

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 871/JPR/2024
निर्धारण वर्ष/Assessment Years : 2017-18

Paradise Infrastructure 407, Paradise, C-61A, Sarojani Marg, C-Scheme, Jaipur.	बनाम Vs.	The ACIT, Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJFP4031B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Adv.)
राजस्व की ओर से / Revenue by : Shri Anup Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 22//08/2024
उदघोषणा की तारीख / Date of Pronouncement : 19/09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by the assessee aggrieved from the order of the Ld. CIT(A), National Faceless Appeal Centre, Delhi (for short "CIT(A)/NFAC") dated 07.06.2024 for the assessment year 2017-18, which in turn arise from the order dated 18.12.2019 passed under section 143(3) of the Income Tax Act, [for short "Act"] by the ACIT, Circle-1, Jaipur.

2. The assessee has marched this appeal on the following

grounds:-

“1. Under the facts and circumstances of the case the Learned CIT(A) has erred in confirming the addition of Rs. 1,05,72,651/- made by the Learned AO by treating the interest and brokerage expenses as capital expenditure instead of revenue expenditure claimed by the assessee without appreciating the facts which are self-explanatory by the financial statement of the assessee.

2. Under the facts and circumstances of the case the Learned CIT(A) has erred in treating the explanation and paper book filed during appellate proceedings as additional evidence which are part of financial statements before the Learned AO.

3. Under the facts and circumstances of the case the Learned CIT(A) has erred in set aside the issue regarding addition of Rs. 27,132/- u/s 40(a)(ia) of the Income Tax Act, 1961.

4. the assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

3. Brief fact as culled out from the record is that the assessee firm filed returns of income on 03.08.2017 declaring total income of Rs. 2,85,440/- for the year under consideration. The assessee is a partnership firm and engaged in the business of construction & developer and earned income from business or profession.

The case was selected for scrutiny assessment through CASS under "Complete Scrutiny and notice u/s 143(2) of the Act, was issued on 13.08.2018 through ITBA-portal which was duly served upon the assessee. During the assessment proceedings, various notices as required were issued and Id. AO noted on

various notices the assessee remained non-compliant and applied for adjournment on 04.11.2019. The Id. AO on examination of the returns of income, it has been noticed that the assessee claimed various expenses in its P&L accounts and some entries have also been booked in the balance sheet for the year under consideration, which require complete verification.

Thus, the notice u/s 142(1) of the Act annexing request letter for producing books of accounts along-with bills/vouchers of all expenses so debited in P&L accounts for the year under consideration has been issued to the assessee on 26.11.2019 fixing the date for producing the same by 28.11.2019.

This time also, the assessee did not produce anything before the Id. AO. Under these circumstances and looking to the nature of non compliance of the assessee, it can't be relied upon the trading results of the assessee as noted by the Id. AO.

Based on these facts the Id. AO noted that the assessee applying delay tactics to delay the assessment proceedings so as to less inquiry can make in its case. On 02.12.2019, the assessee voluntarily filed submission through ITBA portal, which has been placed on record by the Id. AO.

3.1 On examination of the submission of the assessee and details made available to the Id. AO. The assessing officer noted that the assessee has paid interest to Tata Capital Housing finance Ltd amount to Rs. 90,441/- whereas the assessee did not make TDS thereon, which violates the provisions of section 40(a)(ia) of the Act and requires to make an addition to the total income. Since, the assessee did not make TDS on the aforesaid transaction, therefore, notice u/s 142(1) of the Act annexing show cause notice has been issued to the assessee on 12.12.2019 fixing the date for furnishing submission on 13.12.2019. In response, neither the assessee nor its AR filed any submission so far. Looking to the view of nature of non compliance of the assessee, it establishes that the assessee intentionally not made TDS on the interest payment to Tata Capital Housing Finance Ltd.. Further, the primary onus for proving the genuineness for not making of TDS could not be discharged by the assessee, therefore, it further establishes the violation of provisions of section 40(a)(ia) of the Act. Accordingly, as per provisions of Section 40(a)(ia) r.w.s. 194A of the Act, the 30% of interest expenditure amount to Rs. 27,132/- (30% of 90,441/-) was hereby disallowed

and added back to the total income of the assessee for the year under consideration.

3.2 The Id. AO noted that the balance of capital amounts of the assessee firm is found as negative amounting to Rs. 35,28,322/- as in the instance case, all partners of the partnership firm withdrawn huge amount from capital accounts and consequently, the capital accounts comes to negative amounting to Rs. 35,28,322/- and under these circumstances, the assessee should have been charged interest on drawings on the negative capital @12%. In view of the above discussed facts that it is evident and self-explanatory that the assessee intentionally underreported the particulars of income by non crediting the interest on drawings of the partners of the firm. Thus, the Interest on Drawings @12% on balance capital amounting to Rs. (-) 35,28,322/-, which comes to Rs. 4,23,399/- [12% of 35,28,322], was Whereby added back to the total income of the assessee u/s 56 of the Act for the year under consideration.

3.3 The Id. AO noted that the assessee e is engaged in the business of construction & developer and claimed expenditure of Finance Brokerage and Interest amounting to Rs. 6,87,133/- and

Rs. 98,85,518/- respectively whereas both the expenditure are capital expenditure for the business of construction and developer and liable to be capitalized. In this regard, the assessee did not furnish any details or justification as to why both the expenditures of finance brokerage and interest have not been capitalized. Thus, notice u/s 142(1) of the Act annexing show cause notice has been issued to the assessee on 12.12.2019 fixing the date for submission by 13.12.2019. In response, neither the assessee nor its AR did habitually not file any reply. The assessee is ab-intio resorting delaying tactics and not filed complete reply after giving various opportunities. Further, the expenditure of finance brokerage and interest must be capitalized treating the same as capital expenditure and also under these circumstances, the expenditure of finance brokerage and interest can't be allowed u/s 37 of the Act. In view of the above discussed facts, the Expenditure of Finance Brokerage and Interest amounting to Rs. 6,87,133/- and Rs. 98,85,518/- respectively aggregating Rs. 1,05,72,651/- are hereby disallowed and added back to the total income of the assessee for the year under consideration as both the expenses are capital expenditure and not allowable u/s 37 of the Act.

4. Aggrieved by the above order of the assessment, the assessee preferred an appeal before the Id. CIT(A). Based the grounds so taken and the submission so made by the assessee, the appeal of the assessee was decided on 07.06.2024 and the relevant finding of the Id. CIT(A) reads as under: -

"5.2.1. I have considered the submission of the Appellant. I have also perused the assessment order. I find that the AO has made the addition in absence of any details/explanation submitted by the Appellant explaining the queries raised by the AO. In this regard, it would be appropriate to reproduce relevant part of the assessment order:

"6. It has been noticed that the assessee is engaged in the business of construction & developer and claimed expenditure of Finance Brokerage and Interest amounting to Rs. 6,87,133/- and Rs. 98,85,518/- respectively whereas both the expenditure are capital expenditure for the business of construction and developer and liable to be capitalized. In this regard, the assessee did not furnish any details or justification as to why both the expenditures of finance brokerage and interest have not been capitalized. Thus, notice u/s 142(1) of the Act annexing show cause notice has been issued to the assessee on 12.12.2019 fixing the date for submission by 13.12.2019. The main contents of the show cause notice are reproduced hereunder: -

"It has been noticed that as you are a builder and as per ICDS, you had to capitalize interest whereas you have not done so, therefore, you are requested to please show cause as to why the addition may not be made to the total income."

6.1 In response, neither the assessee nor its AR did habitually not file any reply. The assessee is ab-intio resorting delaying tactics and not filed complete reply after giving various opportunities. Further, the expenditure of finance brokerage and interest must be capitalized treating the same as capital expenditure and also under these circumstances, the expenditure of finance brokerage and interest can't be allowed u/s 37 of the Act. In view of the above discussed facts, the Expenditure of Finance Brokerage and Interest amounting to Rs.

6,87,133/- and Rs. 98,85,518/- respectively aggregating Rs. 1,05,72,651/- are hereby disallowed and added back to the total income of the assessee for the year under consideration as both the expenses are capital expenditure and not allowable u/s 37 of the Act."

Thus, it can be observed from above, the AO has made the impugned addition since the Appellant failed to provide relevant details/explanation inspite of repeated reminders and issue of show cause notice. In this background, it needs to be appreciated that whether an expenditure is of revenue or capital in nature depends primarily on examination of such details. In absence of submission of details of such expenditure, it is quite natural for the AO to come to conclusion that it is capital in nature; after considering business activities of the Appellant. The Appellant can not be given a benefit in absence of any efforts on the part of the Appellant to submit any details. Further, in this background, the details/evidences furnished by the Appellant in the present proceedings partake the character of additional evidences which are required to be admitted only when conditions stipulated therein are met. However, there is no accompanying petition of the Appellant under Rule 46A of the Rules, 1962. In this regard, it would be imperative to refer to the provisions contained in rule 46A of the Income Tax Rules, 1962 which is being reproduced as under:

"Rule 46A.-- (1) The Appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer), except in the following circumstances, namely:--

1. where the [Assessing Officer) has refused to admit evidence which ought to have been admitted; or

1. where the Appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer);or

(c) where the Appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal; or

1. where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the Appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity-

1. to examine the evidence or document or to cross-examine the witness produced by the Appellant, or

1. to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the Appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271."

A perusal of the above provisions of Rule 46A would reveal that Rule 46A(1) is negatively worded and precludes an appellant from filing any evidence in the nature of an additional evidence, other than those which have been filed before an AO, except in the circumstances laid out in Rule 46A(1). Thus, it is clear that before the first Appellate Authority an Appellant can rely on the evidence filed before the AO and in case an Appellant so chooses to furnish any evidence other than the ones filed by him before the AO, then in that situation the Appellant must make out a case as falling under any of the four limbs of rule 46A(1). It therefore emerges that without stating a case under Rule 46A(1), an appellant cannot file additional evidence. A natural corollary of the same is that in the absence of any case made out by an Appellant under Rule 46A(1), the first Appellate Authority cannot

consider the additional evidence filed before him. In this regard, it would be pertinent to refer to the ratio of the following judgments:

In the case of CIT vs. Manish Build Well Pvt. Ltd. [ITA no.928/2011 dated 15/11/2011], it was held/averred, as follows, by the Hon'ble Delhi High Court:

"23. It is for the aforesaid reason that Rule 46A starts in a negative manner by saying that an appellant before the CIT (A) shall not be entitled to produce before him any evidence, whether oral or documentary, other than the evidence adduced by him before the assessing officer. After making such a general statement, which is in consonance with the principle stated in the above judgment, exceptions have been carved out that in certain circumstances it would be open to the CIT (A) to admit additional evidence. Therefore, additional evidence can be produced at the first appellate stage when conditions stipulate in the Rule 46A are satisfied and a finding is recorded.

.....

We are highlighting these aspects only to press home the point that the conditions prescribed in Rule 46A must be shown to exist before additional evidence is admitted and every procedural requirement mentioned in the Rule has to be strictly complied with so that the Rule is meaningfully exercised and not exercised in a routine or cursory manner. A distinction should be recognized and maintained between a case where the assessee invokes Rule 46A to adduce additional evidence before the CIT (A) and a case where the CIT (A), without being prompted by the assessee, while dealing with the appeal, considers it fit to cause or make a further enquiry by virtue of the powers vested in him under sub-Section (4) of Section 250. It is only when he exercises his statutory suo moto power under the above sub-section that the requirements of Rule 46A need not be followed, On the other hand, whenever the assessee who is in appeal before him invokes Rule 46A, it is incumbent upon the CIT (A) to comply with the requirements of the Rule strictly."

In the case of ITO vs. Bajoria Foundation [254 ITR 065 (Cal); Para 6], it was held/averred, as follows, by the Hon'ble Calcutta High Court:

"It is trite that rules have to be framed within the scope of main, provision and that a rule, which travels beyond or is inconsistent with or is repugnant to the provisions in the statute will be ultra vires and void. Rule 46A was introduced with effect from 1-4-1973 and as a result of

Insertion of Section 295(2)(mm) in the income tax act which empowered Board to provide for the circumstances in which, the condition subject to which and the manner in which Commissioner (Appeals) may permit an Appellant to produce an evidence which the Appellant did not produce or was not allowed to produce before the assessing officer. However, these powers of the Board, which have been vested in them for carrying out for the purposes of the Act, have to be exercised in such a judicious manner so as not to make any statutory provision redundant and nugatory.

Respectfully following the ratio of the above judgments and in view of the fact that the Appellant has furnished the additional evidence without any accompanying petition making out a case under any of the four limbs of the Rule 46A(1) of the Income Tax Rules, 1962, I, being constrained by the procedural rules and law laid out, cannot consider the additional evidence. Thus, in the absence of the requisite documentary evidences, the contention of the Appellant remained unverified and unproved solely due to the conduct and latches on the part of the Appellant and these cannot be accepted. Accordingly, the addition made by the AO is hereby confirmed, Ground is, thus, dismissed.

5.3. Ground 3

Vide this ground, the Appellant has challenged the addition of Rs. 27,132/-u/s 40(a)(ia). In this regard, the Appellant has submitted that during the year under consideration there is no payment of any installment or of any interest. The payment of Rs. 84,721/- is with respect to processing fees and file charges on which the assessee was not supposed to deduct any tax. Copy of ledger account of Tata Capital Housing Finance Ltd I has been submitted.

In view of above facts, the AO is directed to examine the claim of the Appellant. The Appellant is directed to furnish online before the AO all relevant details in this regard. In case the claim of Appellant is found correct, addition of Rs.27,132/- is directed to be deleted. If found contrary, the addition stands affirmed. Ground is, thus, allowed for statistical purposes.

6. In the result, the Appeal is partly allowed.”

5. Aggrieved from that order of Id. CIT(A), the assessee preferred the present appeal on the ground as stated hereinabove. In support of the grounds so raised the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

“The assessee is a partnership firm engaged in the business of construction & developers and earned income from business or profession. Return declaring total income at 2,85,440/- was filed on 03.08.2017. The Learned Assessing Officer completed assessment u/s 143(3) on 18.12.2019 determining total income at Rs. 1,13,08,622/- inter-alia making the following additions –

- (i) Rs. 4,23,399/- u/s 56 of the Income Tax Act, 1961 on account of interest chargeable on debit balance of the partners on notional basis.
- (ii) Rs. 1,05,72,651/- by treating the interest and brokerage expenses as capital expenditure instead of revenue expenditure claimed by the assessee.
- (iii) Rs. 27,132/- u/s 40(a)(ia) of the Income Tax Act, 1961.

Aggrieved with the order of the learned Assessing Officer the assessee went in appeal before the Learned CIT(A). The Learned CIT(A) whereas granted relief deleting the addition of Rs. 4,23,399/- made by the Learned Assessing Officer on account of notional interest on debit balances of the capital account of partners, but confirmed the addition of Rs. 1,05,72,651/-. In respect of addition of Rs. 27,132/- the Learned CIT(A) directed the Learned Assessing Officer to delete the addition subject to verification.

Aggrieved with the order of the Learned CIT(A), the assessee has come in appeal before the Hon'ble Tribunal and the individual grounds of appeal are discussed below :-

Ground No. 1–

Under the facts and circumstances of the case, the Learned CIT(A) has erred in confirming the addition of Rs. 1,05,72,651/- made by the Learned Assessing Officer by treating the interest and brokerage expenses as capital expenditure instead of revenue expenditure claimed by the assessee without appreciating the facts which are self-explanatory by the financial statements of the assessee.

&

Ground No. 2-

Under the facts and circumstances of the case, the Learned CIT(A) has erred in treating the explanation and paper book filed during appellate proceedings as additional evidence which are part of financial statements before the Learned Assessing Officer.

(a) Facts of the case

It is submitted that during the year under consideration, the assessee claimed expenditure on account of interest payment of Rs. 98,85,518/- and brokerage on such finance of Rs.687133/-. The Learned Assessing Officer disallowed the same treating the expenditure of capital nature on the simple ground that the assessee did not furnish any particulars regarding the claim of expenditure. On further appeal, the Learned CIT(A) has declined to consider the submissions made before the Learned Assessing Officer simply on the ground that the particulars furnished before him were of the nature of additional evidence and the same could not be entertained in the absence of an application u/s 46A. It is submitted that the particulars submitted before the Learned CIT(A) were not strictly of the nature of additional evidence. The assessee had furnished return of income along with accounts on 03/08/2017, which consisted particulars of partners accounts, details of unsecured loans, secured loans etc. and complete details of expenditure. A copy of the return along with computation of income and accounts which was available before the Learned Assessing Officer, is furnished on Paper Book Page No1-9. It is submitted that before disallowing the expenditure of interest and brokerage, the Learned Assessing Officer was under obligation to go through such accounts. These accounts reveal that there were fresh loans of Rs. 1,70,00,000 from Tata Capital Housing Finance and other fresh loans of Rs. 42,90,000/-. On the other hand, the capital of partners stood reduced from Rs. 70,25,145/- as on 1/4/2017 to Rs. (-) 32,42,952/-, resulting in withdrawals of Rs. 1,02,68,097/-. In other words, the partners withdrew their capital to the extent of Rs. 1,02,68,097/-. Further, the accounts also disclosed that there was increase in the inventory of Rs.78,37,633/- (157374200 – 149536567). All these particulars were enough for reaching any conclusion regarding claim of interest. Since the partners had withdrawn capital to the extent to Rs.1,02,68,097/- and assessee had also made fresh investment in the inventory of Rs.78,37,633/-, naturally loans to the extent of Rs. 1,81,05,730/- (Rs.10268097+7837633) were required to make the shortfall. It is only supportings of these particulars which were furnished before the Learned

CIT(A), which he declined to consider treating the same as additional evidence.

(b) No additional evidence furnished before the Learned CIT(A)

It is submitted that the accounts furnished along with the return of income had full particulars of secured and unsecured loans, partners accounts and details of trading account. These were available before the Learned Assessing Officer during the course of assessment proceedings. Before disallowing the payment of interest and brokerage, it was incumbent upon the Learned Assessing Officer to have gone through the accounts available before him. If he had done so, there would have been no occasion for making the disallowance. The accounts revealed withdrawals by partners to the extent of Rs.1,02,68,297/- and there was increase in the inventory to the extent of Rs. 78,37,633/-. It is to meet these requirements that there was loan of Rs. 1,70,00,000 from Tata Capital Housing Finance Ltd and other unsecured loans of Rs 42,90,000/-. Apparently, the loans were taken to meet the business exigencies and requirements. Further, on top of all, the accounts did not reveal any expenditure of capital nature. Therefore, there was no material before the Learned Assessing Officer to disallow the claim of interest and brokerage expenditure on the ground that the same was of capital nature. The Learned Assessing Officer had no material for justifying the disallowance of interest and brokerage expenditure. The other ground taken by the Learned Assessing Officer for making the disallowance is that the assessee did not furnish any particulars. In this regard, it is submitted that for that matter, the assessee had claimed other expenditure under the head salary, labour, repairs, conveyance, miscellaneous etc, but the same were not disallowed, although the particulars of the same were also not furnished. There was absence of parity of action on the part of the Learned Assessing Officer. There was no ground for making the disallowance. It is in support of the accounts that the assessee furnished before the Learned CIT(A) the very details of loans taken, both secured and unsecured and interest paid on such loans. The assessee also furnished details of withdrawals made by partners, which resulted in negative balances. By no standard, furnishing of supportings of accounts can be considered as additional evidence.

It is submitted that in view of these facts, the Learned CIT(A) was not justified in treating the particulars submitted before him as additional evidence and further in declining the same to consider for purposes of relief. A copy of the submission made before the Learned CIT(A) along with paper book is available on Paper Book Page No.10-38.

It is submitted that the Learned CIT(A) before treating the submissions made before him as additional evidence, should have allowed an opportunity to the assessee for furnishing an application under Rule 46A, but this was not done. The action of the Learned CIT(A) goes against the principles of natural justice. All the same, the main plea of the assessee is that the supporting accounts submitted before the Learned CIT(A) were not of the nature of additional evidence. The assessee submitted before the Learned CIT(A) details of interest paid, details of loans taken, details of old loans etc. These were all part of Balance sheet and were available before the Learned Assessing Officer in the shape of accounts. In view of this, by no stretch of imagination, these could be termed as additional evidence. In view of this, the Learned CIT(A) was not justified in not considering the submissions made before him with respect to disallowance of interest and brokerage expenses. The Hon'ble Tribunal is requested to consider the submission of the assessee sympathetically and delete the addition of Rs. 1,05,72,651/-.

The assessee considers it relevant to quote the relevant part of submission made before the Learned CIT(A).

"Ground No. 2 –

Under the facts and circumstances of the case the Assessing Officer has erred in making the addition of Rs. 1,05,72,651/- by treating the interest and brokerage expenses as capital expenditure instead of revenue expenditure claimed by the assessee.

1. Facts of the case: -

The Learned Assessing Officer has made addition as under –

<i>On account of interest paid by the assessee on loans</i>	<i>9885518.00</i>
<i>Finance brokerage paid in respect of loans obtained</i>	<i>687133.00</i>
<i>Total</i>	<i>10572651.00</i>

It is submitted that during the year under consideration the assessee paid interest of Rs. 98,85,518/- on loans obtained for the purposes of business. A copy of interest account is available on paper book page no 5 to 9. It is submitted that the payment of interest of Rs. 98,85,518/- consisted of Rs. 82,64,160/- which was paid on old loans carried forward during the year under consideration.

It is submitted that the perusal of the balance sheet reveal that the position of fresh loans is as under: -

- (i) Loan from Tata Capital Housing Finance Ltd Rs. 1.70 Crore*
- (ii) Unsecured Loans of Rs. 7,52,136/- (125391921-124639785)*

Copies of balance sheet and P&L account along with annexure are available on paper book page no 10 to 17.

The increase in unsecured loans is insignificant being only of Rs. 7,52,136/- which is ascribable to accrual of interest on loans. Thus the effective fresh loan obtained during the year under consideration is only of Rs. 1.70 Crore from Tata Capital Housing Finance Ltd. It is submitted that this sum of Rs. 1.70 Crore has not been invested in any capital expenditure but has been used for purposes of business discussed as under -

2. No capital expenditure during the year –

It is submitted that the only ground on which payment of interest has been disallowed by the Learned Assessing Officer along with finance brokerage is that both the expenditure of capital nature for the business of construction and developer. It is submitted that the Learned Assessing Officer has erred in treating the payment of interest and finance brokerage as capital expenditure. It is submitted that the business of the assessee is of construction and developers and any expenditure including of interest and finance brokerage incurred for the business is allowable. The Learned Assessing Officer has not mentioned in what manner the expenditure of interest and finance brokerage is of capital nature. The assessee has not incurred any expenditure of capital nature. The balance sheet of the assessee does not show any investment in fixed assets. It is in the construction work that inventory have increased from Rs. 14,95,36,567/- to Rs. 15,73,74,200/-. Thus there is increase in the inventory i.e. WIP of Rs. 78,37,633/- (157374200-149536567). In other words there is investment in the construction business to the extent of Rs. 78,37,633/- . This is purely, wholly and exclusively for the purposes of business. Payment of interest on such loans require to be considered for the purposes of business.

It is further submitted that as on 01.04.2017 the capital in the partners accounts was having credit balance of Rs. 70,25,145/-. On this interest

was payable @ 12% as per the terms of partnership deed. During the year under consideration the partners have withdrawn the entire capital and their accounts have gone to minus 32,42,952/-. Thus with reference to partners account the loans exhausted come to Rs. 1,02,68,097/- (7025145+3242952).

In view of the aforesaid facts the fresh investment in business comes to Rs. 7837633/- in inventories + Rs. 10268097/- payment to partners account totaling to Rs. 1.80 Crore. In view of the aforesaid facts the fresh loans of Rs. 1.70 Crore obtained from Tata Capital Finance Ltd was used for purposes of business and hence no payment of interest required to be disallowed. The Learned Assessing Officer erred in making disallowance of Rs. 1,05,72,651/- which is totally uncalled for and deserves to be deleted.

3. Interest payment in last year and this year –

It is further submitted that payment of interest in the preceding year i.e. Assessment Year 2016-17 was of Rs. 60,36,333/-. It is submitted that during the year under consideration the interest on loans which continued or which existed from Assessment Year 2016-17 to 2017-18 increased to Rs. 82,63,160/- from Rs. 60,35,683/-. The comparative chart of interest paid on old loans in Assessment Year 2016-17 and 2017-18 is as under: -

Name of Party	Interest paid in AY 16-17	Interest paid in AY 17-18
A. Daga Steel & Industrial Corporation	30960	12240
Aaruni Kasliwal	34600	149200
AAYUSHI JAIN	29600	297600
Absan Enterprises (Unsecured Loan)	8500	
Ajay Tambi	29000	58800
ANITA AGARWAL	17600	148800
Anita Tambi	34200	174300

<i>Anju Agarwal</i>	<i>20760</i>	<i>89520</i>
<i>Arpit Miyanbazaz</i>	<i>112000</i>	<i>593600</i>
<i>BANK OF BARODA TOD interest</i>	<i>74971</i>	
<i>BANWARILAL & CO</i>	<i>35200</i>	<i>297600</i>
<i>BHUSHAN KUMAR MITRA</i>	<i>8800</i>	<i>15200</i>
<i>Dev Vrat Arya</i>	<i>43000</i>	<i>372000</i>
<i>GOPALI DEVI KANKARWAL</i>	<i>89500</i>	<i>373000</i>
<i>Guideline Travels LLP</i>	<i>1241667</i>	<i>1950000</i>
<i>HARI BALLABH GUPTA & SONS HUF</i>	<i>53700</i>	<i>223800</i>
<i>Harpal Singh</i>	<i>615000</i>	
<i>Himmat Singh (UL)</i>	<i>31250</i>	
<i>Indu Miyan Bazaz</i>	<i>371000</i>	<i>371000</i>
<i>JAI KISHAN TAMBI</i>	<i>8800</i>	<i>15200</i>
<i>KAMAL CHAND MUSHRAFF HUF</i>	<i>8800</i>	<i>15200</i>
<i>KAMAL KISHORE MALPANI</i>	<i>8800</i>	<i>15200</i>
<i>Kedar Nath Kanhaiya Lal</i>	<i>51800</i>	<i>32200</i>
<i>Monika Pradeep Saboo</i>	<i>675000</i>	<i>675000</i>
<i>Nikita Rawat</i>	<i>23600</i>	<i>149800</i>
<i>Onkar Mal Banshidhar</i>	<i>324000</i>	
<i>Pinkcity Jewel House Pvt Ltd.</i>	<i>62500</i>	
<i>Purshottam Nagpal Huf</i>	<i>23600</i>	<i>109000</i>
<i>R.K.M International</i>	<i>125000</i>	
<i>Rahul Ladiwala</i>	<i>32000</i>	
<i>Ram Chandra Singh Rawat</i>	<i>375000</i>	

<i>Ram Prakash Miyanbazaz</i>	<i>140000</i>	<i>798400</i>
<i>Ramesh Chand Maheshwari</i>	<i>1875</i>	
<i>Ramkesh Meena</i>	<i>573333</i>	
<i>Richa Agarwal (Gyan Ji)</i>	<i>53100</i>	<i>223800</i>
<i>Richa Agarwal (Rajeev Ji)</i>	<i>17500</i>	<i>62400</i>
<i>Rishika Dhamani</i>	<i>24750</i>	<i>112800</i>
<i>Rohit Maheshwari</i>	<i>1250</i>	
<i>S R Bhandary HUF</i>	<i>8600</i>	<i>15400</i>
<i>S S Enterprises (Unsecured Loan)</i>	<i>14167</i>	
<i>Sangeeta Agarwal</i>	<i>53100</i>	<i>223800</i>
<i>Sangeeta Dangayach / Vikas Danyach</i>	<i>120000</i>	
<i>Sanjay Bhandari</i>	<i>8600</i>	<i>15400</i>
<i>Saroj Rani</i>	<i>88500</i>	<i>373000</i>
<i>Satya Narain Agarwal</i>	<i>48000</i>	
<i>Shalini Gupta</i>	<i>16500</i>	<i>75200</i>
<i>Sitaram BadrinarainMawawale</i>	<i>20400</i>	
<i>Subhash Gupta</i>	<i>14000</i>	
<i>Sunil Bansal</i>	<i>33600</i>	
<i>Suraj Narain Khatoriya</i>	<i>104000</i>	
<i>Swapnil Swami</i>	<i>58800</i>	
<i>Vandana Khunteta</i>	<i>35400</i>	<i>224700</i>
<i>Grand Total</i>	<i>6035683</i>	<i>8263160</i>

It is submitted that in the Assessment Year 2016-17 the assessee has paid interest of Rs. 60,35,683/-. The same stands allowed. Therefore, the Learned Assessing Officer was not justified in disallowing entire

interest of Rs. 98,85,518/- because interest to the extent of Rs. 60,35,683/- stood allowed in Assessment Year 2016-17 itself. The submission of the assessee that even if no compliance was made by the assessee of the queries made by the Learned Assessing Officer, the Learned Assessing Officer was under obligation to allow interest atleast upto Rs. 60,35,683/- as allowed in the last year. However in the case of the assessee it is submitted that the entire interest payment and finance brokerage are for the purpose of business as discussed above.

4. Interest on fresh loans –

It is submitted that in addition to payment of interest of Rs. 82,63,160/- on old loans the assessee paid interest of Rs. 16,22,358/- on fresh loans raised during the year under consideration the details of these loans and interest paid are as under: -

<i>Name of Party</i>	<i>Amount Taken in AY 17 – 18</i>	<i>Interest Paid AY 17-18</i>
<i>Amarjeet Kaur</i>	<i>1000000</i>	<i>142800</i>
<i>Atul Agarwal</i>	<i>1200000</i>	<i>21120</i>
<i>Beenu Devi Agrawal</i>	<i>1000000</i>	<i>17600</i>
<i>Bhagwati Devi Agarwal</i>	<i>800000</i>	<i>14080</i>
<i>Gaurav Gupta</i>	<i>500000</i>	<i>8800</i>
<i>Indra Choudhary</i>	<i>500000</i>	<i>7917</i>
<i>Jyoti Devi Jhalani</i>	<i>1000000</i>	<i>141600</i>
<i>Kanta Kumari Jain</i>	<i>1000000</i>	<i>141600</i>
<i>Mukesh Agarwal HUF</i>	<i>500000</i>	<i>7917</i>
<i>Namratra Sanjeev Agarwal</i>	<i>5000000</i>	<i>91667</i>
<i>Narain Das Mukhija</i>	<i>3000000</i>	<i>410400</i>
<i>Navin Kothari</i>	<i>2000000</i>	<i>283200</i>

<i>Nupur Mittal</i>	<i>1000000</i>	<i>17600</i>
<i>Om Prakash Miya Bajaj</i>	<i>2500000</i>	<i>46000</i>
<i>R.D.BAHETI</i>	<i>1000000</i>	<i>14583</i>
<i>RAJENDRA KUMAR MALPANI HUF</i>	<i>500000</i>	<i>71400</i>
<i>Sakshi Mittal</i>	<i>1000000</i>	<i>17600</i>
<i>Satya Narayan Agarwal(HUF)</i>	<i>1000000</i>	<i>8800</i>
<i>SHILPA TAMBI</i>	<i>1000000</i>	<i>15833</i>
<i>Tata Capital Housing Finance (9863399)</i>	<i>17000000</i>	<i>84721</i>
<i>YAMINI MALPANI</i>	<i>400000</i>	<i>57120</i>
<i>TOTAL</i>	<i>42900000</i>	<i>1622358</i>

Thus the total payment of interest on old loans of Rs. 82,63,160/- and on fresh loans of Rs. 16,22,358/- comes to Rs. 98,85,518/-. The claim of the assessee both of interest and finance charges is perfectly in order. The entire loans have been obtained and used wholly and exclusively for purposes of business. There is no capital expenditure as mentioned by the Learned Assessing Officer in the assessment order. The disallowance was made by the Learned Assessing Officer on the ground that the assessee failed to appear before him. Further the Learned Assessing Officer failed to appreciate the facts of the case in proper perspective particularly with reference to the position of loans and interest in the immediately preceding Assessment Year.

5. Provisions of section 37 –

The provisions of section 37 are quoted as under: -

37. (1) Any expenditure (not being expenditure of the nature described in [sections 30](#) to [36](#) and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

The aforesaid provisions stipulate the following condition for claim of expenditure –

- (i) The expenditure is not capital expenditure*
- (ii) The expenditure is not personal expenses of the assessee*
- (iii) The expenditure is laid out or expended wholly and exclusively for the purposes of the business or profession*

All the aforesaid conditions stipulated in the provisions of section 37 are met by the assessee. The Learned Assessing Officer has failed to point out any capital expenditure made by the assessee or any personal expenditure. It is submitted that the entire expenditure of interest and finance brokerage is wholly and exclusively for the purposes of business. Hence the same deserves to be allowed. It is further submitted that it is also not the case of the Learned Assessing Officer that the assessee made advances without interest. The entire addition has been made by the Learned Assessing Officer under confusion. The following case laws quoted in support –

- (a) S.A. Builders Ltd. Vs. CIT (2007) 158 Taxman 74/288 ITR 1 (SC)*

The decision relating to section 37 will also be applicable to section 36(1) (iii) because in section 37 also the expression used is “for the purpose of business”. It has been consistently held in decision relating to section 37 that the expression ‘for the purpose of business’ includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby. The expression ‘commercial expediency’

is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. The ratio of the Supreme Court decision, in Madhav Prasad Jatia Vs. CIT AIR 1979 SC 1291 is that the borrowed fund advanced to a third party should be for commercial expediency, if interest thereon is sought to be allowed under section 36(1)(iii).

The assessee borrowed funds from bank and advanced part of it to its sister concern (a subsidiary) as interest-free loan. The Assessing Officer disallowed interest under section 36(1)(iii) on the borrowings to the extent those were advanced to the subsidiary. The Tribunal as well as the High Court upheld the order of the Assessing Officer.

Held that in the instant case, neither the High Court nor the tribunal and other authorities had examined whether the amount advanced to the sister concern was by way of commercial expediently. The High Court and other authorities should have examined the purpose for which the assessee advanced the money to it's sister concern , and what the sister concern did with the money, in order to decide whether it was for commercial expediency but that had not been done .

It is not in every case that interest on borrowed money has to be allowed if the assessee advanced it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances, where holding company has a deep interest in its subsidiary and the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the holding company would ordinarily be entitled to deduction of interest on its borrowed loans.

- (b) India Cements Ltd. Vs. CIT (1966) 60 ITR 52 (SC) / S.F. Engineer Vs. CIT (1965) 57 ITR 455 (Bom.)

Interest payments – Purpose for which loan was required is irrelevant – In principle, apart from any statutory provisions, there is no distinction between interest in respect of a loan and an expenditure incurred for obtaining the loan. The nature of the expenditure incurred in raising a loan would not depend upon the nature and purpose of the loan. The purpose for which the loan was required is irrelevant to the consideration of the question whether the expenditure for obtaining the loan is revenue expenditure or capital expenditure –

- (c) CIT Vs. Sales Megnesite (P) Ltd. (1995) 214 ITR 1/81 Taxman 33 (Bom.)

Commercial expediency must be decided from businessman's point of view – Even expenditure incurred voluntarily on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business would be deductible under this section. The question whether it was necessary or commercially expedient or not is a question that has to be decided from the point of view of the businessman and not by the subjective standard of reasonableness of the revenue.

- (d) Caldern Pharmaceuticals Ltd. Vs CIT (2004) 265 ITR 244 (Cal.)

Interest on borrowing could not be disallowed, merely because the assessee had not taken, in the opinion of the Assessing Officer, effective steps to realize the amount due to it.

In view of the above facts and circumstances the addition made by the Learned Assessing Officer deserves to be deleted. "

Ground No. 3–

Under the facts and circumstances of the case, the Learned CIT(A) has erred in set-aside the issue regarding addition of Rs. 27,132/- u/s 40(a)(ia) of the Income Tax Act, 1961.

The facts of the case are that assessee has made payment of Rs. 84,721/- as processing and filing charges on loan taken from Tata Capital Finance Ltd. No TDS was required to be made on such payment. However, the Learned Assessing Officer treated the aforesaid amount of Rs. 84,821/- as payment of interest and there being no TDS on this amount, 30% of the same was disallowed, which resulted in addition of Rs. 27,132/-. The Learned CIT(A) has directed the Learned Assessing Officer to allow the same after verifying the fact that payment of Rs. 84821/- was towards processing and file charges. The Hon'ble Tribunal is requested to direct the Learned Assessing Officer to grant the consequential relief.

Ground No. 4-

The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.

The Hon'ble Tribunal is requested to decide the appeal in favour of the assessee by considering the above submission and oblige.”

6. To support the various grounds so raised by the Id. AR of the assessee he also relied upon the following evidences in support of the contentions so raised in the written submission :-

S. No.	Particulars	Pg No.
1.	Copy of return of income along with computation and copy of balance sheet, trading & P & L a/c, partners capital account etc.	1-9
2.	Copy of submission made before the Learned CIT(A) along with copy of paper book submitted	10-38

7. During hearing, in addition to the written submission and evidence so filed by the Id. AR of the assessee vehemently argued that the Id. CIT(A) has erred in considering the evidence filed by the assessee as additional evidence and since the assessee has

not preferred an application as per rule 46A the same were not considered and has confirmed the view of the Id. AO. So far as ground number 1 raised by the assessee the contention of the Id. AO was the assessee must capitalize the expenditure incurred and whereas the evidence produced before the Id. CIT(A) are accounts furnished along with the return of income consisting of details of partners' capital accounts, breakup of secured and unsecured loans, trading and profit & loss account and the Id. AO has made the addition based on that evidence. That evidence were considered to be additional evidence by the Id. CIT(A) and therefore, the addition was confirmed.

So far as the addition of Rs. 27,132/- the matter was set aside as the payment was not interest and was processing fees and file charges. On that aspect the Id. AR of the assessee stated that considering that set of fact he must have allowed the relief to the assessee.

8. Per contra, Id. DR supported the order of the lower authorities. The Id. DR vehemently argued that Id. AO has given almost 6 to 7 opportunity to assessee and the assessee did not submit the required details to the Id. AO and thereby the Id. AO

has no option but to make the addition. The assessee did not make any submission so as to the claim being of capital expenditure or that of the revenue expenditure. Before the Id. CIT(A) the assessee has filed the evidence but did not follow the prescribed procedure therefore, both the order's finding is correct and the same be sustained. The Id. DR in addition also filed the following written submissions:-

“Kindly refer to your office letter No.Addl.CIT(Sr.DR-II)/ITAT/JPR/2024-25/367 dated 25.07.2024 in connection with the above mentioned subject.

In this regard, report on written submission and paper book of assessee on the issue of addition of Rs.1,05,72,651/ on account of Interest and Brokerage Expenses is submitted as under:-

Addition of Rs.1,05,72,651/ on account of Interest and Brokerage Expenses

AO made the addition of Rs 1,05,72,651/ on account of Interest and Brokerage Expenses in the assessment order dated 18.12.2019. During the assessment proceedings, it has been noticed that the assessee is engaged in the business of construction & developer and claimed expenditure of Finance Brokerage and Interest amounting to Rs. 6,87,133/- and Rs. 98,85,518/- respectively, whereas both the expenditure are capital expenditure for the business of construction and developer and liable to be capitalized. In this regard, the assessee did not furnish any details or justification as to why both the expenditures of finance brokerage and interest have not been capitalized. As the assessee did not submit any reply in compliance to show cause notice, therefore, AO made the addition of Rs. 1,05,72,651/- observing that the expenditure of finance brokerage and interest must be capitalized treating the same as capital expenditure and also under these circumstances, the expenditure of finance brokerage and interest can't be allowed u/s 37 of the Act. In view of the above discussed facts, the Expenditure of Finance Brokerage and

Interest amounting to Rs. 6.87,133/- and Rs. 98,85,518/ respectively aggregating Rs. 1,05,72,651/- was disallowed and added back to the total income of the assessee for the year under consideration as both the expenses are capital expenditure and not allowable u/s 37 of the Act.

2. Thereafter assessee filed the appeal before Ld. CIT(A) and Ld. CIT(A) vide order dated 07.06.2024 dismissed the appeal of the assessee on this ground and confirmed the above addition observing as under:-

"It can be observed from above, the AO has made the impugned addition since the Appellant failed to provide relevant details/explanation in spite of repeated reminders and issue of show cause notice. In this background, it needs to be appreciated that whether an expenditure is of revenue or capital in nature depends primarily on examination of such details, In absence of submission of details of such expenditure, it is quite natural for the AO to come to conclusion that it is capital in nature; after considering business activities of the Appellant. The Appellant can not be given a benefit in absence of any efforts on the part of the Appellant to submit any details. Further, in this background, the details/evidences furnished by the Appellant in the present proceedings partake the character of additional evidences, which are required to be admitted only when conditions stipulated therein are met. However, there is no accompanying petition of the Appellant under Rule 46A of the IT Rules, 1962."

3. Further, Ld. CIT(A) observed that in the absence of the requisite documentary evidences, the contention of the Appellant remained unverified and unproved solely due to the conduct and laches on the part of the Appellant and these cannot be accepted. Accordingly, the addition made by the AO is hereby confirmed.

4. As during the assessment proceedings assessee did not submit any details or justification as to why both the expenditures of finance brokerage and interest have not been capitalized, therefore, in the absence of the same AO made the addition treating the both the expenses are capital expenditure and not allowable u/s 37 of the Act.

Assessee' contention No additional evidence were furnished before the Ld. CIT(A) and the explanation and paper book filed during the appellate proceedings were part of financial statements, which were before the AO.

Report of AO:-

Assessee contention is that it has not submitted any additional evidence before the Ld. CIT(A) and the explanation and paper book filed during the appellate proceedings were part of financial statements and not additional evidences. Therefore, the CIT(A) erred in considering the explanation of paper book as additional evidences and thereafter not admitting the same under Rule 46A. This contention is not found legally and factually correct. During the assessment proceedings, assessee has not submitted any details or justification as to why both the expenditures of finance brokerage and interest have not been capitalized. The AO issued show cause notice to the assessee on this issue proposing the addition but despite providing sufficient opportunity, complete reply was not given.

(ii) During the appellate proceedings, assessee submitted details of loans taken, both secured and unsecured and interest paid on such loan. The assessee claimed that payment of interest of Rs.98,85,518/- consisted of (i) Rs.82,64,160/- which was paid on old loans carried forward during the year under consideration (ii) interest paid on fresh loans of Rs. 16,22,358/-. It claimed that effective fresh loan obtained during the year is only Rs.1.70 crore from Tata Capital Housing Limited and this amount has not been invested in any capital expenditure but has been used for the purpose of business. As there was no accompanying petition of the Appellant under Rule 46A of the IT Rules, 1962, therefore, same details or evidences were not accepted by the Ld.CIT(A).

(iii) In this regard, it is observed that this explanation regarding old loans, fresh loans, use of fund taken on loan for business only and not for capital investment and related evidences were never filed before the AO. This explanation and paper book was first time filed before the Ld. CIT(A) during appellate proceedings. These details and evidences were necessary for the assessee to be submitted before the AO so that he could have examined correctness and genuineness of the claim made by the assessee but the assessee did not furnish them before the AO. From the nature of these details and evidences, it is clear that these falls in the definition of additional evidences. For admissibility of additional evidences, it is necessary that the case should be covered in the exception given in Rule 46A of the Income-tax Rule-1962. But the assessee failed to prove that its case is covered in any of the exceptions given in Rule-46A and therefore, Ld. CIT(A) correctly denied to admit additional evidences submitted by the assessee.

(iv) In view of the above discussion, it is clear that the details and paper book submitted by the assessee is covered under the definition of additional evidences and since, the assessee failed to make its case under any of the exceptions given in Rule-46A, the Id. CIT(A) correctly denied to admit them. On merit, in absence of requisite documentary evidences, the Id. CIT(A) was unable to verify the contention of the assessee and confirmed the additions. Therefore, the contention of the assessee is not found acceptable and is liable to be rejected.

Report is submitted for kind perusal and necessary action.”

9. In the rejoinder the Id. AR of the assessee the Id. CIT(A) should have given the opportunity to the assessee to remove the defects observed by him and thereby he has violated the principles of natural justice. As regards the second ground, the Id. CIT(A) should have granted the relief instead of sending it to AO which he has no power to do. He also submitted that the Id. CIT(A) has considered based on the same set of additional evidence and considered the merits of the case whereas for the other ground he did not.

10. We have heard both the parties and perused the materials available on record.

Ground No. 1 and 2 relates to the interest and brokerage treated as capital expenditure by lower authorities and the assessee claimed it in profit and loss account. The assessee

contended the assessee is a developer of property as it is evident from the financial statement of the assessee available on record. The brief fact of the dispute as is arising from the order of the Assessing Officer is that the assessee claimed expenditure of finance brokerage and interest amounting to Rs. 6,87,133/- and Rs. 98,85,518/- respectively totaling to Rs. 1,05,72,651/-..

The Id. AO contended that these expenditures are of the capital expenditure and therefore, he made addition of Rs. 1,05,72,651/- treating both the expenditure are in the nature of capital expenditure, as the assessee had debited it to the profit and loss account instead capitalizing the same.

The matter was carried to before the Ld. CIT(A) he did not consider the evidence filed by the assessee, as the assessee did not preferred the petition under Rule 46A of IT Rules and thereby he confirmed the addition of an amount of Rs. 1,05,72,651/-.

Aggrieved from that finding of the lower authorities the assessee is in appeal before us. The Id. AR of the assessee submitted that there is no additional evidence as such, and the lower authorities failed to appreciate the fact that though the assessee has debited the finance brokerage and interest total income of Rs. 1,05,72,651/- in the profit and loss account but as it

is evident from the profit and loss account filed by the assessee that the assessee is engaged in the business of construction and developer of property. The assessee has opening work in progress for an amount of Rs. 14,95,36,567.81. The assessee also for the year under consideration added to direct and indirect expenditure of the year under consideration in the same opening work in progress. As evidence from the record that during the year under consider, the assessee made self of Rs. 35,00,000/- and has received club membership of Rs. 50,000/- for which profit of Rs. 2,85,369.55. The assessee also consequently disclose closing work in progress of Rs. 15,73,74,200.00 this closing work in progress consist of the finance brokerage and interest claimed by the assessee and therefore, though the assessee has debited the said amount in the profit and loss account but the same has been added while considering the closing work in progress to the extent of the unsold or unrealized closing work in progress. Therefore, when this questions were raised by the Bench before the Id. DR he did not raised any specific to the fact that the assessee to the extent of self made so one the profit and to the extent of unsold closing work in progress the interest and finance brokerage is already forming part of that capital work in progress credited in the

profit and loss account and therefore, there cannot be any further grievance when the assessee has further debiting expenditure has also credited part of the amount related to the stock of the assessee. Thus, we are of the considered view that the said expenditure is already capitalized and therefore, their cannot be any debit as to the claim as revenue or capital expenditure. Since, the assessee has already capitalized the said expenditure to the extent of work in progress and therefore, based on these facts ground No. 1 and 2 raised by the assessee is allowed.

So far as ground No. 3 relates to 30% disallowances of Rs. 27,132/- made as per provision of Section 40(a)(ia) of the Act. The Ld. CIT(A) noted that these expenditure claimed by the assessee is not related to the interest expenditure as contend by the Id. AO based on the same set of record that has been produced by the assessee in the appellate proceedings. We note that the Id. CIT(A) did not consider that the assessee has not placed on record the petition as per Rule 46A of the Rules which has considered the additional evidence wherein it is categorically verified by him that these expenditure are not on interest and are related to the processing fee paid by the assessee and file charges paid to Tata Capital Housing Finance limited and therefore, Id. CIT(A) should

have directed to delete the said disallowances to the Id. AO instead of he set aside the same. Considering the factual aspect placed on record, we are of the considered view that since the claim of the assessee is of any interest and of the process fee. The disallowances made is not at all required to be sustained and therefore, the same is directed to be deleted.

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

Order pronounced in the open Court on 19/09/2024.

Sd/-

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19/09/2024

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Paradise Infrastructure, Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 871/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar