

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI

BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3250/MUM/2024

Assessment Year: 2018-19

Income Tax Officer – 41(4)(4), Mumbai	Vs.	Wellgroomed Venture, Hubtown Viva, Shankarwadi Village, Mogra, Western Express Highway, Jogeshwari East, Mumbai – 400060 (PAN : AAGPT4896B)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Anuj Kisnadwala, Advocate
Revenue : Dr. Kishor Dhule, CIT DR

Date of Hearing : 19.08.2024

Date of Pronouncement : 11.11.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2024-25/1064288498(1), dated 23.04.2024 passed against the assessment order by National Faceless Assessment Centre, Delhi, u/s. 143(3) r.w.s. 144B of the Income-tax Act (hereinafter referred to as the "Act"), dated 02.06.2021 for Assessment Year 2018-19.

2. Grounds taken by the Revenue are reproduced as under:

(1) "Whether the CIT(A) was justified in holding that amount of interest to tune of Rs. 9,53,45,542/-paid to M/s. Solidity Developers Pvt. Ltd was actually loan taken SDPL from M./s. Citygold Investments Pvt. Ltd. and was utilized for the purpose of funding the assessee without examining whether any interest expenses were actually borne by SDPI or not, and ignoring that the assessee's explanation regarding non recognition of interest cost in earlier years is an afterthought of the assessee to cover up the manipulations in books of account.

(i) Whether the amount debited in the P & L Account on account of provision for interest on service tax Rs 1.86,80,713/- should be allowed as deduction from business profits

(iii) Whether Ld CIT(A) was justified that there was no suppression or understatement of sales by holding that the revenues had been recognized in earlier years and the registration took place subsequently in relevant AY 2018-19 without appreciating the facts that as per AIR data Provided by the Joint Sub Registrar office, Mumbai the assessee had executed conveyances amounting to Rs. 9,59,59,000/- whereas the revenue recognized in the books was only Rs. 2,32,04,000/- thereby resulting in difference of sales to the tune of Rs. 7,27, 55, 000/-

(iv)Whether Ld. CIT(A) was in deleting the addition on account of suppressed sales by holding that there was no suppression or understatement of sales as the revenues had been recognized in earlier years and the registration took place subsequently in relevant AY 2018-19 without appreciating the facts that the assessee had executed conveyances amounting to Rs. 9,59,59,000/- and recognized revenue of only of Rs. 2,32,04,000/- thereby suppressing the sales to the tune of Rs.7,27,55,000/-.

3. Brief facts of the case are that assessee is engaged in real estate business of construction and development of commercial premises. It is set up as a joint venture between Solidity Developers Pvt. Ltd. (SDPL) who owns 95% share and M/s. Akruti Kailash Constructions (AKC) who holds balance 5% shares, both being co-venturers in the joint venture. Assessee filed its return of income on 30.10.2018 reporting total income at Rs.17,53,110/-. Case of assessee was selected for complete scrutiny on the following two issues-

- i) Income from real estate business
- ii) Unsecured loans.

3.1. Assessment was completed at assessed total income of Rs.20,50,42,779/- after various additions/disallowances, details of which are tabulated as under:

Sr. No.	Particulars	Amount (Rs.)
1	Returned Income	17,53,110
2	Add: unexplained receipts (discussed as per Para.5.4)	9,53,45,542
3	Add: Disallowance on account of provision for interest(as per para.6)	1,64,28,353
4	Add: Disallowance of GST liability(as per para.7)	80,061
5	Add: Disallowance on Service tax written back(as per para.8)	1,86,80,713
6	Add: addition on account of undisclosed sale(as per para.9)	7,27,55,000
7	Assessed Income	20,50,42,779/-

3.2. From the above table, Revenue is in appeal for items at Sr. No.2 vide ground No.1, for Item at Sr. No.5 vide ground No.2, for Item at Sr. No.6 vide ground No.3 & 4. We take up the grounds seriatim.

4. For the first ground on addition of interest of Rs.9,53,45,542/- relevant fact are that assessee had undertaken real estate project in the

name of Hub Town VIVA. An increase in Working Progress (WIP) was noted by the Id. Assessing Officer against this project which was on account of reimbursement of interest cost with a corresponding increase in the current accounts balance of the co-venturer SDPL. It was submitted that SDPL had taken a loan from Citygold Investment Pvt. Ltd. (CIPL), a non-banking financial institution. These funds were infused in the joint venture by SDPL for the purpose of construction of the stated project. On these loans, SDPL incurred interest cost aggregating to Rs.9,53,45,542/- in Financial Year 2011-12, 2012-13 and 2013-14 which was recoverable from the JV assessee. Details of loans taken and interest paid thereon is tabulated as under:

F.Y.	Loan as 31-03	Interest Paid	ROI	TDS
2011-12	24,50,05,722	3,74,28,580	18%	37,42,858
2012-13	6,06,75,815	4,63,27,881	19%	46,32,788
2013-14	7,11,05,988	1,15,89,081	19.10%	11,58,908
Total		9,53,45,542/-		

4.1. According to the assessee, this interest cost was capitalised in the books of SDPL in the carrying amount of its investments in the JV assessee as a co-venturer. However, JV assessee had not accounted for the same in its books of accounts, since the project had not yet completed. The project was completed on 06.07.2015 when Occupation Certificate was received by the JV assessee. Subsequently, when it came to the notice of the JV assessee that this interest cost had remained to be accounted though duly accounted and reported in the books of SDPL, the aggregate interest cost was taken into the books of JV

assessee in AY 2018-19. For this it was added as a cost to the WIP account of the project and was subsequently claimed proportionally against the revenue offered from the sale of units in the said project. In order to corroborate the claim of the assessee, following documents were placed on record.

- i. Ledger confirmation from SDPL
- ii. Ledger account in the books of the JV
- iii. Reconciliation statement showing oversight in claim of interest expense
- iv. Confirmation of Loan from CIPL
- v. WIP statement for the year showing booking of above interest
- vi. Financial statements of SDPL highlighting the loan taken from CIPL
- vii. Confirmation from CIPL towards end use of the loan taken by SDPL

4.2. According to the assessee, interest cost is directly related to the project undertaken by the JV assessee since the funds obtained by one of its co-venturer, i.e. SDPL from CIPL were infused in the JV assessee by taking a loan. Further, according to the assessee, interest cost actually incurred by the assessee is not in dispute. It was only an inadvertent error on the part of the assessee of not accounting it year on year basis by way of cost to the WIP account of the project. On this aspect, it was contended that even if interest had been accounted in each of the respective years then also, the effect in the book of accounts would have been same since this interest cost would have been added as cost to the WIP account and then claimed proportionally against the revenue generated from the sale of units in the project.

5. Taking into consideration the submissions made by the assessee duly supported by corroborative evidence, ld. CIT(A) allowed the ground raised by the assessee and deleted the addition so made. While holding so, he observed that impugned sum of interest was debited to the cost of WIP and the said journal entry did not involve any receipt of cash from SDPL. Thus, according to him there was no occasion for the ld. AO to invoke provisions of Section 68 of the Act for making the said addition. He also noted that JV assessee was solely formed for the project undertaken by it and the overall profitability would have no impact whether the interest was accounted in each of the respective years or in the year under consideration. Furthermore, since tax rates across these years remained same, the overall impact was revenue neutral. He placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd. 358 ITR 295 (SC) which addressed the question concerning the year in which the assessee is required to pay tax. The relevant findings of the Hon'ble Court are reproduced as under:

“Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.”

6. Before us, the ld. Counsel reiterated the above stated facts and referred to reconciliation statement in respect of claim of expenditure placed in the paper book, mapping it with reporting done by SDPL in its books of accounts. Assessee commenced its revenue recognition from

the said project when it received the occupation certification on 06.07.2015, i.e. relevant to AY 2016-17. Ld. Counsel pointed out that revenue reflected in its financial statements, prior to AY 2016-17 is in respect of other work contracts undertaken by it and is not related to the project undertaken as a JV between SDPL and AKC. Ld. Counsel pointed out from the audited financial statements, details in respect of WIP account of Hub Town VIVA project wherein finance cost is included. There is another project by the name Aradhana, wherein the finance cost is reported as interest paid of Rs.8,43,43,113/- for the period as at 31.03.2017. He thus, pointed out that ld. AO has misunderstood the reporting done by the assessee in respect of WIP for its different projects undertaken.

7. Ld. Sr. DR placed strong reliance on the observations and findings of the ld. AO since assessee is bound to account for interest cost in the respective years and not as an aggregation in one year which does not reflect the correct picture of its financial affairs. According to him, ld. AO has rightfully made the addition u/s. 68 of the Act.

8. We have heard both the parties and perused the material on record. The facts narrated above are undisputed and uncontroverted. Loan taken by SDPL from CIPL and infused into the JV assessee for the purpose of project undertaken by it is not in doubt. Assessee has not received any money during the year in respect of the interest cost which has been debited to the cost of WIP of project. Assessee has accounted for this interest cost as liability towards its co-venturer, i.e., SDPL. It is a revenue neutral transaction. We find that ld. CIT(A) has considered all the aspects of the issue meritoriously as enumerated above and has deleted the addition. Considering the facts on record and the judicial precedents referred above, we do not find any reason to interfere with

the meritorious finding arrived at by ld. CIT(A) on this issue. Accordingly, ground no.1 raised by the Revenue is dismissed.

9. Ground no.2 is in respect of disallowance of service tax written back of Rs,1,86,80,713/-. However, the ground raised by the Revenue states that it is in respect of amount debited in the profit and loss account towards provision of interest on service tax which should not have been allowed as a deduction from business profits. Considering the amount taken by the Revenue in its ground, we observe that the issue is in respect of write back of provision for service tax created in the earlier year and had been disallowed by the assessee u/s. 43B of the Act and was claimed as deduction u/s.43B in the relevant year in which the unpaid provision was written back and reversed/credited to the profit and loss account.

9.1. ld. AO did not agree with the claim of the assessee by observing that since it had written back the said amount to the profit and loss account, it is not allowable as a deduction from business profits. In this respect the facts are that assessee had provided for service tax liability in earlier years which was not claimed as deduction since not actually paid as required u/s. 43B of the Act. According to the assessee, since the said provision was found to be no longer required, it was written back and credited to the profit and loss account. Thus, according to the assessee, the provision so created in the earlier year was disallowed u/s.43B and never claimed as deduction while computing the profits in the respective years. When it has been reversed or written back, assessee has rightly excluded the same while computing its business income for the year under consideration.

9.2. Assessee explained these facts by placing on record corroborative material which included computation of income for AY 2017-18 and 2018-19 alongwith copy of ledger account for service tax expenses. Assessee also gave a tabular summarisation of the facts which is reproduced as under:

<i>S.N</i>	<i>Details</i>	<i>Assessment Year 2017-18</i>	<i>Assessment Year 2018-19</i>
<i>In Computation:</i>			
<i>1.</i>	<i>Disallowance u/s 438- Service Tax</i>	<i>1,86,80,713</i>	
<i>2.</i>	<i>Disallowance reversed as liability ceased to exist*</i>	<i>1,86,80, 713</i>	
<i>In Financials:</i>			
<i>3.</i>	<i>Liability for service tax booked</i>	<i>1,86,80,713</i>	
<i>4.</i>	<i>Entry of service tax reversed as liability ceased to exist</i>		<i>1,86,80,713</i>

9.3. On the above stated facts, ld. CIT(A) observed that disallowance made by the ld. AO is not tenable. For this he placed reliance on the decision of Hon'ble High Court of Madras in the case of CIT vs. Samundra Shoes Overseas Ltd. in TCA No.349 of 2016, dated 06.06.2016 and of Coordinate Bench of ITAT, Mumbai in the case of DCIT vs. K.S. Diesels Ltd. (132 taxmann.com 74).

