M/2019	26/04/2022	2013-14
6	Macrotech Developers Limited	2148/Mum/2018	12/05/2022	2014-15

7	Palava Dwellers Pvt Ltd	2147/Mum/2018	20/02/2020	2014-15
8	Palava Dwellers Pvt Ltd	1594/Mum/2019	30/08/2022	2015-16
9	MMR Social Housing Pvt Ltd	1891/Mum/2022	21/09/202	2013-14
	Lodha Impression Real Estate Pvt Ltd	1894/Mum/2022		2015-16
10	Sahajanand Hi-Tech Constructions Pvt Ltd	1893/MUM/2021	09/11/2022	2016-17
11	Lodha Impression Real Estate Pvt Ltd	2154/MUM/2022	28/11/2022	2014-15

Grounds 4 & 5:

7. The Ld.AR first placed that the addition was made under section 14A read with rule 8D of the Income-tax Rules, 1962 (in short, 'the rule') amount to Rs.77,621/-. The assessee claimed that there is no such exempted income earned by the assessee during the impugned assessment year. Accordingly, Ld.AR fully relied on the observation of the Ld.CIT(A). The relevant paragraphs are duly reproduced as below:-

"13. DECISION:

13.1 *The AO noticed that during the year under consideration, the appellant had made an investment of Rs.7.85 lakhs in equity shares of Indian companies, but no disallowance u/s.14A of the Act had been made by the appellant. During the course of assessment proceedings, the AO required the appellant to explain as to why disallowance u/s.14A of the Act read with Rule 8D of the Rules should not be made. In reply, the appellant submitted that the investment of Rs.7.8 lakhs had been made in the preceding years and it had not incurred any expenses for the purpose of the investments during the year under consideration. The appellant also submitted that it had own funds like share capital, reserves and surplus to the tune of Rs.5.83 Cr, which proved that the investments of Rs.7.8 lakhs had*

been made out of its own funds. Relying upon the decisions of Hon'ble Bombay High Court in the cases of Reliance Power and Utilities Ltd. v. CIT (313 ITR 340) and HDFC Bank Ltd. v. CIT (366 ITR 505), the appellant contended before the AO that no disallowance u/s. 14A read with Rule 8D was called for in its case. However, the AO held that the contention of the appellant that the investments had been made out of own funds is not acceptable for the reasons that (i) the appellant had borrowed huge funds from financial institutions and group concerns; and (ii) the appellant failed to prove that the borrowed money had been used exclusively for the business purposes and only own funds had been used for the purpose of making investments in shares. The AO further held that making investments for the purpose of earning income needs time and efforts by way of conducting board meetings, taking opinion of experts, etc., for which some expenses would be incurred. Therefore, some of the expenses incurred by the appellant are required to be considered as attributable and incurred for earning income which does not forms part of the total income. Accordingly, the AO held that the explanation offered by the appellant is not satisfactory. He, therefore, worked out the amount disallowable u/s.14A of the Act read with Rule 8D of the Rules at Rs.77,6217-, which includes Rs.3,915/- and Rs.73,706/- worked out as per clause (ii) clause (iii) of Rule 8D(2), respectively.

13.2 The appellant has made detailed submissions in this regard before me. It is contended that the appellant had not earned any exempt income during the year and that its own funds far exceeded the amount of investments, and, thus, the appellant had not incurred any expenditure in relation to earning any exempt income. Relying on judicial pronouncements, the appellant has contended that when the assessee has not earned any exempt income during the relevant year, disallowance u/s. 14A read with Rule 8D cannot be made. The appellant has also placed reliance on the orders of learned CIT(A) in the case of various group companies, in support of the contention that the disallowance should be

restricted to the extent of exempt income earned during the relevant year and where there is no exempt income earned by the assessee during the relevant year, no disallowance u/s.14A r.w.r. 18D is warranted. It has been further contended that the provisions of Section 14A of the Act would not be applicable when the interest-free funds are higher than the investments. No disallowance u/s.14A can be made without establishing the relationship between the indirect expenses incurred and the exempt income earned. Finally, the appellant contended that the amendment made by the Finance Act, 2022 to Section 14A cannot be presumed to have retrospective application and reiterated that for the year under consideration, no disallowance u/s.14A could be made if no exempt income was earned by the assessee. Without prejudice to the above contentions, the appellant also contended that the disallowance under Rule 8D(2)(ii) should be worked out on the net interest expenditure.

*13.3 On perusal of financial statements submitted as Annexure 1 vide appellant's submission dated 06/11/2023, it is observed that the appellant was having sufficient own funds. Share capital, reserves and surplus are of Rs.5.83 Cr whereas the investment in equity shares is of Rs.7.85 lakhs . I find that the Jurisdictional High court in case of **CIT vs Reliance Utilities & Power Ltd[2009] 178 Taxman 135** held that if the funds are available with the assessee, which are sufficient to meet investments , then presumption would arise that the investment is made out of funds so available with the assessee. The relevant portion of the decision is reproduced as under-*

"....10. If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd. 's case (supra) had the occasion

*to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. 's case (supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd. 's case (supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. **The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT (Appeals) and ITAT...***

Grounds 3 & 6:

8. The disallowance was made under section 36(1)(iii) amount to Rs.8,14,064/-. The assessee had given finance of Rs.4.90 crores to M/s Poonam

Fast Food Pvt Ltd on 21/02/2013 for buying of shares of another company, viz. Roselabs Finance Pvt Ltd. However, the share was acquired in the next year and not in the impugned assessment year. Therefore, the Id. Assessing Officer disallowed the interest paid by the assessee proportionately @15.54% which works out to amount of Rs.8,14,064/-. The Ld.AR during hearing placed that the assessee has a sufficient balance and the capital balance is made up of share capital and reserve which is amount to Rs.5.83 crores whereas advance was made of Rs.4.90 crores which is below the capital of the assessee. The Ld.AR fully relied on the order of the Ld.CIT(A). The relevant part of the observation of Ld.CIT(A) is reproduced as below: -

“16.1 The AO found during the course of assessment proceedings that the appellant had given an advance of Rs.4.90 Cr. to M/s. Poonam Fast Foods Pvt. Ltd. on 21/02/2013 for buying the shares of another company, viz. Roselab Finance Pvt. Ltd. However, the shares were acquired only in the next year. Therefore, the AO required the appellant to explain as to why interest pertaining to the aforesaid advance should not be disallowed u/s. 36(1)(iii) of the Act. In reply, the appellant submitted that the advance had been given out of own funds, and, hence, no disallowance was called for. However, the AO held that the appellant failed to prove that own funds had been used for giving the advance. Therefore, he held that proportionate interest @ 15.54% is disallowable u/s. 36(1)(iii) of the Act. He, accordingly, made an addition of Rs.8,14,064/- (Rs.4,89,95,539 x 15.55% x 39 days / 365 days) to the total income of the appellant.

16.2 The appellant vide its submission dated 06/11/2023 submitted that the company's own funds were sufficient to give advance to M/s. Poonam Fast Foods Private Limited for the purposes of acquiring shares of M/s. Roselabs Finance

Limited. The appellant also submitted that same ground in respect of disallowance under section 36(1)(iii) of the Act is already covered and decided in favour of the appellant by the predecessor CIT(A) in appellant's own case for AY 2015-16 vide order dated 29/01/2017. The facts of the appellant's case for captioned assessment year are identical to the facts of AY 2015-16. The learned CIT(A), in his order dated sister concern to another sister concern as per requirement of funds. The Ld.AR submissions are realistic and duly supported

"6.2.3. On perusal of the details filed by the assessee it is evident that the assessee had sufficient own funds even on account of selling of debentures during the year. Hence, I am of the considered view that since the sufficiency of own fund is established in this case, no disallowance is called for on this account. The disallowance is accordingly directed to the deleted. The Ground No. 1 is accordingly ALLOWED."

16.3 On perusal of financial statements submitted as Annexure 1 vide appellant's submission dated 06/11/2023, it is observed that the appellant was having sufficient own funds. Share capital, reserves and surplus are of Rs.5.83 Cr. I find that the Jurisdictional High court in case of **CIT vs Reliance Utilities & Power Ltd[2009] 178 Taxman 135** held that if the funds are available with the assessee, which are sufficient to meet investments, then presumption would arise that the investment is made out of funds so available with the assessee and therefore, no disallowance u/s 36(1)(iii) can be made.

I also find that the Hon'ble Mumbai ITAT on the identical facts has decided this issue in favour of the appellant's group company, in M/s Macrotech Developers Ltd. (successor to Bellissimo Hi Rise Builders Pvt. Ltd.) ITA No.490/Mum./2022 for AY 2014-15:

*16.4 In view of the fact that the appellant was having sufficient own fund to explain the advances of Rs.4.90 Cr. given to M/s. Poonam Fast Foods Pvt. Ltd, respectfully following the decision of Jurisdictional High court in case of CIT vs Reliance Utilities & Power Ltd[2009] 178 Taxman 135, the disallowance made by the A.O is deleted. Accordingly the ground of appeal no 3 is **ALLOWED.**"*

9. We heard the rival submission considered the documents available in the record. Related to disallowance of interest amount to Rs.7,40,84,000/- and added in the work-in-progress is duly covered by the co-ordinate bench of ITAT, Mumbai and list of the cases are above placed in the appeal order. Further, the Ld.CIT(A) relied on the order of **CIT vs Lokhandwala Construction Industries Ltd 260 IT 0579 (Bom)**. In the order, Ld. CIT(A) has already distinguished the order of the Hon'ble Special Bench of ITAT, Mumbai in the case of **M/s Wallstreet Construction 102 TTJ 505**. In relation to the disallowance under section 14A, the Ld.CIT(A) fully relied on the order of **Reliance Powers & Utilities vs CIT 313 ITR 340(Bom)** and the assessee had declared that there is no exempt income during this impugned assessment year. So, disallowance under section 14A is quashed. For disallowance under section 36(1)(iii), it is clear that the assessee has sufficient amount to lend the amount to the party for purchasing the shares. We fully relied on the order of the Hon'ble Bombay High Court. We find that there is no merit in the appeal of the revenue. We are not interfering in the appeal order. In our considered view, appeal of the revenue is dismissed.

10. In the result, **ground Nos.1 to 6** of appeal of revenue are dismissed.

Order pronounced in the open court on 24th day of July, 2024.

Sd/-

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 24/07/2024

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

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(Asstt. Registrar), ITAT, Mumbai