

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE MS KAVITHA RAJAGOPAL, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No.3168/Mum/2024  
(Assessment Year: 2015-16)**

<b>Vijaynath Roof and Wall Cladding Systems Pvt. Ltd.</b> A-2/257, Shah Nahar Industrial Estate, Dhanraj Mill Compound, Lower Parel (West), Mumbai-400013. <b>PAN : AABCV6494M</b>	Vs.	<b>DCIT-8(3)(2),</b> Aayakar Bhavan, M.K. Road, Churchgate, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Kiran Mehta / Ravi Dasija

**Revenue / Respondent by** : Shri G.J. Ninawe, Sr. DR

**Date of Hearing** : 04.09.2024

**Date of Pronouncement** : 06.09.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 15.04.2024 for Assessment Year (AY) 2015-16. The assessee raised the following grounds of appeal:

- 1) *In the Facts and Circumstances of the case, the learned CIT (A) erred in granting relief only to the extent of Rs. 67,110/- out of interest disallowance interest to the extent of Rs. 178,322 made on the footing that prorated interest disallowance was required to be made qua funds used for making capital advances. It is*

*submitted that the learned AO ought to have deleted the entire disallowance of Rs.178,322.*

2) *In the facts of the Appellant's case, the learned CIT (A) erred partially deleting addition of Rs. 76,82,424 out of total addition of Rs. 93,95,248 made on account of change in the value of closing work- in-progress due to the changed method of valuation adopted by the learned AO. It is submitted that the learned CIT (A) ought to have deleted the entire addition of Rs. 93,95,248/-.*

3) *In the facts and circumstances of the case the learned CIT (A) erred in confirming disallowance of interest of Rs. 10,81,838 made by the learned AO on the footing that the said amount computed on a prorate basis pertained to interest free advances made by the Appellant and hence would tantamount diversion of to interest bearing funds for non- business purposes.*

4) *The learned CIT(A) erred in confirming disallowance of Rs. 328,830 made u/s 40(a)(ia) by the learned AO on the ground that this represented interest paid to NBFCs without any TDS. It is also submitted that the mention of amount of Rs. 11,70,366 by the learned CIT (A) in para 4.6 is an apparent error.*

5) *The learned CIT (A) erred in confirming the addition of Rs. 432,627 on the footing that this amount represented bank interest received which was not declared by the Appellant in its Return of Income for the year.*

6) *The learned CIIT (A) erred in confirming an addition of Rs. 1,50,02,510 made by the learned AO on the footing that this amount represented sale proceeds of some land and building which the Appellant had not disclosed in its accounts. It is submitted that the impugned addition is misconceived and in any case, the Appellant was entitled to deduction of indexed cost on acquisition and other related costs concerning the said asset.*

7) *The learned CIT (A) erred in confirming the disallowance of bad debts (sundry balances written off) to the extent of Rs. 23,65,595/-*

8) *The learned CIT (A) erred in making addition of Rs. 487,390 on account of TDS disallowed in relation to the advances against orders. It is submitted that in no event can the TDS disallowed be added to the income of the Appellant.*

9) *The learned CIT (A) erred in not dealing with ground related to the interest levied u/s 234B/C.*

2. The assessee is a private limited company engaged in the business of taking on contract basis turnkey project of metallic roofing and cladding and some times ceiling works. The assessee filed the return of income for AY 2015-16 on 30.09.2015 declaring a total income of Rs. 1,87,71,750/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer (AO) completed the assessment by making various additions assessing the

income of the assessee at Rs. 5,16,30,000/-. On further appeal, the CIT(A) gave partial relief to the assessee. The assessee is in appeal before the Tribunal against the order of the CIT(A). During the course of hearing, the Id. AR submitted that ground no. 2, 5 & 8 are not pressed and therefore, these grounds are dismissed as not pressed.

### **Disallowance of interest paid towards capital advance - Groun No.1**

3. On perusal of the balance-sheet the Assessing Officer (AO) noticed that an amount of Rs. 29,69,920/- has been shown as capital advances. The AO further noticed that the assessee has borrowed funds on which interest is paid and claimed as a deduction to the tune of Rs. 1,29,39,493/-. The AO called on the assessee to furnish details and to show-cause as to why the proportionate interest attributable to capital advances cannot be disallowed. Since the assessee did not file any reply, the AO calculated the proportionate disallowance of Rs. 1,78,322/- and made addition accordingly. The CIT(A) reduced the disallowance by Rs. 67,110/-.

4. We heard the parties and perused the material on record. During the course of hearing our attention was drawn to the financial statements of the assessee (page 12 to 49 of Paper Book). From the perusal of the balance-sheet we notice that as of 31.03.2015 the own funds of the assessee is at –

Share Capital	Rs. 1,00,00,000/-
Reserves & Surplus	<u>Rs. 17,22,77,043/-</u>
Total	<u>Rs. 18,22,77,043/-</u>

5. We further notice that the borrowings of the assessee as at 31.03.2015 is at Rs. 3,32,20,802/- and the capital advance given by the assessee as stated by the AO is at Rs. 29,69,920/-. Therefore, we see merit in the submission of the Id. AR that

the capital advance is given out of own funds and therefore, the interest paid by the assessee on borrowings cannot be disallowed. In our considered view when interest free own funds are available with the assessee no disallowance towards interest can be made towards interest unless it is established that the assessee has utilized the loan funds to give capital advance. In the given case the AO has done the proportionate disallowance without bringing any material to substantiate that the capital advance is given out of borrowed fund. Accordingly, we direct the AO to delete the proportionate disallowance made towards interest.

### **Disallowance of interest towards interest free loans – Ground No.3**

6. The AO has also made a disallowance of Rs. 10,81,838/- towards interest claimed by the assessee for the reason that the assessee has given loan of Rs. 1,45,12,369/- to Directors and other related parties on which no interest is charged and that an amount of Rs. 51,85,000/- is outstanding against loans and advances to others for which the assessee has not explained the purpose. Therefore, the AO made a proportionate disallowance against the total finance cost of Rs. 1,29,39,493/-. The CIT(A) confirmed the said disallowance.

7. We heard the parties and perused the material on record. From the perusal of the facts as emanated above, it is clear that the loans and advances given by the assessee to Directors and others is less than the own funds available with the assessee which is at Rs. 18.22 crores (refer table above). We have in the earlier paragraph held that when interest free own funds are available with the assessee no disallowance towards interest can be made towards interest unless it is established that the assessee has utilized the loan funds to give capital advance / interest free

loans. Therefore, we direct the AO to delete the proportionate disallowance made towards interest. Ground raised by the assessee is allowed.

**Disallowance under section 40(a)(ia) – Ground No.4**

8. During the assessment proceedings, the assessee furnished details before the AO in respect of loan obtained for the purchase of vehicle and machinery. On perusal of the said details, the AO noticed that a sum of Rs. 19,035/- and Rs. 3,09,795/- has been paid to Kotak Mahindra Prime Ltd. and Dailmer Financial Services (I) Pvt. Ltd. which are NBFCs and that the assessee has not deducted TDS on the interest paid. Since the assessee did not furnish any further details, the AO disallowed the entire amount of interest under section 40(a)(ia) of the Act.

9. The ld. AR submitted that the loan parties to whom the interest paid are reputed NBFCs and they would have been included the interest income received from the assessee as part of their taxable income while filing the return. Accordingly, the AR submitted that the 2<sup>nd</sup> proviso to section 40(a)(ia) would be applicable in assessee's case and no disallowance is warranted.

10. We heard the parties and perused the material on record. It is an admitted position that the assessee has not deducted tax on the impugned interest paid to NBFCs. The only contention of the assessee is that the NBFCs would have included the interest paid by the assessee as part of the income and offered the same to tax. Therefore we direct the AO to delete the disallowance made under section 40(a)(ia) once the assessee is able to substantiate the claim that the payees have included the interest as their income while filing their tax return. It is ordered accordingly.

**Addition towards sale of fixed assets – Ground No.6**

11. On perusal of the fixed assets schedule the AO noticed that the assessee has shown a sum of Rs. 1,50,02,510/- as sale of land & building during the year under consideration. Since the assessee has not offered any capital gains the AO called on the assessee to furnish details pertaining to the same. The assessee submitted that the assets that purchased in the name of the directors were wrongly capitalized as assets of the company in earlier years and that during the year under consideration the same was reversed to be transferred as loan to directors. Accordingly, the assessee submitted that the amount reflected in the fixed assets schedule is not the actual sale but reversal of erroneous entry passed in the earlier year. The AO however, did not accept the submissions of the assessee and made an addition towards capital gains by holding that

*“5.7.3: The submission made by the assessee is considered and the same is not tenable. On perusal of the loans & advances to related parties it is seen that total loan & advances to directors as well as related parties is shown at Rs. 1,45,12,369/-, whereas the amount reduced from the fixed assets is to the extent of Rs. 1,50,02,510/-. Moreover the assessee company had already taken the depreciation on the amounts shown under buildings in previous years. The assessee has not correlated the figures of amounts reduced from fixed assets with that of corresponding figures of loan to director and therefore the submission made by the assessee is not acceptable. Further the assessee company is a corporate entity whose accounts are audited by a chartered accountant regularly year on year basis. Therefore amounts of loan to directors could not have been clubbed with the fixed assets, as the auditor is required to verify the addition to fixed assets at the time of audit. As such the arguments given by the assessee are rejected summarily and the entire amount of sale consideration of Rs. 1,50,02,510/- is treated as short term capital gains and added to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the Act are separately initiated for concealing particulars of Income.”*

12. We heard the parties and perused the material on record. The Id. AR reiterated the submissions made before the AO and in this regard drew our

attention to the journal entries passed and the ledger copies of the land & building (page 55 to 60 of the PB). It is a contention of the assessee that in earlier year two assets namely Shirval (Pune) Plot and Sanghvi (Pune) flats were purchased in the name of directors by the company and that the same is erroneously capitalized as assets of the company. During the year under consideration the entry in the books are corrected by reversing the above capitalization and therefore the amount reflected in the fixed assets schedule is not actual sales. It is also submitted that the reversal entry is passed for the original cost without any profit margin and there is no capital gain arising out of the entire transaction. It is relevant to mention here that the assessee did not bring anything on record to evidence the cost at which the assets were erroneously capitalized in the earlier years and whether any depreciation has been claimed on the same. We notice that the assessee did not submit any documentary evidences supporting the above claim before the AO or the CIT(A). In view of this discussion, we are of the considered view that the issue should go back to the AO for factual examination of the claims of the assessee. The assessee is directed to file the necessary details as may be call for by the AO and co-operate with the assessment proceedings. It is ordered accordingly.

**Disallowance of sundry balances written off – Ground No.7.**

13. The AO during the course of assessment noticed that the assessee has claimed a sum of Rs. 23,65,595/- towards sundry balances written off. The AO called on the assessee to furnish evidence in respect of the fact that income on account of these balances have been offered to tax in earlier years. However, the assessee did not file any details evidencing the said fact. Therefore, the AO disallowed the amount written off against sundry balances.

14. We heard the parties and perused the material on record. From the perusal of records we notice that the assessee has not submitted the relevant details or any documentary evidences in support of the write off of the sundry balances and whether the same was part of income offered to tax in earlier years. The Id. AR during the course of hearing fairly conceded that the assessee could not furnish the relevant details before the lower authorities and prayed for one more opportunity. Considering the facts of the present case and in the interest of natural justice, we are inclined to give one more opportunity to the assessee to produce the relevant details before the lower authority. Therefore, we remit the issue back to the AO to consider the issue afresh. The assessee is directed to file the necessary details as may be call for by the AO and co-operate with the assessment proceedings. It is ordered accordingly.

15. In the result, the appeal of the assessee is partly allowed.

*Order pronounced in the open court on 06-09-2024.*

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**Judicial Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**