

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, HON'BLE JUDICIAL MEMBER
AND
SHRI MANJUNATHA G, HON'BLE ACCOUNTANT MEMBER**

ITA Nos.675 & 676/Hyd/2020		
Assessment Years: 2014-15 and 2017-18		
M/s. Kausalya Agro Farms & Developers Private Limited, Hyderabad. PAN - AAGCS7285L	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
(Appellant / Assessee)		(Respondent)
Assessee by:	Shri S. Rama Rao, Advocate	
Revenue by:	Ms. Reema Yadav, Sr.AR.	
Date of hearing:	01.08.2024	
Date of pronouncement:	04.09.2024	

ORDER

PER BENCH :

These appeals filed by the assessee are directed against the order of learned Commissioner of Income Tax (Appeals) – 12, Hyderabad dated 18.09.2020 for the assessment years 2014-15 and 2017-18, respectively.

2. The grounds raised by the assessee read as under :

“1. The order of the ld.CIT(A) is erroneous to the extent it is prejudicial to the appellant.

2. The ld.CIT(A) erred in confirming the action of the Assessing Officer in initiating the proceedings u/s 147 of the I.T. Act particularly when the proceedings were initiated in connection with or as consequence to the search and seizure operations conducted u/s 132 of the I.T. Act.

3. The ld.CIT(A) erred in confirming the disallowance of fiancé charges of Rs.24,09,170/- out of Rs.2,31,41,088/- debited to the development expenditure without properly considering the fact that the expenditure was incurred in connection with and in relation to the business activity carried on by the appellant.”

3. The brief facts of the case are that the assessee, is a Kapil Group of company engaged in the business of real estate development. The assessee filed its return of income for AY 2014-15 on 28.09.2014, declaring a total income of Rs.5,54,961/-. A search and seizure operation under Section 132 of the Income Tax Act, 1961 was conducted on 07-04-2017 on the group of Kapil Consultancy Services Ltd and in which, the assessee was also covered. The assessment has been subsequently re-opened under Section 147 of the Income Tax Act, 1961 for the reasons recorded, as per which income chargeable to tax has escaped the assessment. Accordingly, a notice under Section 148 of the Act, dated 30-02-2019 was issued. In response to the notice under Section 148 of the Act, the appellant requested for reasons recorded for reopening the assessment. The reasons were communicated to the appellant. Thereafter, the appellant objected to the reopening proceedings and filed its objections. After considering the objections

given by the assessee, Assessing Officer completed the assessment under Section 143(3) read with Section 147 on 30.12.2019 and determined total income at Rs.2,42,11,976/- by making additions towards disallowance of finance charges and disallowance under Section 14A of the Act.

4. The assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A), for the reasons stated in their order dated 18-09-2020, partly allowed the appeal filed by the assessee, where he has confirmed the addition made by the AO towards disallowance of finance charges to the extent of Rs.24,09,170/-, however, he has deleted the addition towards disallowance u/s 14A of the Act.

5. The assessee preferred a further appeal before the Tribunal. The ITAT, Hyderabad Bench vide its common order in ITA No.675/Hyd/2020 dated 21-03-2022, set aside the issue to the file of the AO for fresh examination. The assessee filed an appeal before the Hon'ble High Court of Telangana, and the Hon'ble High Court of Telangana, in its common order dated 02-02-2023, set aside the common order passed by the Tribunal dated 21-03-2022 and directed the Tribunal to dispose of the appeal on the limited grounds urged by the appellant, namely, disallowance of interest expenditure under Section 36(1)(iii) of the Act to the extent disallowed by the first appellate authority as well as the validity of the reassessment proceedings.

6. The first issue that came up for our consideration from the assessee's appeal is the validity of re-opening of assessment under Section 147 of the Act.

7. The learned counsel for the assessee, Shri S. Rama Rao, submitted that the assessment in the impugned assessment year was re-opened after 4 years from the end of the relevant assessment year, without there being any fresh material with the AO to allege that there is an escapement of income on account of failure on the assessee to fully and truly disclose all material facts necessary for the assessment. The learned counsel for the assessee further submitted that the AO re-opened the assessment on the basis of reasons recorded, which are reproduced in the assessment order itself. The AO copied the reasons recorded in the case of M/s. Indur Developers and Agencies Pvt. Ltd., for the assessment year 2016-17 and made a sweeping observation that the Kapil group of companies were resorting to uniform practice for sale of flats from the buyers and diverting funds for non-business purpose to advance loans to other group companies, without being there any specific observation with regard to the appellant and escapement of income for that assessment year. Therefore, he submitted that the re-opening of assessment is invalid and needs to be quashed.

8. The Id.DR, Ms. Reema Yadav, on the other hand, supporting the order of the Id.CIT(A) submitted that the assessment has been reopened on the basis of fresh tangible material which came to the possession of the Assessing Officer, during the search proceedings, in the cases of the Kapil Group of Companies, where the modus

operandi of the assessee was unearthed, which reveals that the assessee is collecting advances from customers and paying interest, whereas diverting funds for non-business purpose. Based on specific information, the AO reopened the assessment, and thus, there is no merit in the argument of the counsel for the assessee that the reopening of the assessment is invalid.

9. We have heard both parties, perused the material on record, and gone through the orders of the authorities below. We have also carefully considered the reasons recorded by the AO for re-opening of the assessment. The sole basis for the AO to form a reasonable belief of escapement of income is on the basis of search conducted in the Kapil Group of Companies on 07-04-2017. The AO, based on the assessment of M/s. Indur Developers and Agencies Pvt. Ltd for A.Y. 2016-17, observed that the assessee has been showing the finance cost under the land development cost which has actually been spent for the development of land. Based on such opinion, Assessing Officer has formed a reasonable belief of escapement of income that interest paid by the appellant on loan advances received from customers towards the sale of flats is not incurred wholly and exclusively for the purpose of the business of the assessee. Therefore, Assessing Officer opined that there is a reason to believe that the income chargeable to tax has escaped the assessment.

10. We have given our thoughtful consideration to the reasons recorded by the AO to reopen the assessment under Section 147 of the Act, and we ourselves do not subscribe to the reasons given by the AO for the simple reason that, there is no live nexus between the reasonable belief of escapement of income on the basis of fresh

material which came to the possession of the Assessing Officer during the course of search and the escapement of income. If we go by the reasons recorded for reopening of the assessment, the AO reopened the assessment on the basis of material belonging to some other assessee and made a sweeping statement that all Kapil group companies are indulged in similar practice of collecting advances from customers for the sale of flats and diverting funds to other group companies for non-business purpose. Therefore, interest paid on customer advance is not wholly and exclusively for the purpose of the business of the assessee. In our considered opinion, the AO is entitled to reopen the assessment, if he has reason to believe that income chargeable to tax has escaped assessment for that assessment year. Further, two conditions must be satisfied for invocation of power under Section 147 of the Act. They are : (1) existence of reason to believe; (2) the escapement of any income chargeable to tax for assessment. The reason to believe by the AO should be based on fresh material which suggests escapement of income, and further, there should be a live nexus between the formation of belief and the material in the possession of the AO. In the present case, if we go by the reasons recorded by the AO, we find that the Assessing Officer formed his opinion of escapement of income of the assessee for AY 2013-14 on the basis of material found in the case of M/s. Indur Developers Pvt. Ltd for the assessment year 2016-17, though there is no material with the AO pertaining to the assessee for AY 2013-14. This legal principle is supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd reported in (2010) 320 ITR 561 (SC) wherein it has been clearly held that the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion

that there is escapement of income from assessment and further reasons must have a live link for formation of belief. A similar view has been taken by the Hon'ble Delhi High Court in the case of DCIT Vs. Rolls Royce Industrial Power India Ltd and Hon'ble Gujarat High Court in the case of Lambda Therapeutic Research Ltd. v. ACIT (2018) 402 ITR 177 (Guj.)

11. In the present case, the original assessment has been completed u/s 143(3) of the Income Tax Act, 1961 and the assessment has been reopened u/s 147 of the Act beyond 4 years from the end of relevant assessment year. Once the assessment has been reopened after 4 years, then proviso to Section 147(1) of the Act comes into operation and as per said provision, the assessment cannot be reopened unless there is a finding from the Assessing Officer on failure of the assessee to disclose fully and truly all material facts necessary for his assessment. In the present case, going by reasons recorded by the Assessing Officer, we find that the Assessing Officer has recorded reasons on the basis of assessment proceedings of M/s. Indur Developers Pvt. Ltd for the A.Y. 2016-17 and made a sweeping statement that all the Kapil Group of companies are indulging in practice of collecting advances from customers and diverting interest bearing funds for non-business purposes being investments with group companies in the form of share capital and loans and advances. Further, the Assessing Officer considered the loans and advances received from the customers from the notes to accounts filed by the assessee along with regular return of income to support his reasons. From the above, it is undoubtedly clear that the Assessing Officer has failed to make out a case on the failure on the part of the assessee to disclose

fully and truly all material facts necessary for his assessment. Unless the Assessing Officer make any allegations that the assessee has failed to disclose relevant facts for assessment, the assessment cannot be reopened beyond 4 years when original assessment has been completed u/s 143(3) of the Act. This principle has been supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Foramer France (2003) 264 ITR 566 (SC). Therefore, in our considered opinion, reopening of the assessment under Section 147 of the Act on the basis of the reasons recorded by the Assessing Officer, which is available in the assessment order, is a clear case of non-application of mind by the Assessing Officer, before initiating the proceedings under Section 147 of the Act. Therefore, we are of the considered view that the reopening of the assessment and consequent assessment order passed by the AO under Section 143(3) r.w.s. 147 of the Act dated 28-12-2019 is invalid and liable to be quashed. Thus, we quash the assessment order passed by the AO.

12. The second issue that came up for our consideration from ground no.2 of assessee's appeal is relating to the reopening of assessment u/s 147 of the Act, 1961. Since we have quashed assessment on legal ground, other grounds taken by the assessee relating to the issue of addition towards finance costs becomes infructuous and thus, the ground of appeal taken by the assessee has been dismissed as infructuous.

13. In the result, the appeal filed by the assessee is allowed.

ITA No.676/Hyd/2020 for A.Y. 2017-18

14. The brief facts of the case are that the appellant is a private limited company engaged in the business of construction and sale of residential and commercial flats. The assessee has filed its return of income for the assessment year 2017-18 on 25.10.2017 declaring total income of Rs.29,39,340/-. A search and seizure operation under Section 132 of the Act was conducted on 07-04-2017 on the assessee, as part of the search conducted on M/s.Kapil Consultancy Services Pvt. Ltd. and others. Consequent to the search, the assessment was completed under Section 143(3) of the Income Tax Act, 1961 on 30-12-2019 and determined the total income at Rs.5,90,24,176/- by making additions towards disallowance of finance charges and disallowance under Section 14A of the Act.

15. On appeal, the ld. CIT(A) for the reasons stated in their order dated 18.09.2020 had confirmed the addition made towards disallowance of finance charges to an extent of Rs.1,33,94,799/-, however, deleted the addition made under Section 14A of the Act.

16. The assessee preferred a further appeal before the ITAT, and the ITAT, vide its common order in ITA No.676/Hyd/2020 dated 21-03-2022, set aside the issue to the file of AO for verification. The assessee filed an appeal before the Hon'ble High Court of Telangana against the common order passed by the Tribunal and contested that the Tribunal can decide only those issues which are subject to appeal before the Tribunal, and the issues already decided by the Id. CIT(A) and not challenged by the Department cannot be decided, nor can the appeal be set aside in total. The Hon'ble High Court of Telangana vide its order dated 02-02-2023, set aside the common order of the Tribunal passed on 21-03-2022, and directed the Tribunal to hear the appeals before it on the limited grounds urged by the appellant, namely, disallowance of finance charges under Section 36(1)(iii) of the Act to the extent disallowed by the first appellate authority as well as the validity of the reassessment proceedings.

17. The solitary issue that came up for our consideration in Ground No.1 of the assessee's appeal is the disallowance of finance charges of Rs.1,33,94,799/- confirmed by the Id.CIT(A) under Section 36(1)(iii) of the Income Tax Act, 1961. During the course of the assessment proceedings, the AO noticed that the real estate companies of Kapil Group have been accepting advance for sales of residential / commercial office space by entering into an MOU with potential customers. As per the MOU, the potential customer has to pay 80% of the sale consideration and choose an advance PUT option for redeeming the advance given. Depending upon the period of advance PUT option, interest will be paid ranging from 10% to

14%. The potential customer can get the office space or flat registered by paying the balance 20% of the consideration before the advance PUT option period ended. If the potential customer withdraws the advance amount earlier to advance PUT option, he will be given much lesser interest than the promised interest. The AO observed that as per Schedule 17 annexed to the Profit and Loss Account filed by the assessee, an amount of Rs.5,48,12,296/- has been claimed as interest charges under the head Revenue Expenses and added to work-in-progress. The AO called upon the assessee to file necessary evidence and also justification for the interest debited under the head Revenue Expenses added to work-in-progress. In response, the assessee submitted that it has paid interest amounting to Rs.5,48,12,296/- to customers on advance paid by them in light of MOUs and as the same was incidental to the business, it has debited to the Profit and Loss Account. However, the said amount was taken to the balance sheet under the head work-in-progress for claiming the same proportionately against the revenue from sale of flats in the future. The assessee further submitted that since the customer has paid an advance amount of about 80% of the sale value, as per the agreement with the customers, the appellant has paid interest ranging from 10% to 14% for a period of 1 year to 4 years. Therefore, the assessee submitted that interest paid on customer advances was wholly and exclusively for the purpose of the business of the assessee and thus, allowable as a deduction.

18. The AO, however, was not convinced with the explanation furnished by the assessee. According to the AO, although the assessee has furnished general reply regarding the purpose of the funds received as an advance for the purchase of office space, but failed to explain the utility of the advances for the purpose of the business of the assessee. The AO further observed that the appellant has diverted advances received from customers to various other group companies. Therefore, the AO opined that the interest paid can not be justified just because TDS has been deducted on the said interest. Accordingly, the AO disallowed the interest debited under finance charges and carried forward to work-in-progress amounting to Rs.5,48,12,296/- under Section 36(1)(iii) of the Income Tax Act, 1961.

19. The assessee carried the matter in appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee submitted that the interest paid on customers' advance is wholly and exclusively incurred for the purpose of business and further, the assessee has paid interest on customers' advance, as per the terms of MOU with customers. The Id. CIT(A), after considering the relevant submissions of the assessee and also taken note of the fact that the assessee has made investments in various group companies, amounting to Rs. 3,85,31,800/- whereas own funds being shareholder funds and long-term borrowings is not sufficient to cover investments and thus, opined that the appellant diverted funds to the tune of Rs. 11,16,23,329/-, therefore, worked out interest expenses @ 12% of Rs.11,16,23,329/- on funds diverted to other group companies and

partly confirmed the addition made by the AO towards disallowance of finance charges.

20. The learned counsel for the assessee, Shri S. Rama Rao, submitted that the ld. CIT(A) is erred in sustaining the addition made by the AO towards disallowance of finance charges on altogether a different ground, even though, the AO disallowed interest on the ground that the appellant has not established utilization of advances from customers for the purpose of business of the assessee. The learned counsel for the assessee further submitted that the assessee is into the business of real estate development, collects advances from customers for sale of residential flats and commercial space. The customers pay 80% of consideration in advance in terms of MOU. The MOU provides for payment of interest @ of 10% to 14% in case of delay in delivery of flats. As per the agreement between customers, the appellant has paid interest on customers' advance and the same has been debited under the head finance charges. The ld.CIT(A) without appreciating the relevant facts, confirmed the addition to an extent of Rs.1,33,94,799/- out of the total disallowance of Rs.5,48,12,296/- and their order should be set aside.

21. The ld.DR Ms. Reema Yadav, on the other hand, supporting the order of ld. CIT(A), submitted that the assessee has received advance from customers and also diverted funds to various group companies in the form of share capital and loans and advances. The assessee has not filed any evidence to prove utilization of advances

received from the customers for the purpose of business of the assessee. Therefore, the AO has rightly disallowed interest expenses and therefore, their order should be upheld.

22. We have heard the rival submissions and perused the material on record and gone through the orders of the authorities below. The fact borne out from the record indicates that the assessee being in the business of real estate development, has collected advances from customers for sale of flats / commercial complexes in terms of MOU. As per the terms of MOU between the appellant and the customers, there is a provision for payment of interest ranging from 10% to 14% in case of any delay in delivery of flats to the customers. As per the contractual agreement with the customers in terms of MOU, the assessee has paid interest on customers' advances and debited under the head finance charges. The AO has disallowed interest expenses on the ground that the appellant failed to prove utilization of advances received from customers for the purpose of business. The Id. CIT(A) went on a different footing and computed disallowance of interest for diversion of interest-bearing funds for non-business purpose. We find that the basic business of the assessee is real estate development, and in that process, the assessee collected advances from customers for sale of flats. As per the agreement with the customers, the assessee has paid interest in case of delay in delivery of flats. The assessee had also proved that the funds received from the customers in the form of advances have been utilized for the purpose of business of the assessee. In fact, it is not a case of the AO that the assessee had diverted funds for non-business purposes. Assuming for a moment that loans and advances

given to group concerns are diversion of interest-bearing funds, the fact remains that, as the AO himself noted, the group companies of the assessee are also engaged in the business of real estate development and there is a business nexus between the appellant and the group concerns and thus, in our considered opinion, loans and advances given to other group companies can be said to be in the normal course of the business of the assessee and thus, there is a commercial expediency. Therefore, we are of the considered view that the AO erred in disallowing finance charges being interest paid on customers' advances without any valid reasons. The ld. CIT(A), without appreciating the relevant facts, partly confirmed the addition made by the Assessing Officer. Thus, we set aside the order of the ld. CIT(A) and direct the AO to delete the addition sustained by the ld.CIT(A) towards disallowance of finance charges amounting to Rs.1,33,94,799/-, which was confirmed by the ld.CIT(A).

23. In the result, the appeal filed by the assessee is allowed.

24. To sum up, both the appeals of assessee are allowed.

Order pronounced in the Open Court on 4th September, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (G. MANJUNATHA) ACCOUNTANT MEMBER
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Hyderabad, dated 4th September, 2024.

TYNM/sps

Copy to:

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1	M/s. Kausalya Agro Farms & Developers Private Limited, H.No.16-31, 9 th Phase, KPHB Main Road, Kukatpally, Hyderabad.
2	The Deputy Commissioner of Income Tax, Central Circle – 2(3), Hyderabad.
3	PCIT, (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order