

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
3727/Mum/2024	2017-18	M/s. Skyline Mansions Private Limited, Skyline 101, Behind Hiranadani Hospital, Opp: I.I.T. Main Gate, Nr Aiyappa Temple, Mumbai-400076 [PAN: AAACB1997L]	ACIT, Central Circle-8(2), 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020
3728/Mum/2024	2019-20		
2831/Mum/2024	2017-18	Deputy Commissioner of Income Tax, Central Circle-8(2), 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020	M/s. Skyline Mansions Private Limited, Skyline 101, Behind Hiranadani Hospital, Opp: I.I.T. Main Gate, Nr Aiyappa Temple, Mumbai-400076 [PAN: AAACB1997L]
2824/Mum/2024	2019-20		

For Assessee :	Shri Naresh Jain
For Revenue :	Shri Alok Kumar, CIT-DR

Date of Hearing :	11-03-2025
Date of Pronouncement :	21-03-2025

ORDER

PER B.R. BASKARAN, A.M :

These cross appeals are directed against the orders passed by the Ld CIT(A)-50, Mumbai and they relate to the Assessment Years (AYs.) 2017-18 and 2019-20.

2. The Revenue is aggrieved by the decision of the Ld CIT(A) in deleting the disallowance of premium paid on redemption of debentures in both the years under consideration.

3. In AY 2017-18, the assessee has raised a legal issue regarding validity of assessment proceedings completed u/s 153A of the Act. In AY 2019-20, the assessee is challenging the disallowance of Education Cess and the disallowance made u/s 40(a)(ii) of the Act.

3.1. Both the appeals filed by the assessee are barred by limitation by 89 days. The assessee has filed a petition requesting the bench to condone the delay. It is stated therein that the employee of the assessee, who was handling the taxation matters at that point of time, was under the impression that the appeals has been allowed by Ld CIT(A). Since the revenue challenged the orders passed by Ld CIT(A), the assessee approached the tax consultant and then it was noticed that the legal grounds raised before Ld CIT(A) have not been disposed of by him. Hence the assessee filed appeals before the Tribunal immediately thereafter and it has resulted in a delay of 89 days. Having regard to the submissions made by the assessee in the affidavits, we are of the view that there was reasonable cause for the assessee in filing the appeals belatedly. Accordingly, we condone the delay and admit the appeals.

4. The facts relating to the case are stated in brief. The assessee was earlier known as M/s Bahupriya Properties Pvt Ltd. It is engaged in real estate business. During the course of assessment proceedings, the AO examined the "Work in Progress" (WIP) account of the assessee. He noticed that the assessee has incurred "Redemption Premium paid on 'Optionally Fully Convertible Debentures' (OFCD)" as detailed below and it has been included in the WIP:-

Assessment year 2017-18	-	49.15 crores
Assessment year 2019-20	-	100.57 crores

4.1. The facts relating to the above said claim are that the assessee issued 10950 Zero Coupon OFCD of Rs.1,00,000 each aggregating to Rs.109.50 crores to a company named "Urban Infrastructure Venture Capital Ltd" (UIVCF) in two tranches. UIVCF had earlier given inter corporate deposits to the assessee company during the years relevant to AYs.2009-10 to 2012-13. It had also purchased equity shares of the assessee company. Out of the inter-corporate deposits so received, a sum of Rs.102,75,00,000/- was converted into 10,275 OFCD having face value of Rs.1,00,000/- in March, 2012. Further, during AY 2014-15, 675 OFCD having face value of Rs.1,00,000/- was issued to UIVCF. Thus, the company had issued 10,950 OFCD having value of Rs.109.50 crores as on 31-03-2014.

4.2. The above OFCD was initially required to be redeemed on 31st May, 2013. However, the assessee requested time till 31.05.2020 for redemption of OFCD. Thereafter, the matter was referred to an arbitrator. Finally it culminated into a conciliatory award dated 03-05-2014. As per the conciliation award, the assessee shall redeem the debentures at a premium of Rs.1,65,500/- per debenture aggregating to Rs.181.22 crores. They will be redeemed as and when surplus cash flow is available with the company, but in any event before 31st May, 2019.

4.3. Accordingly, the assessee agreed to redeem a part of OFCD, i.e., 2970 debentures in the financial year 2016-17 relevant to AY 2017-18, which will result in payment of face value of OFCD of Rs.29.70 crores and premium of Rs.49.15 crores aggregating to Rs.78.85 crores. Accordingly, the assessee claimed the premium amount of Rs.49.15 crores as finance cost and included the same in WIP.

4.4. Even though the assessee was required to pay Rs.78.85 crores, it paid a sum of Rs.57.40 crores only consisting of face value of Rs.29.70 crores and premium amount of Rs.27.70 crores.

4.5. Subsequently, a final exit agreement was drawn between the assessee and UIVCF, as per which it was agreed that UIVCF should be paid Rs.261.50 crores towards both OFCD investment and equity investment made by it in the assessee company. Since the assessee had already paid a sum of Rs.57.40 crores in the year relevant to AY 2017-18, the assessee was required to pay balance amount of Rs.201.10 crores. Out of which the premium amount was determined as Rs.100.57 crores and the assessee claimed the same as finance cost and accordingly included the same in WIP as on 31-03-2019.

5. The AO examined the claim of premium payable on redemption of OFCD. He, however, doubted the claim of the assessee for the following reasons:-

(a) The assessee has received the funds for developing the land located at Powai. However, the development rights were given to a sister concern named M/s Skyline Great Hills (SGH). However, the examination of final accounts prepared by SGH revealed that no development work has taken place. The facts also show that the development agreement was subsequently cancelled. The assessee had paid money to SGH earlier and the same received back.

(b) It is noticed SGH has utilized the amount received from the assessee for giving advances to the partners and other business activities, i.e., it did not use the said funds for development of the land.

(c) In development agreements, land owner allows the developer to develop land against which the developer either pays consideration or share in the built up area or partly in cash and partly built up area. However, in the instant case, the land owner has given land and also money to SGH. However, in this case, the assessee has given the work of development of land to SGH and also paid money to it, which is against usual business terms.

(d) The assessee has raised funds by issuing OFCD. The said funds were given to SGH, but the SGH has not used it for business purposes. Further, the land has been sold by SGH to M/s Kanakia Space Realty P Ltd.

(e) The assessee company and SGH are having common partners. Hence the whole transaction appears to be stage managed one.

6. The assessee explained before the AO that he has misunderstood whole transactions. It explained the chronology of events that happened in the purchase and use of land as under:-

(i) The land admeasuring 133 acres and 21.25 guntas was sold on 30-03-1964 by certain trusts to Shri Chandrabhan Sharma and others.

(ii) On 29-07-1971, the above said Shri Chandrabhan Sharma obtained lease of the land admeasuring 32 acres and 32 guntas (equivalent to 1.32 lakhs square meters) for 98 years from other purchasers.

(iii) On 28-02-1972, a new trust by name "Manav Dharma Mission Trust" was formed. Shri Chandrabhan Sharma and other purchasers transferred their rights, title and interest in the land in

favour of the above said trust. However, the land was in possession of Shri Chandrabhan Sharma by virtue of lease deed. He transferred the possession of land to SGH.

(iv) On 30-05-1995, the Charity Commissioner granted approval to transfer reversionary rights in respect of 32 acres and 32 guntas for a consideration of Rs.21,00,000/- to the assessee herein.

(v) On 20-01-1996, the assessee got transfer of reversionary rights.

(vi) Thus the assessee has obtained only reversionary rights and the possession of land was with Shri Chittranjan Sharma by virtue of the lease deed dated 30-03-1964. The said person has assigned his lease rights and possession in favour of SGH and not to the assessee.

6.1. In order to commercially exploit the land, the assessee needed funds. Hence, it was looking for investors. Further, the possession of the land has to be obtained from SGH for developing the land. Since the possession of land and leasehold right was with SGH, both the assessee and SGH agreed to jointly develop the land. Accordingly a Joint Development Agreement (JDA) was entered on 04-04-2008 between the assessee and SGH. Accordingly, the SGH granted development rights to the assessee company. As per JDA, the assessee was obligated to carry out development activities and incur all the costs which are necessary for development of land. The SGH was obliged to obtain approvals/clearances from various departments. Subsequently a supplementary agreement was entered, as per which the assessee should pay interest free deposit of Rs.102 crores to SGH.

7. Accordingly, the assessee submitted before the AO that the factual aspects have been wrongly understood by the AO. It was explained that

the assessee has got the development rights from SGH. It is not the case that the assessee had granted such rights to SGH. It was further submitted that the Joint development agreement was examined by the AO of SGH in its assessment proceedings, since the AO took the view that the amount received by SGH is assessable as deemed dividend u/s 2(22)(e) of the Act. However, the Ld CIT(A) has accepted the genuineness of JDA. The ITAT has also held that the security deposit received by SGH was for business purposes only. Placing reliance on the assessment proceedings of SGH, the assessee contended that JDA has already been examined by the revenue and hence all the transactions were genuine and they were entered for business purposes only.

8. The assessee also explained the necessity of obtaining funds from UIVCF, usage of funds and the reasons for repayment of funds to UIVCF. The assessee also explained that the reversionary rights held by it in the land was subsequently sold to SGH as per another agreement on 17-09-2018, since the development of land did not take place as originally scheduled. Hence SGH repaid the interest free security deposits of Rs.102 crores to the assessee.

9. It was also contended that there was commercial expediency in all these transactions and hence the wisdom of the same should not be questioned by the AO. It was further contended that the premium paid on OFCD is allowable as interest expenditure u/s 36(1)(iii) of the Act. Alternatively, it was contended that the premium amount is allowable as deduction u/s 37(1) of the Act.

10. Upon examination of facts narrated by the assessee, the AO observed that the land was not ultimately developed. Instead, it sold its reversionary rights to SGH. Further, the AO observed that the OFCD issued to M/s UIVCL were convertible into equity shares at the option of

UIVCL. If so converted, then the share holding of the promoters in the assessee company will fall down and the UIVCL will become majority shareholder. Hence the promoters of the assessee company did not choose to convert the OPCDs into equity shares. Accordingly, the AO arrived at the conclusion that the only benefit derived in paying the premium on redemption of OFCD is to save controlling interest of promoters in the assessee company. He also reiterated that the funds of Rs.102 crores given by the assessee to SGH were not used for carrying out any development work. Accordingly, the AO came to the conclusion that the premium paid on OFCD is not business expenditure. Accordingly, he rejected the claim of the assessee and accordingly reduced the premium amount from the WIP in both the years under consideration.

11. The Ld CIT(A), however, allowed the claim of the assessee and accordingly reversed the disallowance made by the AO. Hence the revenue has filed these two appeals.

12. We heard rival contentions and perused the record. From a perusal of the assessment order, we notice that the AO has taken the view that the OFCDs were not converted into equity shares by the promoters of the assessee company only for the reason that they will lose the controlling interest over the assessee company upon such conversion. As pointed out by Ld A.R, there are fallacies in this argument of the assessing officer. We discuss the same below:-

(i) Even if it is assumed for a moment that the OFCDs are converted into equity shares, then it is not the case that the premium amount shall be waived by the new owner, viz., UIVCL. This is for the reason that the premium amount is paid on OFCDs for the period prior to the conversion, if any. Thus, the premium amount shall be payable by the assessee company under both the situations, viz., on

redemption of OFCD and also upon conversion of OFCD into equity shares. Hence, the AO was not correct in presuming that the premium amount shall not be payable if the OFCDs were converted into equity shares.

(ii) Secondly, as per the agreement, the conversion of OFCD is at the option of the UIVCL and not at the option of the assessee company, meaning thereby, the assessee does not have any say in this matter. We notice that the AO also notes this fact in the assessment order. Hence, it is prerogative of UIVCL to take a call as to whether it wanted redemption of OFCDs or it wanted conversion into equity shares. In this case, the UIVCL has exercised the option for redemption. We noticed earlier that the premium amount has been determined as per conciliatory award and the quantum of premium amount has not been questioned by the AO. Hence, the AO was not correct in presuming that it is the promoters of the assessee company, who have decided to redeem OFCDs with premium.

Hence, the basic foundation on which the AO relied upon to disallow the claim for deduction of premium payable on OFCDs would fail in this case.

13. The AO had also taken the view that the funds received by issuing OFCDs were not used for the purpose of business of the assessee. We noticed earlier that the AO had misunderstood the arrangement or structuring of transactions. This is clear from the discussion made by him in the assessment order with regard to the show cause notice issued by him to the assessee. We noticed earlier that the AO was under the impression that the assessee was holding right over the land and it has given the land to SGH for development. The assessee has explained to the AO that the above said understanding is not correct. It was explained

- (a) that the assessee was only holding only reversionary right;
- (b) that the original leasehold right and possession of land was held by Shri Chandrabhan Sharma;
- (c) that the above said Shri Chandrabhan Sharma has, in turn, transferred the leasehold right and possession to M/s SGH.
- (d) that the assessee wanted to develop the land and hence it had to obtain possession of land from SGH. Hence, the assessee and SGH entered into Joint Development Agreement (JDA) and it is the assessee, which was entrusted with the work of development of land as per JDA. Hence, as per the agreement, the assessee was liable to pay interest free security deposit of Rs.102 crores to SGH.
- (e) that, as per JDA, the assessee took the responsibility to develop the land and SGH took up other responsibilities of obtaining various approvals etc.
- (f) that the assessee required huge funds for development of land besides the payment of security deposit mentioned above. Hence, it raised funds from UIVCF by way of intercorporate deposits, equity shares and OFCDs for incurring the development expenses and also for giving the security deposit to SGH as per the terms and conditions of Joint Development Agreement. The funds received from UIVCF have been used by the assessee for development of land and also for paying security deposit to SGH in a phased manner. The relevant details are tabulated as under in page 23 and 24 of the order passed by Ld CIT(A):

Asst. Year	Funds received from UIVCF	Security deposit paid to SGH	Cumulative WIP
2009-10	57,00,00,000	54,79,85,717	2,06,78,741
2010-11	68,32,00,000	64,06,78,997	3,78,52,144
2011-12	74,82,00,000	64,06,83,497	14,90,86,945
2012-13	107,75,89,100	84,95,80,000	21,18,70,531
2013-14	107,75,89,100	84,95,80,000	23,40,34,602
2014-15	109,50,89,100	84,95,80,000	26,62,48,766

The above table shows that the funds received from UIVCF were used by the assessee for the purposes of business only.

(f) that the JDA was terminated in AY 2019-20 and the assessee has received back the security deposit from SGH.

13.1. From the facts discussed above, it can be seen that the AO has not properly understood the facts surrounding the issue. The leasehold rights and possession of land were with SGH and the assessee was holding reversionary rights. Under JDA, the assessee took up the responsibility to develop the land. As observed by the AO, the developer is liable to pay money to the owner of the land. Since possession of land was given to the assessee by SGH, the assessee was liable to pay security deposit to SGH. The above table extracted above would show the funds received by the assessee by issuing OFCD to UIVCF were used for paying security deposit to SGH and also for development of land. Hence, it is not correct on the part of the AO to hold that the assessee has not used the funds received by issuing OFCDs for the purpose of business of the assessee.

14. The AO has also expressed the view that the funds transferred to SGH have not been used by SGH for development work purposes and they have been diverted for personal use of the directors. We noticed earlier that the assessee has obtained possession of land from SGH for the purpose of development and in connection thereto, the assessee has paid Rs.102 crores to SGH as security deposit. So far as the assessee is concerned, it will have not have any say over the usage of funds so given to SGH, i.e.,it is prerogative of the recipient of funds to decide the manner of its usage. We noticed earlier that the amount so given by the assessee to SGH was for the purposes of business of the assessee only, since it was paid for obtaining possession of land for the purposes of development. Hence, we hold that the assessee has used the funds obtained from UIVCF for the purpose of business only. In our view, manner of usage of funds by SGH is not relevant for deciding the deductibility of premium paid by the assessee on OFCD.

15. The foregoing discussions would show that all the reasons given by the AO to disallow the claim for deduction of premium paid on OFCD would fail.

16. We notice that the AO has otherwise did not doubt incurring of expenses by way of premium payable on OFCD. The question as to whether such kind of premium paid on redemption of optionally fully convertible debentures falls under the category of "revenue expenditure" or not was answered by Hon'ble Bombay High Court in the case of CIT vs. Raymond Ltd (2012(4) TMI 128)(Bom) (23 taxmann.com 427). It was held as under by Hon'ble Bombay High Court:-

“9. In the present case the assessee issued Non Convertible Debentures in the Financial Year ending on 31 March 1985, which were liable to be redeemed in Financial Year 1991-92 at a premium of Rs. 15 lakhs. The amount which was expended by the assessee towards the premium of Rs. 15 lakhs is, properly construed, a liability which the assessee incurred for the purpose of its business in order to obtain the use of the funds for the period covered by the issue of Non Convertible Debentures. The payment of a premium at the end of the term which is fixed for the Non Convertible Debentures and upon which the debentures are to be redeemed is the flip side of a situation where the assessee issues debentures at a discount. In the case of a discount, the assessee has the benefit of the funds which are realised from the issue of the debentures, over the term of the debentures. In the case of a premium which the assessee pays, the premium paid on the date fixed for redemption is in consideration of the use of the funds by the assessee until such date as the debentures fall due for redemption. The principle which has been laid down by the Supreme Court in *Madras Industrial Investment Corpn. Ltd**. (*supra*) to hold that the additional liability equivalent to a discount represents revenue expenditure must, by analogy of reasoning, apply to the premium which is paid by the assessee at the time of redemption of the debentures. In that view of the matter, the question which has been framed by the Revenue would have to be answered in the affirmative, in favour of the assessee. The actual premium paid upon the redemption of the debentures would have to be classified as revenue expenditure, in terms of the decision of the Supreme Court in *Madras Industrial Investment Corpn. Ltd.* (supra)*”

(* 225 ITR 802)

Identical view has been expressed by Hon'ble Gujarat High Court in the case of DCIT vs. Gujarat Narmada Valley Fertilisers Co Ltd (2013 (10) TMI 152).

17. In view of the foregoing discussions, we are of the view that the AO was not justified in disallowing the claim of premium paid on OFCDs in both the years under consideration. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the disallowances made in both the years under consideration.

18. At the time of hearing, the Ld A.R did not press the cross objections filed by the assessee in both the years. Accordingly, we dismiss them as not pressed.

19. In the result, both the appeals of the Revenue and both the cross appeals of the assessee are dismissed.

Order pronounced in the open court on 21-03-2025

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai,
Date : 21-03-2025

TNMM

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai