

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH : MUMBAI

BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 5206/Mum/2025
Assessment Year : 2017-18

Neelkanth Realtors Limited, 508, Dalamal House, J.B. Marg, Nariman Point, Mumbai-400021. PAN : AAACA9796N	vs.	Income Tax Officer, Ward-3(2)(3), Maharshi Karve Road, New Marinelines, Mumbai-400020.
(Appellant)		(Respondent)

For Assessee :	Shri Pratik A. Mehta
For Revenue :	Shri Brajendra Kumar, Sr.DR

Date of Hearing :	03-12-2025
Date of Pronouncement :	17-12-2025

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’], dated 31-07-2025, pertaining to Assessment Year (AY) 2017-18.

2. Briefly stated, facts of the case are that the assessee filed its return of income declaring total income of Rs. 10,71,080/-, which was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Income Tax Act, 1961 (‘the Act’) were issued. In response, the assessee filed its submissions from time to time, thereafter the assessment order was passed by the AO

u/s. 143(3) of the Act vide order dt. 18-12-2019. While passing the assessment order, the AO had made two disallowances. The first disallowance relates to proportionate disallowance of interest on loans and advances given by the assessee, on which no interest has been charged by the assessee. As per the AO, on perusal of Balance Sheet of the assessee, it was noted that the assessee has taken loans and advances to the tune of Rs. 91,12,14,360/- and has claimed interest payment of Rs. 13,86,42,833/- which is capitalized as work-in-progress. It was also noted by the AO that the assessee has given loans and advances to the tune of Rs. 32,07,58,949/- for non-business purposes from interest bearing funds. As per the AO, no plausible reason is given by the assessee as to why the interest bearing funds are used to give interest free loans and advances and the assessee has not furnished a single documentary proof to substantiate that the said interest free loans and advances are related to business purposes. As per the AO, the assessee did not have enough reserves and surplus to give interest free loans and advances to related parties and others, without business expediency and, therefore, the AO held that proportionate interest to the extent of Rs. 4,88,04,026/- is not an allowable expenditure and the same was required to be reduced from work-in-progress shown by the assessee. Accordingly, the work-in-progress was reduced to that extent. Separately, the AO observed that the assessee has shown investments and has claimed exempt income of Rs. 1,14,00,239/- and has not disallowed any expenditure u/s.14A r.w. Rule 8D of the Income Tax Rules, 1962 ('the Rules'). As per the AO, during the course of assessment proceedings, the assessee was asked to explain as to why the disallowance u/s.14A r.w. Rule 8D should not be made. In response, the assessee merely stated that no disallowance be made and, thereafter, the AO disallowed a sum of Rs. 2,17,432/- invoking the provisions of section u/s.14A r.w. Rule 8D.

3. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since sustained the said order and the findings of the AO and against the said order, the assessee is in appeal before us.

4. At the outset, the Ld.AR submitted that there are factual inaccuracies, which are apparent on the face of the assessment order and in this regard it was submitted that the assessee has taken interest bearing loans and advances of Rs. 85,80,84,360/- and not Rs. 91,12,14,360/- as wrongly stated by the AO. It was further submitted that the assessee has incurred interest expenditure of Rs. 12,69,95,449/- and the remaining amount of Rs. 1,16,47,384/- relates to the borrowing related cost such as interest processing charges etc., and the AO has considered the whole amount as interest expenditure amounting to Rs. 13,86,42,833/-. It was further submitted that the assessee has given interest free advances of Rs. 31,99,85,128/- and not Rs. 32,07,58,944/- as wrongly stated by the AO.

5. Regarding findings of the AO that no plausible reason has been given by the assessee as to why interest bearing funds were used to give interest free loans and advances and the assessee has not furnished any documentary evidence to prove that the interest free loans and advances are related to business purposes, it was submitted that the assessee has filed detailed submissions vide letter dt. 29-11-2019 in response to notice dt. 27-11-2019 and thereafter the AO has not called for any further explanation from the assessee and has passed the assessment order on 18-12-2019 without considering the detailed submissions filed by the assessee for the reasons best known to him. It was accordingly submitted that the AO has erroneously passed the assessment order and which has been summarily confirmed by the Ld.CIT(A).

6. It was further submitted that the assessee-company capitalized the interest expenses as part of work-in-progress as per the regular method of accounting consistently followed by the assessee for the past many years. It was submitted that no disallowance of interest expenses capitalized to work-in-progress was made in any of the previous assessment years such as for the AYs. 2012-13, 2013-14 and 2014-15, wherein the matter was selected for scrutiny and order u/s. 143(3) of the Act was passed and subsequently, for AYs. 2015-16 and 2016-17 in terms of summary assessment u/s. 143(1) of the Act. It was accordingly submitted that the AO has thus accepted in the earlier assessment years that the borrowed funds have been utilized for the purpose of the assessee's business.

7. It was further submitted that the loans and advances given by the assessee are brought forward balances from the earlier assessment years and no fresh loans and advances have been given during the year under consideration and in this regard, our reference was drawn to the assessee's paper book wherein it is clearly evident that all the loans and advances are carried forward from the earlier assessment years. It was accordingly submitted that the interest expenses for the earlier years have been accepted after detailed scrutiny as incurred wholly and exclusively towards business purposes and on the principle of consistency, the same ought to be allowed for the year under consideration as part of work-in-progress. In support reliance was placed on the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT [1992] 60 Taxman 248 (SC) for the proposition that where a fundamental aspect permeating through the different assessment year has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

8. Further, reference was drawn to the assessee's Balance Sheet for the financial year ending 31-03-2017 relevant to the impugned assessment and it was submitted that non-interest bearing capital and reserves amounts to Rs. 116,41,57,48,269/- and which are clearly more than the non-interest bearing advances of Rs. 31,99,85,128/- and it was submitted that even on this account, no question of interest expenditure disallowance arises for the year under consideration and reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Industries Ltd.

9. In respect of disallowance of Rs. 2,17,432/- u/s.14A r.w. Rule 8D, it was submitted that the AO has wrongly stated that the assessee has earned exempt income of Rs. 1,14,00,239/-. In this regard, our reference was drawn to the "other income" schedule of the assessee's audited financial statements available as part of assessee's paper book and it was submitted that it is evident from the said schedule that no exempt income has been earned by the assessee during the year under consideration. It was accordingly submitted that where the assessee has not claimed any exempt income during the year under consideration, the question of disallowance of expenditure u/s.14A r.w. Rule 8D does not arise for consideration and the same is now settled proposition and reliance was placed on the decisions of Hon'ble Supreme Court in case of CIT vs. Chettinad Logistics (P.) Ltd., [2018] 95 taxmann.com 250 (SC) and the decision of the Hon'ble Bombay High Court in case of Pr.CIT vs. Ballarpur Industries Ltd. (IT Appeal No. 51 (Bom.) of 2016, dt. 13-10-2016).

10. The Ld. DR has been heard, who has relied on the orders of the lower authorities.

11. We have heard the rival contentions and perused the material available on record. We find merit in the submissions of the Id AR that there are factual inaccuracies which are apparent on the face of the records, as so pointed out before us, in terms of figures of interest bearing loans and advances which has been considered by the AO at Rs. 91,12,14,360/- instead of Rs. 85,80,84,360/-, interest expenditure of Rs. 13,86,42,833/- instead of Rs. 12,69,95,449/-, interest free advances of Rs. 32,07,58,944/- instead of Rs. 31,99,85,128/-. Further, we find that the assessee during the course of assessment proceedings has filed detailed written submissions from time to time and thereafter vide letter dated 29-11-2019 filed online on 02-12-2019 highlighting the fact that loans and advances have been advanced in earlier years out of interest free funds and interest thereon has been capitalized as part of work-in-progress and the same has been allowed and accepted in scrutiny assessment proceedings for the earlier assessment years. There is however no cognizance of the submissions so filed by the assessee and the assessment proceedings thereafter have been completed. Further, disallowance has been made u/s 14A by the AO holding that the assessee has earned exempt income whereas the assessee has demonstrated that it has not earned any exempt during the year. The assessee has brought these facts to the notice of the Ld.CIT(A) as well who has again summarily upheld the findings of the AO.

12. We therefore have a situation which demonstrate lack of appreciation and understanding of the factual matrix of the case both by the AO as well as well as by the Ld.CIT(A). In absence of findings of the AO as well as of the Ld.CIT(A) considering the correct factual matrix of the case, we are constrained to remand the matter to the file of the AO to decide the same afresh in accordance with law after providing reasonable opportunity to

the assessee. All the contentions on merits of the case are thus left open and the assessee is at liberty to raise the same before the AO as so advised.

13. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 17-12-2025

Sd/-

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

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Mumbai,
Dated: 17-12-2025

TNMM

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