10. We have heard both the parties and perused the material on record. The facts as stated above are undisputed and uncontroverted. Considering the same as well as the judicial precedents relied upon by the ld. CIT(A), we do not find any reason to interfere on the factual

finding arrived at by Ld. CIT(A). Ground no.2 raised by the Revenue is dismissed.

11. Ground No.3 and 4 relate to addition of suppressed sales amounting to Rs.7,27,55,000/- based on AIR data submitted by Joint Sub Registrar Office, Mumbai from which ld. AO noted that assessee had executed conveyances amounting to Rs.9,59,59,000/- during the year under consideration whereas the revenue recognised by it in its books of account is only Rs.2,32,04,000/-. Assessee submitted that sales were recognised in the year in which possession was handed over and consideration was received by it in full, i.e., when the sale /transfer was complete. Ld. AO did not agree with the submissions made by the assessee and made the addition by holding it as suppressed sales. Assessee gave break up of its income from operations reported in its audited profit and loss account which included –

- | | |
|-------------------------------------|--------------------|
| i) Income from sale of unit no.1116 | - Rs.2,32,04,000/- |
| ii) Income from works contract | - Rs.6,62,56,857/- |
| iii) Interest income from customers | - Rs.1,07,53,354/- |

Total revenue as per profit and loss account - Rs.10,02,14,211/-

11.1. It was stated that revenue from the units in respect of which details were obtained by the ld. AO from the office of Sub Registrar, Mumbai was booked and offered to tax in AYs from AY 2016-17 to 2020-21 which was corroborated by giving a tabulated summary reproduced below:

Sr.no	Unit no	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
		Year in which revenue is booked			
1	315	1,14,48,000	-	-	-
2	1214	-	2,55,58,700	-	-
3	1210	-	81,78,750	-	-
4	1109	87,24,000	-	-	-
5	1111	98,50,000	-	-	-
6	1213	95,62,500	-	-	-
7	1212	-	1,06,85,000	-	-
8	1112	81,20,500	-	-	-

					-
9	1113	-	-	-	1,05,90,000
10	1209	-	79,24,300	-	-
11	1208	-	1,20,02,500	-	-
12	1116	-	-	2,32,04,000	-
Total		4,77,05,000	6,43,49,250	2,32,04,000	1,05,90,000

11.2. On the above stated facts, ld. CIT(A) noted that revenue recognised by the assessee is on project completion basis when risk and rewards are transferred whereas reporting of a transaction in the AIR information is based on registration of property. Ld. CIT(A) took note of the reconciliation presented by the assessee in respect of registration of properties found in AIR information shared by Joint Sub Registrar office, Mumbai with the revenue recognised and offered to tax in earlier/subsequent years in respect of sale of units and arrived at a conclusion that there was no suppression of sales in as much as revenues had indeed been recognised by the assessee in earlier/subsequent years when risk and rewards were transferred whereas registration took place subsequently. On these set of facts, he noted that addition made by the ld. AO in the year under consideration leads to double taxation, i.e., taxation of revenues from the same units twice, mainly once in earlier years when the property was transferred and again in the relevant year when the property was registered. He thus, deleted the addition so made by holding it as unjustified on the part of ld. AO.

12. We have heard both the parties and perused the material on record. The facts stated above and duly analysed by ld. CIT(A) are uncontroverted. The fact based meritorious finding arrived at by ld. CIT(A) by taking into consideration corroborative material placed on record, we do not find any reason to interfere with the findings so arrived at by ld. CIT(A). Accordingly, ground No.3 and 4 raised by the Revenue are dismissed.

13. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 11 November, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 11 November, 2024

MP, Sr.P.S.

Copy to :

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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai