

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2065/Mds/2016
निर्धारण वर्ष /Assessment year : 2012-2013

M/s. Olympia Tech Park
(Chennai) Private Limited,
No.1, Olympia Technology Park,
Sidco Industrial Estate,
Guindy, Chennai 600 032.

Vs. The Income Tax Officer,
Corporate Ward 5(1)
Chennai.

[PAN AABCO 0824C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. M.I. Sirish, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Ashish Tripathi, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 11-01-2017
घोषणा की तारीख /Date of Pronouncement : 25-01-2017

आदेश / ORDER

In this appeal filed by the assessee directed against an order dated 28.03.2016 of Id. Commissioner of Income Tax (Appeals)-3, Chennai, it assails an addition of ₹8,40,320/- as interest income.

2. Facts apropos are that assessee engaged in real estate business had filed return of income for the impugned assessment declaring "Nil" income. During the course of assessment proceedings, it was noted that the by Id. Assessing Officer that assessee had

entered into a joint venture agreement with one Shri. N.S. Srinivasan and six others for developing 15.86 acres of land at Egattur & Navalur Village, Chengalpet Taluk for constructing and selling luxury villas. As per the agreement, it was the responsibility of the assessee to construct villas. The said construction was stated to have been started during the previous year relevant to impugned assessment year. Expenditure incurred for construction was shown by the assessee in its Balance sheet as work in progress. Id. Assessing Officer noted that assessee had earned interest income of ₹8,40,320/- from fixed deposits placed with one M/s. KSM Nirman Pvt. Ltd. As per Id. Assessing Officer assessee was still to set up its business. Since it had no income from its operations in the relevant previous year, he applied the judgment of Hon'ble Apex Court in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd vs. CIT 227 ITR 172 and held that such interest was to be taxed under the head "income from other sources". An addition of ₹8,40,320/- was made.

3. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that it had commenced its business activities before the previous year relevant to preceding assessment year 2011-2012. As per the assessee it recognized revenue based on project completion method.

According to it, expenditure incurred for constructing the villas were shown as a part of its work in progress/inventory. Assessee pointed out that it had during the relevant previous year received an advance of ₹50.85 crores from its customers for constructing villas and invested a sum of ₹44.80 crores for construction. As per assessee substantial loans were taken by it for constructing villas. Interest income earned on funds temporarily parked had to be considered as a part its business activities only. In any case as per the assessee, interest income had to be netted off with interest expenditure since there was a direct nexus. Contention of the assessee was that interest expenditure was much higher than the interest income and even if interest income was considered under the head "income from other sources" once expenditure was set off, there would be no case for an addition.

4. However, Id. Commissioner of Income Tax (Appeals) was not appreciative of the above contentions. According to him, assessee had not set up its business during the relevant previous year and therefore the judgment of Hon'ble Apex Court in the case of *Tuticorin Alkali Chemicals & Fertilizers Ltd (supra)* clearly applied.

5. Now before me, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessee had set up its business well prior to the relevant previous year.

According to Id. Authorised Representative it had received substantial amount from the customers for constructing villas. Ld. Authorised Representative submitted that approval for the construction was received on 22.11.2010 and assessee had started construction work of the villas. Ld. Authorised Representative submitted that the moment the joint development was entered with Shri. N.S. Srinivasan and others, the business of the assessee stood setup. Ld. Authorised Representative submitted that assessee had not returned any revenue in the profit and loss account only for a reason that since it was following project completion method.

6. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below, submitted that assessee could not show whether business was actually setup during the relevant previous year.

7. I have heard rival submissions and perused the orders of the lower authorities. It is not disputed that assessee had entered into joint development agreement on 18th May, 2011 with Shri. N.S. Srinivisan and others for development of 15.86 acres of land and construction of villas therein. Assessee had also started construction work and its Balance Sheet placed at paper book page 190 reflects an inventory of ₹44,80,46,798.50, which include work in progress of ₹29,09,75,621/-. A sum of ₹50,85,70,701.33 received by it as

advance from customers were shown as part of its current liability. Just because assessee did not recognize any income does not mean the project had not commenced. Admittedly, assessee company was incorporated in the year 2008. This being the case, I am of the opinion that the business of the assessee had commenced. Once the business is considered as setup, interest earned on deposits made out of temporarily surplus, in my opinion could not have been considered interest income under the head income from other sources but only as a business receipt. In such circumstances, judgment of Hon'ble Apex Court in the case of *Tuticorin Alkali Chemicals & Fertilizers Ltd (supra)* had no application. Ld Assessing Officer is directed to reduce from the value of the work in progress the interest income received by the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on Wednesday, the 25th day of January, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:17thJanuary, 2017

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |