IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, H: NEW DELHI
BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER
ITA No.- 4215/Del/2019
[Assessment Year: 2013-14]

Candor Gurgaon One Realty Projects Pvt. Ltd., (formerly known as Unitech Realty Projects Pvt. Ltd. and Earlier known as Unitech Realty Projects Ltd.), F-83, Profit Centre, Gate No. 1, Mahavir Nagar Near Pizza Hut Kandivali West Mumbai-400067, Maharashtra.	Vs	Additional Commissioner of Income-tax, Special Range-2, C.R. Building, New Delhi-110002.
PAN- AAACU8046K		
Assessee		Revenue

Assessee by	Shri K. M. Gupta, Adv. & Shri Jaskaran Singh, Adv.
Revenue by	Shri S.K. Jadhav, CIT(DR)

Date of Hearing	**12.01.2026**
Date of Pronouncement	**08.04.2026**

ORDER

PER BRAJESH KUMAR SINGH, AM:

This appeal by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeal)-44, New Delhi, dated 29.03.2019 [hereinafter

referred to as the 'Ld. CIT(A)'] arising out of the assessment order dated 08.02.2017 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, Circle 5(2), New Delhi, (hereinafter referred to as the 'Ld. AO') pertaining to A.Y. 2013-14. In this case, the following addition / disallowance were made in the assessment order:

i. Addition on account of ALP Rs. 8,32,78,024/-
ii. Addition on account of brokerage Rs. 1,50,56,760/-

1.1 In addition thereto the AO had treated a sum of Rs. 57,35,046/- as 'income from other sources' and had denied deduction under section 80 IAB of the Act on the same in respect of four different receipts of income which were considered as business receipts by the assessee.

2. Brief facts of the case: During the year, the assessee was engaged in the business of developing commercial real estate property in India and was primarily involved in developing and leasing of investment property in information technology/information technology enabled services (IT/ITeS) Special Economic Zone ('SEZ'). The assessee was involved in the development of a project in Tikri, Gurugram which was notified as SEZ by the Government of India and was eligible to claim deduction of profits derived from the business of development and operation of SEZ under section 80-IAB of the Act, for any ten consecutive years out of the

fifteen-year period. The year under consideration is the first year of claim for deduction under section 80-IAB of the Act.

2.1. During the captioned year, a reference was made by the AO to the Transfer Pricing Officer (TPO) on October 19, 2015. The TPO vide order dated October 28, 2016 enhanced the income of the assessee by Rs. 8,32,78,024/- by determining the arm's length price of the following specified domestic transaction as Nil. The adjustment made in this case, by the TPO / AO is reproduced as under:

S. No.	*Name of the related party*	*Nature of specified domestic Transaction*	*Amount*	*ALP determined by TPO (INR)*	*Adjustment u/s 92 CA (INR)*
1	*Unitech Developer & Property Ltd.*	*Payment of Interest on share Application Money*	*2,68,16,055*	*Nil*	*2,68,16,055*
2	*Unitech Property Management Pvt. Ltd.*	*Payment of Property Management service Fees*	*46,89,193*	*Nil*	*46,89,193*
3	*Unitech Limited*	*Payment of Project Management Fees*	*5,17,72,776*	*Nil*	*5,17,72,776*
Total					***8,32,78,024***

2.2. The AO concluded the assessment proceedings vide assessment order dated February 08, 2017 and assessed the total income of the assessee at Rs 57,35,050/-, which included the sum of Rs. 8,32,78,024/- being the amount on account of 'addition

on account of ALP' and addition of Rs. 1,50,56,760/- being the amount on account of 'addition on account of brokerage' which were however, allowed as 100% deduction u/s 80IAB of the Act by the AO.

3. Aggrieved by the above addition/disallowances, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] wherein the Ld. CIT(A) vide order dated March 29, 2019 upheld the order passed by the AO

4. Aggrieved, the assessee is now in appeal before us on various grounds of appeal. The same are discussed issue-wise. The assessee has filed the following grounds of appeal on the issue of enhancement of Rs 8,32,78,024/-.

> " *1. On the facts and in the circumstance of the case and in law, the Commissioner of Income-tax (Appeals) [CIT (Appeals)] has erred in:*
>
> *1.1 confirming the action of Transfer Pricing Officer in re-computing the arm's length price of specified domestic transactions on payment of interest of INR 2,68,16,055, property management service fees of INR 46.89.193 and project management service fees of INR 5,17,72,776 paid by the Appellant to its associated enterprises, as NIL, leading to an adjustment of INR 8,32,78,024, and*
>
> *1.2 confirming additions made by the Assistant Commissioner of Income-tax (AO) amounting 10 INR 5,64,61,969 under section 92CA of the Income-tax Act, 1961 ('the Act).*"

4.1 The assessee also filed a written submission w.r.t. the aforementioned grounds of appeal.

5. However, during the course of hearing before us, the assessee by way of an application filed on July 19, 2024 raised an additional ground of appeal wherein, without prejudice to the fact that the disallowances made by the TPO were not legally tenable submitted that the entire transfer pricing adjustment made in case of the assessee was bad in law (being expenditure undertaken with a person referred to in section 40A(2)(b) of the Act) with the omission of clause (i) from the definition of specified domestic transaction u/s 92BA of the Act by Finance Act, 2017 which the assessee claimed that it was retrospective in nature. The additional ground filed by the assessee is reproduced as under:

> *"7. That on the facts and in the circumstances of the case and in law, the deletion of clause (i) of section 92BA by Finance Act, 2017, whereby any transaction in the form of expenditure undertaken with a person referred to in section 40A(2)(b) of the Act were omitted from the definition of specified domestic transaction, is retrospective in nature thereby rendering the entire transfer pricing adjustments made in case of the Appellant bad in law and thus liable to be deleted."*

5.1 Further, the Ld. Counsel submitted that it is a purely legal ground and the assessee seeks to raise the legal ground which goes to the root of the case and does not require factual analysis. Further, it was submitted that all the material facts are on record.

5.2 In support of the additional ground filed by the assessee, the Ld. Counsel relied upon the decision of the Hon'ble Karnataka High Court which held that clause(i) of

Section 92BA having been omitted by the Finance Act. 2017, with effect from 01.04.2017 from the statute the resultant effect was that it had never been passed and to be considered as a law never been existed i.e. the deletion will be applicable with retrospective effect i.e. from 01.04.2013 when this section was brought in statute and resultantly no adjustment u/s 92BA(i) of the Act could ever have been made by the AO / TPO in respect of specified domestic transaction to persons referred to in clause (b) of sub section 2 of Section 40Aof the Act as was done by the AO in the present case was making the adjustment of Rs. 8,32,78,024/-. In this regard, the submissions the Ld. Counsel on the additional ground no. 7 of the appeal are reproduced as under:

Ground The transfer pricing adjustment made is bad in law since the omission of clause (1) of section 92BA by Finance Act, 2017 is retrospective in nature.

8. The Appellant would like to bring to your honors kind attention that the Appellant has taken an additional ground i.e.. Ground no 7 vide application filed on July 19, 2024 with respect to the adjustment made by the Transfer Pricing Officer u/s 92CA(3) of the Act in respect of the determination of arm's length price of specified domestic transaction under Section 92BA of the Act.

9. It is respectfully submitted that the Appellant has entered into specified domestic transaction covered under section 92BA of the Act. In the present case, a reference was made to the Transfer Pricing Officer (Ld. TPO) by the Assessing Officer (Ld. AO) on October 19, 2015. The Ld. TPO vide order dated October 28, 2016 enhanced the income of the Appellant by INR 8,32,78,024.

10. However, subsequently there was an amendment in section 92BA of the Act by the Finance Act, 2017 w.e.f. April 01, 2017 whereby clause (i) of section 92BA of the Act relating to any expenditure in respect of which payment has been made or is to be made to a person referred in Section 40A(2)(b) of the Act was omitted. On account of such omission, the impugned transaction would not fall within the definition of specified domestic transaction.

11. Since clause (1) has been omitted from the statute, this particular clause shall be deemed not to be the statute since inception, unless there exists some saving clause or provision regarding the proceedings initiated or action taken under such clause.

12. In this regard, reliance is placed on the judgement of Hon'ble Supreme Court in the came of Kolhapur Canesugar Works Lid v. UOI wherein it was held that:

"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the post largely depends on the savings applicable in a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall continue but fresh proceedings for the same purpose may be initiated under the new provision."

13. Further reliance is placed on the judgement of Hon'ble Karnataka High Court in the case of [PCIT v. Texport Overseas (P.) Ltd.] (2020) 114 taxmann com 568 (Karnataka) wherein it was held that:

6. In fact, Co-ordinate Bench under similar circumstances had examined the effect of omission of sub-section(9) to Section 108 of the Act we f. 01.04.2004 by Finance Act, 2003 and held that there was no saving clause or provision introduced by way of amendment by omitting sub-section (9) of section 108. In the matter of General Finance Co. v. ACIT, which judgment has also been taken note of by the tribunal while repelling the contention raised by revenue with regard to retrospectivity of section 92BA(1) of the Act. ***Thus, when clause(i) of Section 92BA having been omitted by the Finance Act. 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of section 92BA and reference made to the order of Transfer Pricing Officer-TPO under section 92CA could be invalid and bad in law.***

7. It is for this precise reason; tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law. The said finding is based on the authoritative principles enunciated by the Hon'ble Supreme Court in Kolhapur Caneungar Works Ltd. referred to herein supra which has been followed by Co-ordinate Bench of this Court in the witter of M/s. GE Thermometrias India Private Ltd., stated supra. As such we are of the considered view that first substantial question of low raised in the appeal by the revenue in respective appeal memorandum could not arise for consideration particularly when the said issue being no more res integra."

14. For the ready reference of your Honours, the relevant extract of order of Hon'ble Bangalore ITAT in the case of Texport Overseas (P.) Ltd. v. DCIT (IT(TP)A No. 1722/Bang/2017) are reproduced hereunder.

7. Having carefully examined the orders of authorities below in the light of rival submissions and relevant provisions and various judicial pronouncements, we find that by virtue of the insertion of section 92BA on the statute as per clause (1), any expenditure in respect of which payment has been made or is to be made to person referred to in clause (b) of sub section 2 of Section 40A exceeds the prescribed limit, it would be a specified domestic transaction for which AO is required to make a reference to TPO under section 92CA of the Act for determination of the ALP. In the instant case. since the transaction exceeds the prescribed limit it becomes the specified domestic transactions for which reference was made by the AO to the TPO under section 92CA for determination of the ALP. Consequently, the TPO submitted a report which was objected to by the learned counsel for the assessee and filed a objection before the DRP. Having adjudicated the objections, the DRP has issued certain directions and consequently the AO passed an order. Subsequently, by Finance Act, 2017 w.e.f. 01.04.2017, clause (i) of section 92BA was omitted from the statute. Now the question arises as to whether on account of omission of clause (i) from the statute, the proceedings already initiated or action taken under clause (i) becomes redundant or otiose. In this regard, our attention was invited to judgement of the Apex Court in the case of Kolhapur Canesugar Works Ltd. (supra) in which the impact of omission of old rule 10 and 10A was examined

……..

10. In the instant case, undisputedly, by the Finance Act, 2017, clause (i) of section 92BA has been omitted w.e.f. 01.04.2017. Once this clause is omitted by subsequent amendment, it would be deemed that clause (i) was never been on the statute. While omitting the clause (i) of section 92BA, nothing was specified whether the proceeding initiated or action taken on this continue. Therefore, the proceeding initiated or action taken under that clause would not survive at all. In this legal position, the cognizance taken by the AO under section 92BA(i) and reference made to TPO under section 92CA is invalid and bad in law, Therefore, the consequential order passed by the TPO and DRP is also not sustainable in the eyes of law

15. Therefore, it is the humble submission of the Appellant that without any savings clause, any action taken by the Ld. TPO under clause (i) of section 93BA of the Act would not survive. Accordingly, the order passed by the Ld. TPO is bad in law and thus liable to be deleted.

16. It is important to note that in the aforementioned case, the Hon'ble Bangalore ITAT restored the matter to the files of the Ld. AO for re-adjudicating the claim of expenditure as per Section 40A(2)(b) of the Act. However, such direction is not necessary in the given case since even in the event that the a disallowance is made under Section 40A(2)(b) of the Act resulting in a positive income of the Appellant, the consequent deduction u/s 80IAB ought to be allowed to the Appellant on the enhanced income in view of CBDT Circular 37 of 2016

17. Reliance in this regard is placed on the judgements of various appellate authorities wherein it has been specifically held that if expenditure disallowed is related to the business activity against which Chapter VI-A deduction has been claimed (section 80IAB in the instant case), the corresponding deduction ought to be allowed on the enhanced income:

ITO vs. Keval Construction ([2013] 33 taxmann.com 277 (Gujarat))

CIT vs. Sunil Vishwambharnath Tiwari (IT Appeal No. 2 of 2011)

PCIT vs. Surya Merchants Ltd. (IT Appeal No. 248 of 2015)

18. In view of the above, even if disallowance is made under Section 40A(2)(b) of the Act, then the Appellant should be granted the corresponding deduction u/s 80IAB of the Act on the impugned enhanced income.

(emphasis supplied by us)

6. The Ld. CIT(DR) relied upon the orders of the authorities below.

7. We have heard both the parties and perused the material available on record. As noted above, the assessee has raised an additional ground no. 7, in this appeal which is purely legal in nature. We further find that all the facts relevant for adjudication of the aforesaid additional ground are already on record. Hence, in view of the decision of the Hon'ble Supreme Court in the case of NTPC Limited vs CIT 229 ITR 383(SC), the additional ground raised by the assessee is hereby admitted and taken up for adjudication.

7.1 Further, upon perusal of the orders of the AO / TPO / Ld. CIT(A) and as per the submission of the assessee, the order of the TPO enhancing the income of the assessee by Rs. 8,32,78,024/- was in respect of payments made by the assessee in respect of specified domestic transaction to persons referred in clause (b) of sub

section 2 of Section 40A of the Act. Thus, the applicability of the relevant deletion of clause(i) of Section 92BA having been omitted by the Finance Act. 2017, with effect from 01.04.2017 in the present case becomes identical to the facts of case of Hon'ble Karnataka High Court in the case of PCIT vs. Texport Overseas (P.) Ltd. (supra) relied upon the assessee in para 6 and 7 of its order as reproduced above in the assessee's submissions which held that "*Thus, when clause(i) of Section 92BA having been omitted by the Finance Act. 2017, with effect from 01.07.2017 from the Statute the resultant effect is that it had never been passed and to be considered as a law never been existed. Hence, decision taken by the Assessing Officer under the effect of section 92BA and reference made to the order of Transfer Pricing Officer-TPO under section 92CA could be invalid and bad in law.*

7. It is for this precise reason; tribunal has rightly held that order passed by the TPO and DRP is unsustainable in the eyes of law….."

7.2 Therefore, the above decision of the Hon'ble Karnataka High Court held that clause(i) of Section 92BA of the Act having been omitted by the Finance Act. 2017, with effect from 01.04.2017 from the statute the resultant effect is that it had never been passed and to be considered as a law never been existed i.e. the deletion will be applicable with retrospective effect i.e. from 01.04.2013 when this section was brought in statute and resultantly no adjustment u/s 92BA(i) of the Act could ever

have been made by the AO / TPO in respect of specified domestic transaction to persons referred to in clause (b) of sub section 2 of Section 40Aof the Act.

7.3 Further, earlier, the Tribunal, Bengaluru Bench vide its order dated 22.12.2017 in this case i.e. Texport Overseas Pvt. Ltd. (supra) in IT(TP)A No.- 1722/Bang/2017 for A.Y. 2013-14 had held that while omitting the clause (i) of section 92BA, nothing was specified whether the proceeding initiated or action taken on this continue and therefore, the proceeding initiated or action taken under that clause would not survive at all. In view of these facts, the Tribunal held that the cognizance taken by the AO under section 92BA(i) and reference made to TPO under section 92CA was invalid and bad in law and therefore, the consequential order passed by the TPO and DRP were also not sustainable in the eyes of law.

7.4 Further, the Co-ordinate Bench of Tribunal in the case of DLF Urban Pvt. Ltd. Vide its order dated 08.04.2024 in ITA No.- 2078/Del/2022 and 1962/Del/2022, in respect of similar domestic transactions entered by the assessee in respect of 'Purchase of Development Right' also followed the decision of Karnataka High Court in the case of Texport Overseas Pvt. Ltd. (supra) and held that the additional ground raised by the assessee deserves to be allowed and consequently the whole exercise done by Ld. AO to bench mark the transaction of purchase of development right stood being void. The relevant extracts of the said order are reproduced as under:

"29. On the basis of the aforesaid principles of law of precedents and taking into consideration the fact that in a coordinate bench decision dated 20.07.2023 here in Delhi, in the case of Relaxo Footwear Ltd., Versus Assessing Officer, National e-Assessment Centre, New Delhi, ITA No.590/Del/2021, wherein one of us (the Judicial member) was on the Bench we had followed the decision of the Hon'ble Karnataka High Court in the case of Texport Overseas Pvt. Ltd (supra), we are of the considered view that the indulgence sought by ld. DR to accept the view of Mumbai Tribunal in Firemenich Aromatics (India) Pvt. Ltd., is not sustainable.

30 We have also taken into consideration the order relied by Id. DR of Mumbai Tribunbal in the case of Firemenich Aromatics (India) Pvt. Ltd. (supra) and the order of coordinate Bench of Delhi in the case of Yorkn Tech Pvt. Ltd. (supra) relied by Id. AR and there is no doubt the coordinate Bench at Delhi has distinguished the Mumbai Bench order in the case of Firemenich Aromatics (India) Pvt. Ltd. (supra) and held that even after the judgement of the Hon'ble Supreme Court in the case of Shree Bhagwati Steel Rolling Mills (supra) and Fiber Boards Pvt. Ltd. (supra) clause (1) of section 92BA which has been omitted from 01.04.2017 has to be considered to have never been part of the statute and, accordingly, no transfer pricing adjustment can be made on a domestic transaction.

31. We will also like to distinguish the Mumbai Tribunal order in Firemenich Aromatics (India) Pvt. Ltd. (supra) by observing that in that case the issue was with regard to omission of sub-section (2A) of section 253 of the Act which was initially inserted by Finance Act, 2014 with retrospective effect from 01.06.2013 and which was then omitted by Finance Act, 2016 from 01.06.2016. The said provisions related to right to file appeal and in that case, the AO had filed the appeal during the currency of section 253(2A) of the Act and for that reason, the Mumbai Bench had considered the issue of repeal/omission made in a statute and the consequences thereof. Since right to appeal is a substantive and, certainly, if it was there in the statute when the appeal was filed and, subsequently, if the statute had omitted the provision, the substantive right of appeal vested in a party would not be taken away by holding the repeal to be retrospective. However, in the case in hand, a substantive provision, being infact a charging provision, has been omitted/deleted and consequently benefit of the same has to be given to the assessee. Thus, we are inclined to follow the Hon'ble Karnataka High Court judgement and, on that basis, the additional ground raised by the assessee deserves to be allowed and consequently the whole exercise done by ld. AO to bench mark the transaction of purchase of development right. stands being void."

(emphasis supplied by us)

7.5 The adjustment of Rs. 8,32,78,024/- in the case of the assessee for AY 2013-14 was made under clause(i) of Section 92BA of the Act. Therefore, in view of

identical position of law in this case of the assessee for AY 2013-14, as in the aforesaid cases as discussed above, respectfully following the same, we hold that the whole exercise of the AO to benchmark the transactions as referred in para no. 2.1 of this order and making an adjustment of Rs. 8,32,78,024/- is not sustainable in the eyes of law as the above orders have held that the deletion of clause(i) of Section 92BA of the Act having been omitted by the Finance Act. 2017, with effect from 01.04.2017 will be applicable with retrospective effect i.e. from 01.04.2013 when this clause was introduced. Therefore, the addition of Rs. 8,32,78,024/- made by the AO is not sustainable and the same is deleted. Ground no. 1 and 1.2 and the additional ground of appeal being ground no. 7 are allowed.

7.6 Further, the plea of the CIT(DR) for restoring the matter relating to the above payments under specified domestic transaction to the AO to re-adjudicate the issue of claim of expenditure in terms of Section 40A(2)(b) of the Act has been carefully considered by us but not found to be acceptable, in view of the fact that such an exercise will be revenue neutral by virtue of the assessee being eligible for deduction u/s 80IAB of the Act in respect of any business disallowances in respect of the above expenses. Similar view was taken by the Co-ordinate Bench of the Tribunal in its order dated 14.06.2023 in ITA Nos.- 7839, 7470 and 2836/Del/2018 in the case of

M/s Candour Gurgaon Two Developers and Projects Pvt. Ltd. and Ors. and the relevant extract of the said order is reproduced as under:

> "*8. As with regard to the issue no 5 being ground of brokerage in ITA No 3879/Del/2018, it can be observed that the invoices produced on behalf of the appellant at page no and 3 of the paper book clearly mention the details of the premises let out and the party to whom the lease was made. The copies of lease deed have also been placed on record. Ld. Tax Authorities have fallen in error in want of more evidences. When assessee is engaged in the business of rental of the properties then engaging brokers for procurement of the tenants is common practice and the expenses of brokerage thus, have to be considered to have been incurred in ordinary course of business.*
>
> *9. Apart from that Ld. Counsel for the assessee has argued that in any case. the whole income of the assessee is tax free by virtue of Section 801AB of the Act so the disallowances of expenditure makes the issue revenue neutral. Thus, the ground raised in ITA no. 3879/Del/2018 is decided in favour of the assessee "*

7.7 Therefore, we reject the above plea of the Department in the given facts of the case.

8. Ground 2 of the assessee's appeal is reproduced as under:

> "*2. On the facts and in the circumstance of the case and in law, the CIT (Appeals) has erred in confirming the action of the AO in denying direct and indirect benefits of any expense/depreciation resulting from payment of interest on ICD amounting to INR 2,41,34,449 which was capitalized to fixed assets."*

8.1 The assessee submitted as under:

> *" 21. This ground is Not Pressed but the Appellant reserves the right to agitate the same as and when any disallowance in this regard is made.*

8.2. Therefore, this ground is dismissed as not pressed in the present assessment year with the rights of the assessee kept open as submitted by it.

9. Ground 3 of the assessee's appeal is reproduced as under:

"3 *On the facts and circumstance of the case, the CIT (Appeals) has erred in confirming the action of the AO in disallowing an amount of INR 1,50,56,760 pertaining to brokerage expenses under section 37 of the Act.*

9.1 The AO made the disallowance as under:

"6. Disallowance of Brokerage: -

6.1 On perusal of P&L A/c, it was noted that during the year the assessee has incurred Rs. 1,50,56,760/- under the head 'Brokerage expenses'. Vide order sheet entry dated 20.12.2016 the assessee was asked why brokerage expense may not be disallowed due to lack of proof of agreement and proof as to how business actually benefited from such payments. The assessee vide reply dated 23.12.2016 submitted as under: -

"Bills of brokerage paid and ledgers of brokerage and ITDS brokerage payable during the year are enclosed. Further the expenses are charged revenue during the year".

The assessee furnished following service invoices: -

M/s Redwood Projects Pvt. Ltd.	*RPPL/2012-13/04/002 dt. 10.04.2012*	*Rs. 59,25,260/-*
Jones Lang Lasalle	*IND / JLLPC20130529 dt. 08.03.2013*	*Rs. 14,36,000/-*
Jones Lang Lasalle	*IND/JLLPC20122904 dt.28.09.2012*	*Rs. 14,36,000/-*

6.2 The reply of the assessee was considered but was not acceptable. The assessee has failed to establish the nexus between the expense on brokerage and the business. The assessee was asked to produce a copy of agreement between two parties or any document to prove that the said companies have actually helped the assessee to find tenants as claimed. However, nothing apart from a bill was produced. The assessee has failed to explain which services were provided in lieu of the brokerage paid. Thus the payment of brokerage is mere a management of the assessee with a view to enhance the expenses and reduce the profit. In view of the above, the expenses of Rs. 1,50,56,760/-

is disallowed for not being a genuine expense for business purpose and added back to the income of the assessee.

(Addition: Rs. 1,50,56,760/-)

9.2 Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) confirmed the said disallowance, and the relevant extracts of the order of the Ld. CIT(A) is reproduced as under:

" 7.11 The AO has correctly held that the appellant has failed to establish Nexus between expenses incurred on brokerage and the business carried out by the appellant. NO documentary evidence had been provided either during the assessment or the appellate proceedings in support of its contention and the appellant has failed to explain which services were provided in lieu of brokerage paid. In view of the same, I do not find any reason to interfere with the findings of the AO."

9.3. Aggrieved with the said order, the assessee is in appeal before us on the ground no. 3 of the appeal as reproduced above.

9.4 During the course of hearing, the Ld. Counsel submitted that this issue was squarely covered by the order dated 14.06.2023 of the coordinate Bench of the Tribunal in the case of Candor Kolkata One Hi-Tech Structures Private Limited (ITA No. 3879/Del/2018 and filed a written submission in this regard. The relevant extracts of the said order are reproduced as under:

"22. During the year under consideration, the Appellant has paid brokerage fees to various parties totalling to INR 1,50,56,760 (Refer Page 199 to 204 of PB) which was disallowed by the AO and subsequently, the addition on this account was also

upheld by the Ld. CIT(A) by stating that there is no nexus between the brokerage expense and the business carried out by the Appellant.

23. The Ld. AO/Ld. CIT(A) failed to appreciate that in the business of tenting properties, it is a general practice to engage brokers for finding tenants. Accordingly, any expense incurred with respect to the brokerage has direct nexus with the business carried out by the Appellant.

24. It is further submitted that the said issue is covered in favour of the Appellant passed by this Hon'ble Tribunal in the case of the sister entity Le, Candor Kolkata One Hi-Tech Structures Private Limited (ITA No. 3879/Del/2018) vide order dated June 14. 2023 wherein after duly considering the invoices and the lease agreement furnished, it was held as under:

> *"8. As with regard to the issue no 5 being ground of brokerage in ITA No 3879/Del/2018, it can be observed that the invoices produced on behalf of the appellant at page no and 3 of the paper book clearly mention the details of the premises let out and the party to whom the lease was made. The copies of lease deed have also been placed on record. Ld. Tax Authorities have fallen in error in want of more evidences. When assessee is engaged in the business of rental of the properties then engaging brokers for procurement of the tenants is common practice and the expenses of brokerage thus, have to be considered to have been incurred in ordinary course of business."*
>
> *(Emphasis Supplied)*

25. Even in the instant case, the Appellant has furnished the relevant invoices (enclosed at page 199-202 of PB) which clearly envisages the details of the premises let out and the party to whom the brokerage was paid. Your Honors would note that the said expenses have been duly incurred in the ordinary course of business and is therefore an allowable expense in terms of section 37(1) of the Act

26. Accordingly, the impugned disallowance cannot be sustained and is liable to be deleted."

10. On perusal of the facts as stated by the AO in the assessment order as reproduced above and the facts of the cases as relied by the assessee, we find that the facts in the present case and the case relied upon by the assessee are identical. In the present year also, the assessee has furnished the relevant invoices (enclosed at page

199-202 of PB) which gives the details of the premises let out and the party to whom the brokerage was paid. Therefore, respectfully following the above order of the Co-ordinate Bench of the Tribunal, we hold that the said expenses have been duly incurred in the ordinary course of business and is therefore an allowable expense in terms of section 37(1) of the Act. Accordingly, we delete the addition of Rs. 87,97,268/- of the total disallowance of Rs. 1,50,56,760/- for which the details have been furnished. For the balance amount of Rs. 62,59,500/-, the matter is restored to the file of the AO for necessary verification and its allowance as per law. Ground no. 3 of the appeal is partly allowed.

11. Ground no. 4 of the appeal is reproduced as under:

4. On the facts and circumstances of the case, and in law, the CIT (Appeals) has erred in:

4.1 confirming the action of the AO in re-classifying the income from car parking amounting to INR 12,15,000, interest income amounting to INR 38.83.379. permission charges amounting to INR 6,00,000 and license fee amounting to INR 36,667 under the head income from other sources, and

4.2 confirming the action of the AO in denial of deduction under section 80-IAB of the Act on such incomes while re-classifying them to income from other sources.

12. The AO treated income of Rs. 57,35,046/- as 'income from other sources' and disallowed to be included in the 'income from Business and Profession'. The relevant discussions of the assessment order are reproduced as under:

" 7.1 The assessee has declared the following income as revenue from operation: -

Income from B&P	Income from operating lease rentals	80817698	
	Income from maintenance services	26078692	
	Interest from car parking	1215000	
Total			108111390
Other operating revenues	Interest on FD	3883379	
	Permission charges	600000	
	License fee	36667	
Grand total			45,20,046

7.2 The assessee has declared Nil income as 'Income from Other Sources' in its computation of income. However, Interest from car parking amounting to Rs. 1215000/- , Interest income of FD amounting to Rs. 3883379/-, Permission charges amounting to 600000/- and License Fee amounting to Rs. 36667/- totalling to Rs. 5735046/- should have been declared as income from other sources. The assessee vide order sheet entry dated 20.12.2016 was show caused why addition of incomes of other than operating lease income may not be disallowed u/s 801AB. The assessee vide reply dated 23.12.2016 submitted as under:-

"(a) The assessee is in the business of developing as SEZ in the IT/ITES sector. As a part of development and leasing of premises situated in the SEZ, the assessee has leased out car parking situated in the SEZ premises and has earned income from leasing of the aforesaid car parking and maintenance. Since it is integral part of the business of leasing therefore should be allowed under SEZ business

(b) The interest is earned on bank deposits which were made for the business exigencies only, therefore are allowable deduction for section 801

7.3 The reply of the assessee was considered but found to be not tenable.

……xxx……

7.4 The assessee's claim on deduction of car parking rental & interest income is not accepted due to following facts.

(a) The assesee company has shown sale of servicers of Rs. 10,81,11,390/- and other Operating Services of Rs. 45,210,046 in the Statement of profit & Loss a/c which includes Interest from Interest from car parking amounting to Rs. 1215000/-, Interest income of FD amounting to Rs. 3883379/-, Permission charges amounting to 600000/-and License Fee amounting to Rs. 36667/- totalling to Rs. 5735046/-. The business of the assessee is

to develop SEZ in IT/ITES Sector and lease out the premises for rent and maintaining the said SEZ, which implies that only lease rentals for the premises and the maintenance charges can be considered as income from business. Car parking Rentals are received from even the visitors who come the offices of the occupants thereof such income cannot be considered as from SEZ activities. Therefore. This can be only considered as Miscellaneous Income.

(b) In addition to above, the assessee company has also shown Interest Income as Other Operating Income namely Interest from car parking amounting to Rs. 1215000/-, Interest income of FD amounting to Rs. 3883379/-, Permission charges amounting to 600000/- and License Fee amounting to Rs. 36667/- totalling to Rs. 5735046/- on which it has claimed deduction u/s 801AB by including the same under the head 'Income from Business' Despite specific opportunity provided to the assessee company. No reply was submitted by it justify its claim for the said deduction.

……xxx……

(e) Accordingly, Interest from car parking amounting to Rs. 1215000/-, Interest income of FD amounting to Rs. 3883379/-, Permission charges amounting to 600000/- and License Fee amounting to Rs. 36667/- totalling to Rs. 5735046/- appearing in Statement of Profit & Loss is held as ineligible for deduction u/s 80-1AB and added to the income of the assessee company as Income from Other Sources.

7.5 In view of the above, income of Rs. 5735046/- is treated as 'income from other sources' and disallowed to be included in the 'income from Business and Profession'.

(Addition Rs. 57,35,046/-)

12.1 Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A) and the Ld. CIT(A) dismissed the appeal of the assessee. The relevant extract of the order of the Ld. CIT(A) is reproduced as under:

"7.15 The AO has given cogent and detailed reasons for not accepting the contention of the appellant. The AO has stated that the business of the appellant is to develop SEZ in IT/ ITES sector and to lease out the premises for rent and maintaining the said SEZ, he has held that this implied that only lease rentals from the premises and maintenance charges could be considered as the income of the appellant. The AO has correctly held that interest from car parking, interest from FD, permission charges, license fees etc. clamed as deduction/s 80IAB do not constitute income from SEZ activities. Even during

the appellate proceedings, the appellant was not able to substantiate its claim. In view of the same, I do not find any reason to interfere with the findings of the AO.

7.16 The ground of appeal no. 4 is dismissed."

12.2 The Ld. AR submitted that the issue relating to 'income from car parking' and 'interest on fixed deposits' to be eligible for deduction u/s 80IAB of the Act was covered in favour of the assessee by the Co-ordinate Bench of the Tribunal in associate concerns of the assessee as per the details of the orders stated in the written submission filed by the assessee. It was further submitted that the balance two items had also direct nexus with the assessee business and was eligible for deduction u/s 80IAB of the Act. The relevant extracts of the written submissions filed by the assessee are reproduced as under:

" *Ground 4 to 4-2- Denial of deduction u/s 801AB of the Act.*

27. During the year under consideration, the Ld. AO/Ld. CIT(A) reclassified the following incomes from the head "income from business and profession" to "income from other sources" and accordingly denied the bona-fide deduction u/s 80-IAB of the Act:

Particulars	***Amounts***
Income from car parking	*12,15,000*
Interest on Fixed Deposits	*38,83,379*
Permission Charges	*6,00,000*
License Fee	*36,667*
Total	***57,35,046***

28. With respect to the income from car parking, the Appellant humbly submits that it has leased out completed areas of the SEZ premises to various tenants and has earned

operating lease rentals from the aforesaid property which represents the main component of the income reported by it. Incidental to the operating lease rental, the Appellant has also earned income from car parking rentals as business income.

29. The income earned from car parking rental has direct and immediate nexus with the lease rentals. The provision of car parking services is essential part of carrying out the business of development, operation and maintenance of SEZ. Alan, income by way of car parking is part of authorized activities as per instruction No go dated 15th March, 2010 issued by Government of India, Ministry of Commerce and Industry, Department of Commerce. Further, car parking has also been included as part of authorized operations in SEZ as per communication No. F 2/115/2005-EPZ Government of India, Ministry of Commerce and Industry, Department of Commerce (SEZ Section) dated 30th January, 2008. Therefore, car parking cannot be separated from the main business of SEZ and hence there is no justifiable reason to deny benefits on income from car parking rental in this backdrop.

30. It is pertinent to mention that this issue pertaining to allowability of deduction u/s 80 IAB of the Act w.r.t car parking rental is covered in favor of the Assessee by orders passed by this Hon'ble Tribunal in case of the group entities ie, Candor Kolkata One Hi-tech Structures P. Ltd. and Candor Gurgaon Two Developers and Projects Pvt. Ltd., the details of which are mentioned herein below:

a Candor Kolkata One Hi-tech Structures Pvt. Ltd. vs. ACIT bearing ITA No 6937/Del/2018 (Refer para 10-14 at page 46-47 of CLC)

b Candor Gurgaon Two Developers and Projects Pvt. Ltd. and Candor Kolkata One Hi-tech Structures P. Ltd. dated Jime 14, 2023 (refer para 5 at page 35-36 of CLC)

c. M/s. Unitech Developers & Projects Ltd. vs. DCIT bearing ITA No. 4032/DEL/2015 (Refer puro 23-5 at page so-5t of CLC)

31. Now, with respect to the Interest income earned from Fixed Deposits, it is humbly submitted that the fixed deposits are not made from idle funds lying with the Appellant for earning interest income. Rather, these deposits are made in relation to security/guarantee given to:

Department of Industries & Commerce, Government of Haryana, Chandigarh; and President of India Haryana State Pollution Control Board, Panchkula

(Refer Page 20 of the PB)

32. Therefore, these fixed deposit were created as a collateral security for obtaining relevant licenses for carrying out the business of the Appellant. Accordingly, the income derived from such deposits is correctly classified as Business Income since it has a direct nexus with the business carried out by the Appellant

33. It is further submitted that the issue of allowability of deduction u/s BOLAB of the Act on interest income is already covered in favour of the Assessee by the order of this

Hon'ble Tribunal passed in case of its group entity Le, Candor Kolkata One Hi-tech Structures P. Ltd, the details of which are mentioned herein below:

a. *Candor Kolkata One Hi-tech Structures Pvt. Ltd. bearing ITA Nos. 7763/Del/2019 (AY 2012-13) & 3879/Del/2018 (AY 2014-15) vide order dated June 14, 2023 wherein after placing reliance on the judgement of the Hon'ble Apex Court in the case of Meghalaya Steels Ltd. vs. CIT [2016] 67 tazmann.com 158 (SC), the impugned addition was deleted. (refer para 6 & 7 at page 36-41 of CLC)*

b. *Candor Kolkata One Hi-tech Structures Pvt. Ltd. vs. ACIT bearing ITA No. 6937/Del/2018 (refer pare 14 at page 47 of CLC)*

34 With respect to the remaining income in the form of Permission Charges and License Fee, it is humbly submitted that the permission charges are one-time fer charged by the Appellant from Tata Communications Limited and Bharti Airtel Limited in relation to fibre entry in the SEZ premises of the Appellant for its tenant ie Genpact

35. The license fees charged by the Appellant from Bharti Airtel Limited is towards rentals for setting ap telecom towers SEZ premises of the Appellant for providing connectivity infrastructure to its tenants.

Since such income has a direct nexus with the business carried out by the Appellant, accordingly the income derived is correctly classified as business income.

36. Accordingly, the impugned reclassification cannot be sustained and is liable to be deleted and hence benefit of deduction u/s 80-IAB of the Act should be granted."

(emphasis supplied by us)

12.3 We have heard the rival contentions and perused the material available on record. The facts in the present case are identical to facts relating to receipts of income from car-parking and interest on fixed deposit to the facts of the case decided by the coordinate Bench of the Tribunal in favour of the assessee in Candor Kolkata One Hi-tech Structures P. Ltd. and Candor Gurgaon Two Developers and Projects Pvt. Ltd relied upon the assessee referred above, duly highlighted by the us. Therefore,

following the same, we hold that the assessee is entitled for deduction u/s 80IAB on the car rental income (Rs. 12,15,000/-) and interest on fixed deposits (Rs. 38,83,379/-). Similarly, following the ratio of the above orders, in view of the facts as explained by the assessee as reproduced as above, we are satisfied that the permission charges (Rs. 6,00,000/-) and license Fee (Rs. 36,667/-) has direct nexus with the business carried out by the assessee and it is business income of the assessee and is entitled for deduction under section 80 IAB of the Act. In the result, all the four items totalling Rs. 57,35,046/- will be eligible for deduction u/s 80IAB of the Act. Ground nos. 4 to 4.2 of the appeal is allowed.

13. Ground no. 5 of the assessee's appeal is reproduced as under:

> " *5. On the facts and in the circumstances of the case, and in law, the CIT (Appeals) has erred in confirming the action of the AO by not granting the deduction of Lease rent straight lining amounting to INR 1,77,68,086 claimed in the return of income."*

13.1 The assessee submitted as under:

> *"Ground 5-Disallowance of Lease rent straight lining*
>
> *37. This ground is not pressed by the Appellant."*

13.2 Therefore, this ground is dismissed as not pressed.

14. Ground no. 6 of the assessee's appeal is reproduced as under:

6. On the facts and circumstances of the case, and in law, the CIT (Appeals) has erred in not adjudicating the ground on initiation of penalty proceedings under section 271(1)(c) of the Act."

14.1 The assessee submitted as under:

"Ground 6-Initiation of penalty proceedings under Section 271(1)(c) of the Act.

38. The ground is consequential in nature and hence premature at this stage."

14.2 The ground is premature at this stage and hence dismissed.

15. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 08th April 2026.

Sd/-	**Sd/-**
[YOGESH KUMAR US]	**[BRAJESH KUMAR SINGH]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 08.04.2026.
Pooja

Copy forwarded to:
1. Assessee
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,