

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH MUMBAI

**BEFORE SHRI. SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI. GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2129/MUM/2024
Assessment Year: 2017-18**

Deputy Commissioner of Income-tax-2(3)(1) Mumbai.	Vs.	Nouveau Developers Private Limited 702, Natraj, MV Road, Junction, Western Express Highway, Andheri (East), Mumbai - 400069. (PAN: AACCN5280G)
(Appellant)		(Respondent)

**C.O. No. 275/MUM/2024
Assessment Year: 2017-18**

Nouveau Developers Private Limited 702, Natraj, MV Road, Junction, Western Express Highway, Andheri (East), Mumbai - 400069. (PAN: AACCN5280G)	Vs.	Assistant Commissioner of Income-tax, Circle -10(3)(1) Mumbai.
(Appellant)		(Respondent)

Present for:

Assessee : Shri. Naresh Kumar, AR
Revenue : Ms. Monika H. Pande, SR. AR.

Date of Hearing : 11.12.2024
Date of Pronouncement : 06.03.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue and Cross Objection filed by the assessee are against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC) Delhi, vide order no. ITBA/NFAC/S/250/2023-

24/1061252667(1), dated 21.02.2024, passed against the assessment order by Assistant Commissioner of Income-tax, Circle 10(3)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 23.12.2019, for Assessment Year 2017-18.

2. Grounds taken by the revenue in ITA No. 2129/MUM/2024 are reproduced as under:

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of interest cost of Rs.3,58,06,255/- without appreciating the facts that the borrowing cost of Rs. 3,58,06,255/- should not be incurred and allowable to be debit in P & L account if the project is already completed."

2. "Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in deleting the disallowance of Rs.1.13,53,417/on account of capitalization of advertisement and marketing expenses without appreciating the fact that the expenses incurred by the assessee were not purely towards advertising its products but are deferred expenditure which are for expanding the business base arid propagating the brand name."

3. Grounds taken by the assessee in C.O. No. 275/MUM/2024 are reproduced as under:

"1. On the facts and circumstances of the case and in law, the Hon'ble CIT (A) erred in confirming the order of the Assessing Officer in respect of additions of Rs.5,52,04,312/- made invoking the provisions of section 43CA of the Income Tax Act, 1961 on sale of immovable properties. The Ld. AO erred in making such addition which is the difference in the stamp duty value of immovable properties and their sale consideration as reported in Tax Audit Report. The Ld. AO failed to take cognizance of the fact that there is timing difference in stamp duty value on the date of booking and stamp duty value on the date of registration of Sale agreement of immovable propertise. It is prayed to your honour to delete such additions and necessary directions may be given in this regards."

4. Brief facts of the case are that assessee is engaged in the business of construction, purchase, acquire, hire, operate, manage and develop land for real estate property including residential units and complexes. Assessee filed its return of income on 13.10.2017, reporting the total income at Rs.12,34,560/- under the normal provisions of the Act and book profit of Rs.8,23,28,981/- u/s. 115JB. Assessee had incurred

borrowing cost of Rs.3,58,06,255/- debited to profit and loss account. Out of this interest expenses, assessee had already capitalised Rs.1,34,72,318/- to its work in progress. For the balance amount of Rs.2,23,33,937/-, disallowance was made by the ld. Assessing Officer. Originally, ld. Assessing Officer had made the disallowance of total interest cost of Rs.3,58,06,255/- which was subsequently rectified by passing a rectification order u/s.154, dated 24.02.2020 wherein the disallowance was made for Rs.2,23,33,937/- since the balance amount had already been capitalised by the assessee to its work in progress.

4.1. Ld Assessing Officer also made a disallowance of Rs.85,80,107/- towards advertising and publicity expenses and sales promotion expense of Rs.27,73,130/- by taking 80% of these two amounts, i.e., Rs.90,82,590/-. He treated 20% as revenue expenditure for giving the allowance. In this respect also, originally ld. Assessing Officer had made a disallowance of Rs.2,77,73,130/- towards sales promotion expenses, which was also rectified by the same referred above rectification order.

4.2. In the course of assessment proceedings, assessee was also asked as to why an amount of Rs.5,52,04,312/- towards difference between stamp duty value and sale consideration be not added as per section 50C r.w.s. 43CA of the Act. After considering the submissions made by the assessee this amount was added to the total amount of the assessee in completing the assessment.

5. On the issue relating to disallowance of interest cost, contention of assessee is that project undertaken had been completed for which occupancy certificate was received on 19.12.2016, relevant to Assessment Year 2017-18. According to the assessee, once the project

is completed, capitalisation of finance cost to qualifying asset gets discharged and the same should be charged to profit and loss account as per Accounting Standard -16, issued by Institute of Chartered Accountants of India (ICAI). Thus, there cannot be capitalisation to work in progress for the year under consideration. On reference to facts of Assessment Year 2013-14 and 2014-15 made by the ld. Assessing Officer, assessee submitted that since the project was not completed during those years, addition was made on account of interest cost but was deleted at the appellate stage.

5.1. Revenue had gone into appeal before the Coordinate Bench of ITAT, Mumbai for Assessment Year 2013-14 and 2014-15 in ITA Nos. 8047/Mum/2019 and 7039/Mum/2018 which dealt with this issue, vide its order dated 12.07.2022. While dealing with this issue, Coordinate Bench took note of the accounting policy followed by the assessee for recognition and capitalisation of borrowing cost as per Accounting Standard-16 recognised by ICAI for determining quantum of interest cost which was debited to profit and loss account. It also took note of Guidance Note on accounting for real estate transactions issued by ICAI, according to which project cost which are directly attributable to the project shall be capitalised. Further, it was noted that disallowance of interest expenditure was not made for the reason that it was not genuine or not for the purpose of business. Thus, Coordinate Bench came to the conclusion that ld. CIT(A) had rightly allowed the claim of the assessee and dismissed the ground taken by the Revenue to this effect.

5.2. Relevant observations and findings of the Coordinate Bench contained in para-6 is extracted below:

“6. We have heard both the parties and perused the records. We note that the assessee is a builder & real estate developer and is following the percentage completion method of accounting the income and expenditure. The assessee has claimed interest expenditure (Rs.2,47,96,353/-) in its P & L account and capitalized interest expenditure of Rs.40,06,934/-. However, the AO disallowed the interest cost of Rs.2,47,96,353/- as not admissible to be claimed as expenses and added the same to the WIP of the project. The Ld. CIT(A) has reversed the action of AO and thereby allowed the claim of assessee by taking note that assessee is following the percentage Completion Method for purpose of accounting and thereby the assessee had capitalized interest of Rs.40,06,934/- out of total interest of Rs.2,88,03,287/- during AY. 2013-14. Further, it also noted that the assessee has followed accounting policy for recognition and capitalization of borrowing cost as per the Accountant Standard-16 "Borrowing Cost" as recognized by the ICAI for determining the quantum of interest cost which was debited to P & L account. The assessee company has followed accounting policy for recognition & capitalization of borrowing cost which is as per the AS-16 "Borrowing Costs". Therefore, the assessee had capitalized interest of Rs.40,06,934/- out of the total interest of Rs.21,88,03,287/- during the AY. 2013-14. And the interest expenses amounting to Rs.2,47,96,353/- was debited to P & L Account and not capitalized to Work-in-Progress. The assessee company has capitalized interest of Rs.40,06,934/- out of the total interest cost on the basis of inflow, project out flow, cumulative funds utilization. As per the Guidance Note on Accounting for Real Estate transactions issued by ICAI, the project cost which are directly attributable to the project shall only be capitalized. (refer 2.2 project cost revised in 2012) wherein it has been clearly stated under (b) Borrowing cost" "in accordance with Accounting Standard-16, borrowing cost which are incurred directly in relation to the project or which are apportioned to a project". Only the cost which are directly attributable to the project should be capitalized to the cost of WIP and hence the assessee has debited the financial cost which are not directly attributable to the project. It is noted that the financial cost of Rs.40,06,934/- out of the total Rs.2,88,03,287/- has been capitalized and became part of the WIP since it was directly related to the project whereas the financial cost of Rs.2,47,96,353/- was debited to the P & L account since it was not directly attributable to the project. We find that the AO was aware of the fact that assessee has capitalized only Rs.40,06,934/- out of the total financial cost to the tune of Rs.2,88,03,287/- and has claimed as revenue expenses and debited in profit & loss account of Rs.2,47,96,353/-. However, it is noted that the AO has not disallowed interest expenditure for the reason that it was in-genuine or not for the purpose of business. Having accepted the genuineness of the interest expenditure the only action taken by the AO was that he has capitalized the same of Rs.2,47,96,535/-, However, since the assessee is following the percentage completion method of Accounting Standard -16, the borrowing cost which are incurred directly in relation to the project should only be capitalized. And therefore, the Ld. CIT(A) has rightly allowed the claim of the assessee which action of the Ld. CIT(A) does not require any interference from our side. And therefore, we dismiss the ground of appeal of the revenue.

5.3. We also take note of decision of Coordinate Bench of ITAT, Mumbai in the case of Keystone Realtors Pvt. Ltd. vs. DCIT in ITA

No.3004/Mum/2014, dated 14.11.2022, findings of which have been relied upon by Id. CIT(A) for giving relief to the assessee. In the said order reliance is placed on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT(A) vs. Lokhandwala Constructions Industries Ltd., [2003] 260 ITR 279 (Bom). Relevant paragraphs from this decision of Keystone Realtors (supra) is extracted below:

"18. In this regard, it is relevant to note that the Hon'ble jurisdictional High Court in CIT vs Lokhandwala Constructions Inds. Ltd., (2003) 260 ITR 579 (Bom.), in case of a builder held that where the loan was obtained for the project of construction of flats, which is stock in trade, the assessee is entitled to deduction under section 36(1) (iii) of the Act in respect of interest expenditure on such loans. The Hon'ble Court further held that while adjudicating the claim of deduction under section 36(1) (iii) of the Act the nature of the expense, whether the expense was on capital account or revenue account was irrelevant, as the section itself says that interest paid by the assessee on capital borrowed is allowable as a deduction.

19. In the present case, undisputedly funds were borrowed for the purpose of the projects undertaken by the assessee, and only based on accounting treatment, the claim of the assessee was denied. It is pertinent to note that the allowability of any deduction is to be decided based on the provisions of the Act. In the present case, since the funds were borrowed for the purpose of projects undertaken by the assessee, therefore, the interest paid on such borrowing is allowable under section 36(1)(iii) of the Act, in view of the aforesaid decision of Hon'ble jurisdictional High Court. Accordingly, the AO is directed to grant the deduction under section 36(1) (iii) of the Act in respect of the interest expenditure claimed by the assessee. As a result, ground No. 2 raised in assessee's appeal is allowed."

5.4. Ld. CIT(A) thus, by following the above referred decisions both by Hon'ble Jurisdictional High Court of Bombay and the Coordinate Bench, allowed the deduction of interest paid by the assessee on capital borrowed and deleted the addition so made.

6. In the given set of facts and circumstances and issue being already dealt in assessee own case for the preceding two years, as well as considering the decisions relied upon by Id. CIT(A) which covers the case of the assessee, we do not find any reason to interfere with the findings arrived at by the Id. CIT(A) in deleting the addition made by Id. Assessing

Officer towards interest cost capitalised to work in progress. In the result, ground no.1 of the Revenue is dismissed.

7. In respect to ground no.2, ld. Assessing Officer made disallowance by taking 80% of advertising and publicity expenses and sales and promotion expenses as capital expenditure and balance 20% as revenue. Ld. Assessing Officer held these expenses as deferred expenditure for the purpose of treating them as capital in nature. Contention of assessee in respect of these expenses is that these are not capitalised to work in progress during the year, since the project has been completed, Further, these expenses are purely indirect expenditure, not related to the cost of the project and therefore cannot be taken to work in progress. These are revenue expenditure which are allowable as business expense u/s.37(1). Reference is also made to the Guidance Note on Accounting in Real Estate issued by ICAI whereby selling cost is not included in the cost of construction and development, since it is an indirect cost, irrespective of these having any link in the construction project.

7.1. Ld. CIT(A) relied upon the decision of Hon'ble High Court of Delhi in the case of CIT vs. Somnath Buildtech Pvt. Ltd. in ITA No.494/2018, dated 13.10.2022 which ruled that advertising expenses, software developing charges and expenses towards brokerage and commission incurred by estate developer are in the nature of general administration cost and selling cost, as classified by Guidance Note issued by ICAI. Hon'ble Court held that these qualify for deduction as revenue expenditure. Thus, ld. CIT(A) deleted the addition made by the ld. Assessing Officer in this respect.

6.2. Issue relating to disallowance of advertising expenses capitalised by the ld. Assessing Officer was also before the Coordinate Bench in assessee's own case for Assessment Year 2013-14. According to the Coordinate Bench, similar issue had arisen in Assessment Year 2013-14, which was allowed by ld. CIT(A) but was not appealed by Revenue at the higher forum. On similar lines, relief was given by ld. CIT(A) in Assessment Year 2014-15 also. Since Revenue did not prefer appeal on this issue for the relief granted by ld. CIT(A), the action of ld. CIT(A) in Assessment Year 2014-15 was upheld by the Coordinate Bench. For taking such a view it placed reliance on another decision of Coordinate Bench in the case of ITO vs. Niche Health Option Pvt. Ltd., in ITA No.1373/Mum/2020 for Assessment Year 2014-15, dated 29.06.2022, wherein by taking note of the fact that Revenue had accepted the action of ld. CIT(A) for one Assessment Year and did not prefer any appeal before the Tribunal but preferred an appeal on the same issue in another Assessment Year, the Tribunal held that the issue is not maintainable in law and rejected the issue in *limine*. Thus, by following the decision in the case of Niche Health Option (supra) ground raised by the Revenue on this issue was dismissed as not maintainable.

8. Considering the facts on record and submissions made by the assessee as well as judicial precedents relied upon, both in the assessee's own case as well as that of Niche Health Option Pvt. Ltd. (supra) and Somnath Buildtech Pvt. Ltd. (supra), so also considering Guidance Note issued by ICAI dealing with treatment of such expenses for capitalisation, we are in agreement with the submissions so made by the assessee, more particularly, when the project had been completed in the year under consideration. The dispute is not on the genuineness of the expenses so incurred but its

treatment as to capital or revenue in nature. Keeping the discussion made above in juxtaposition, we find no reason to interfere with the findings arrived at by Id. CIT(A), to allow the claim made by the assessee. Accordingly, ground no.2 raised by the Revenue is dismissed.

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

10. In the cross objection filed by the assessee, the sole ground raised is in respect of addition of Rs.5,52,04,312/- made by invoking section 43CA r.w.s. 50C which is on account of difference in the stamp duty value of immovable properties and their sale consideration as reported in tax audit report. According to the assessee, there is timing difference on the stamp duty value on the date of booking and stamp duty value on the date of registration of sale agreement.

10.1. On perusal of order of the Id. CIT(A), from the findings and observations given in para – 5.4, we note that the addition so made has been sustained on the premise that assessee has not submitted any evidence to establish that the date of agreement fixing the value of consideration for transfer of asset were made in financial year 2011-12 and 2012-13. It is further, noted that no evidences were produced to show that the date of allotment was made to buyers in the financial year 2011-12 and 2012-13. It is also noted in para – 4.2, that assessee continuously sought adjournments and did not make any submission which resulted into sustaining of this addition and dismissal of the ground so raised by the assessee.

10.2. In view of these facts, in the interest of justice and fair play, we find it appropriate to remit this specific issue back to the file of Id. CIT(A)

for *denovo* meritorious adjudication, after taking into consideration, submissions made by the assessee. Needless to say, assessee be given reasonable opportunity of being heard and to make any further submissions, if so desired. Assessee is also directed to be diligent in attending the hearing proceedings. Accordingly, ground raised by the assessee in the cross objection is allowed for statistical purposes.

11. In the result, cross objection by the assessee is allowed for statistical purposes and appeal by Revenue is dismissed.

Order is pronounced in the open court on 06 March, 2025

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 06 March, 2025

MP, Sr.P.S.

Copy to :

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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai