

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नईमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकर अपील सं. ITA No.777/Chny/2023**  
**(निर्धारणवर्ष / Assessment Year: 2017-18)**

<b>DCIT</b> Corporate Circle-1(1) Chennai.	<b>बनाम/</b> <b>Vs.</b>	<b>M/s. Casagrاند Premier Builder Limited</b> (earlier known as Casa Grand Builder P. Ltd.) 5 <sup>th</sup> floor, NPL Devi, New No.111, Old No.59. LB Road, Thiruvanmiyur, Chennai-600 041
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AACCC-2758-A</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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**2. आयकर अपील सं./ ITA No.726/Chny/2023**  
**(निर्धारणवर्ष / Assessment Year: 2017-18)**

<b>M/s. Casagrاند Premier Builder Limited</b> (earlier known as Casa Grand Builder P. Ltd.) 5 <sup>th</sup> floor, NPL Devi, New No.111, Old No.59. LB Road, Thiruvanmiyur, Chennai-600 041	<b>बनाम</b> <b>/ Vs.</b>	<b>JCIT(OSD)</b> Corporate Circle-1(1) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AACCC-2758-A</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Revenue by</b>	:	Mrs. Swapna Nanu Ambath & Sh. V. Nanda Kumar Ld. CIT-DRs a/w Shri D. Hema Bhupal (JCIT) – Ld. Sr. DR
प्रत्यर्थी की ओरसे/ <b>Assessee by</b>	:	Shri B.Ramakrishnan (CA)-Ld. AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	25-06-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08-08-2024

## आदेश / O R D E R

### Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross appeals for Assessment Year (AY) 2017-18 arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 05-04-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28-12-2019.

1.2 The name of the assessee has been changed as mentioned in the cause title. The Ld. AR has filed revised Form 36 reflecting the aforesaid changes which is taken on record.

1.3 The registry has noted delay of 10 days in the revenue's appeal, the condonation of which has been sought by revenue. Considering the period of delay, the delay is condoned and we proceed for adjudication of appeal on merits.

#### 1.4 The grounds raised by the assessee read as under:-

1. The order passed by the Learned CIT (A), is opposed to law and contrary to the facts and circumstances of the case and is therefore unsustainable.
2. The Ld AO and the Ld CIT(A) have erred in making an addition of Rs.2,47,29,600/- by disallowing the interest on loan borrowed on behalf of Casa Grande Shelter LLP on the contention that the same was not utilized for the purpose of business of the appellant.
3. The Ld AO and the Ld CIT(A) have failed to appreciate that advances given to sister concerns would fall within the ambit of the word "commercial expediency" and hence the corresponding interest ought to have been allowed in the hands of the appellant.
4. Both the Ld. AO and the Ld CIT(A) erred in disallowing the expenses without considering the fact that the same is already taxed in the recipient's hands and disallowing it in the hands of the appellant amounts to taxing the same twice.
5. Without prejudice to the above, the appellant pleads that the if the interest is disallowed in the hands of the appellant, the benefit of the expense should be allowed in the hands of the group company.

#### 1.5 The grounds raised by the revenue read as under: -

1. The order of the CIT(A) is contrary to law, facts and circumstances of the case.
2. Whether the Ld. CIT(A) has erred in granting relief to the assessee by deleting the addition made u/s 69C of IT Act on account of commission claimed to have been paid by

the assessee to M/s Silicon Valley Components Pvt. Ltd merely based on a chart prepared by the assessee without any actual evidence?

3. Whether the Ld. CIT(A) has erred in granting relief to the assessee by deleting the addition made u/s 69C of IT Act on account of research and survey expenses claimed to have been aid to IRIS Development LLP merely based on invoices submitted by the assessee without any form of survey or inspection reports etc.?

4. Whether the Ld. CIT(A) has erred in granting relief to the assessee by deleting the addition made on account of interest accrued to the assessee ignoring the fact that assessee has actually claimed interest expenses to the tune of Rs.9,16,69,668/- despite claiming that the interest free loans were given out of surplus funds available with the assessee?

As is evident, the sole ground of assessee's appeal is interest disallowance whereas the grievance of the revenue is two-fold i.e., disallowance of certain expenses and interest disallowance.

1.6 The Ld. CIT-DR advanced arguments in support of additions made in the assessment order. The Ld. CIT-DR assailed the relief granted by Ld. CIT(A). The Ld. AR also advanced arguments supporting the case of the assessee. The appeals were put up for clarification which was responded to by both the sides. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in construction / real estate activities.

## **2. Disallowance of Interest expenses**

2.1 The Ld. AO observed that the assessee granted interest-free loans to its subsidiary companies for Rs.81.52 Crores whereas the assessee claimed interest expenses of Rs.916.69 Lacs. The Ld. AO held that the same call for addition of notional interest on interest-free advances given by the assessee. The assessee defended its stand and submitted that it has reserves and surplus of Rs.60.60 Crores. It has also availed interest free advances of Rs.26.10 Crores from M/s Casa Grande Coimbatore LLP in which the assessee was a major

partner. Therefore, interest-free funds available with the assessee were much more than the advances given by the assessee. It was further submitted that it had given advances to its subsidiary companies for acquisition of land. The advances so given were out of interest-free funds available with the assessee and therefore, no notional interest could be charged on advances given by the assessee. However, Ld. AO, inter-alia, held an opinion that if the assessee had given advances to third-parties, he would have earned interest. Accordingly, Ld. AO applied SBI rate of 14% on the advances and worked out an amount of Rs.11.41 Crores as interest due but foregone in favor of related party.

2.2 The Ld. CIT(A) observed that the assessee funded the advances out of reserves and surplus and interest free deposits, The assessee also submitted supporting documents such as details of project specific loans, expected development cost etc. Such advances were given out of commercial expediency with specific intention to acquire land parcels. Therefore, such advances were trade advances and not loans. Therefore, the addition was deleted against which the revenue is in further appeal before us.

2.3 From the fact, it emerges that Ld. CIT(A) has granted relief to the assessee on the ground of commercial expediency without considering the fact that the assessee and its subsidiaries were separate legal entities. The interest expenditure could be allowed to the assessee only if the assessee was able to prove the business nexus with the advances given by the assessee. Further, it was the onus of the assessee to prove that funds were given out of free funds and not out of borrowed funds. Similar issue of interest disallowance

has been restored back by us in revenue's appeal for AY 2016-17, ITA No.721/Chny/2023. To enable revenue to take consistent stand in the matter, we remit this issue back to the file of Ld. AO for de novo adjudication with a direction to the assessee to substantiate its case. The corresponding grounds of revenue's appeal stand allowed for statistical purposes.

### **3. Disallowance of Commission / Brokerage Paid**

3.1 The assessee paid commission / brokerage of Rs.547.31 Lacs to M/s Silicon Valley Auto Components Pvt. Ltd. (SVACPL) and accordingly, the assessee was required to substantiate proof of services rendered by that entity. The assessee submitted that this entity was having experience in identifying the purchasers / customers for purchasing apartments / flats and facilitating sale of residential projects. The assessee engaged the services of SVACPL vide Memorandum of Understating (MOU) for identifying and referring the customers for certain projects being developed by the assessee. The said MOU was stated to be impounded by the department during survey in the case of group company (M/s Casa Grande Vallam LLP) on 30-12-2015 and therefore, the copy of MOU could not be produced. However, Ld. AO held an opinion that the assessee could not submit any proof of rendering of the services. To verify the genuineness of submissions, a letter was sent to AO holding jurisdiction of M/s Casa Grande Vallam LLP calling for impounded document. It was confirmed that the said documents were not part of impounded material. The assessee continued to maintain that the said entity rendered the services against commission. The details containing project-wise customers referred,

respective sale value for the unit referred and commission paid for each unit was furnished which has also been extracted in the assessment order. However, Ld. AO rejected the submissions of the assessee and added the same as unexplained expenditure u/s 69C to the income of the assessee.

3.2 The Ld. CIT(A) deleted the same on the ground that the assessee had filed the requisite details. The Ld. AO did not consider the factor that SVACPL had acted as an agent for referring specific class of clients which is mostly based on word of mouth and the sale generated based on such efforts are also evident in the present case. The Ld. AO has not questioned the sale generated by the assessee because of efforts of SVACPL. The commission was paid at nominal rate of 1.75%. Therefore, disallowance was not justified. Aggrieved, the revenue is in further appeal before us.

3.3 From the facts, it emerges that the assessee is stated to have referral commission to this party for bringing in the customers for purchase of properties in its projects. However, the assessee has failed to demonstrate rendering of services by that entity. Even the copy of MOU has not been made available. The claim has to be substantiated by documentary evidences. Considering all these facts, the claim, in our opinion, has remained unsubstantiated. Under these circumstances, we restore this issue back to the file of Ld. AO for de novo adjudication with a direction to the assessee to substantiate its case. The corresponding grounds raised by the revenue stand allowed for statistical purposes.

#### **4. Disallowance of expenses paid to IRIS Development LLP**

4.1 The assessee paid research & survey expenses to this entity for Rs.158.88 Lacs. The assessee submitted that this entity was specialized in the field of conducting research and survey in the field of real estate. They provided services by conducting market research and survey etc. for starting the projects of the assessee. The copy of the invoices was also enclosed. However, Ld. AO held that no proof of rendering of services was furnished by the assessee. Therefore, the amount of Rs.158.88 Lacs was added to the income of the assessee as unexplained expenditure u/s 69C of the Act.

4.2 Upon further appeal, the Ld. CIT(A) observed that the assessee had furnished the invoices which was not considered by Ld. AO. The assessee also explained commercial expediency of such payment along with supporting document and the same was found to be reasonable. Accordingly, impugned addition was deleted. Aggrieved, the revenue is in further appeal before us.

4.3 We find that similar is the situation here wherein the assessee failed to demonstrate rendering of services by this entity during the course of assessment proceedings. Except for invoices, apparently, no other document has been produced in support of the claim. Without establishing the fact of rendering of services, this claim could not be allowed. Therefore, we restore this issue back to the file of Ld. AO for de novo adjudication with a direction to the assessee to substantiate its case. The corresponding grounds raised by the revenue stand allowed for statistical purposes. The appeal of the revenue stand allowed for statistical purposes.

#### **5. Disallowance of interest paid to M/s JM Financial Solutions**

5.1 The assessee incurred interest expenses of Rs.247.29 Lacs on loan obtained from this entity. The assessee submitted that the loan was related to the project 'Cherry pick' carried on by M/s Casa Grande Shelter LLP in which the assessee held 99% shareholding. It was also submitted that the assessee as well as other entity was in the same line of business. Since the LLP was not in a position to avail loan independently, the assessee received the loan and gave it to LLP. Since the assessee was 99% partner in the LLP, it was normal for the assessee to provide loan out of commercial expediency. Further, the LLP was not claiming interest to that extent in their financials. If the interest was disallowed in the assessee's hands, it was to be allowed in the hands of the LLP. However Ld. AO held that the other entity was incurring losses of Rs.101.40 Lacs and hence claiming interest expenses would be of no benefit to the related party. On one hand, the assessee was assuming the tax burden on account of the related party and on the other hand, the interest income was foregone while the related party was booking losses. There was conscious arrangement between the related parties to escape the tax incidence in the hands of both the parties. The impact of non-charging of interest should be seen from the angle of both the cases. Accordingly, the impugned interest of Rs.247.29 Lacs as paid by the assessee was disallowed on the conclusion that the same was not utilized for the purpose of the business of the assessee and no corresponding income was offered to tax.

5.2 The Ld. CIT(A) confirmed this addition on the ground that merely claiming to be commercial expediency would not be a justified ground for not charging interest especially when the assessee itself

was paying interest on such borrowed funds. Aggrieved, the assessee is in further appeal before us.

5.3 It could be seen that the assessee has obtained loan on behalf of its subsidiary for a certain project. The project has been carried out by assessee's subsidiary entity which is separate legal entity. The assessee has 99% shareholding in this entity and it could thus be said that the assessee has made capital investment in that entity. The reasons adduced by the assessee is that since the LLP was not in a position to avail loan independently, the assessee received the loan and gave it to LLP. In such a case, it was the subsidiary entity who had to bear the financial burden of the loan since it was subsidiary entity who applied the loan wholly and exclusively for its business purpose. Another notable feature is that the subsidiary entity is a loss making entity and accordingly, the interest burden could not be borne by the assessee unless business nexus was established and it was shown that the claim qualifies for deduction u/s 36(1)(iii). Therefore, on the facts and circumstances, we confirm this disallowance. The appeal of the assessee stands dismissed.

### **Conclusion**

6. The appeal of the assessee stands dismissed. The appeal of the revenue stand allowed for statistical purposes.

*Order pronounced on 8<sup>th</sup> August, 2024*

**Sd/-**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष / **VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 08-08-2024  
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF