

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ I.T.A. No. 7345/Mum/2011
(निर्धारण वर्ष / Assessment Year: 2006-07)

M/s. Bombay Isle Developers Pvt. Ltd. Narang Manor, Ground Floor, Plot No 96-B, 15 th Road, Bandra (West), Mumbai-400 050.	बनाम/ Vs.	Income Tax Officer 9(1)(2), 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		A ABCB 5317P
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri K. Gopal
प्रत्यर्थी की ओर से/Respondent by	:	Shri Randhir Gupta

सुनवाई की तारीख / Date of Hearing	:	25/07/2016
घोषणा की तारीख / Date of Pronouncement	:	28/09/2016

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)- 19, dated 11.08. 2011 on the grounds of appeal mentioned herein below.

1. *“The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.15,45,880/- being interest cost by not appreciating the fact that the matter is debatable and cannot become subject matter of rectification under section 154 of the Act.*
2. *The learned Commissioner of Income Tax (Appeals) further erred in upholding the view of the Assessing Officer that the value of closing work in progress be enhanced by the amount of interest cost of Rs.15,45,880/-.”*

2. The brief facts of the case are that assessment in this case was completed u/s 143(3) of the I.T. Act, 1961 on 29.12.2008 thereby assessing total income at Rs.19,58,40/-. However it was noticed that disallowance of net interest on account of enhanced WIP amounting to Rs.15,45,880/- was not added to the business income. Therefore after serving notices, the ITO passed order u/s 154 of the Act thereby revised the total income of the assessee.

3. Aggrieved by the order of the ITO, assessee filed the appeal before CIT(A) and the CIT(A) after considering the case of the assessee dismissed the appeal of the assessee vide order dated 29.12.2008 thereby upholding the order of ITO passed u/s 154 of the Act.

4. Aggrieved by the order of CIT(A), the assessee filed the present appeal before us on the grounds mentioned herein above.

5. Both the grounds raised by the assessee are inter-connected and inter-related therefore we thought it fit to dispose off the same through the present common order. At the very outset, ld. AR appearing on behalf of assessee submitted that the

CIT(A) erred in confirming addition of Rs.15,45,880/- being interest cost by not appreciating the fact that the matter is debatable and cannot become subsequent matter of rectification u/s 154 of the Act. Ld. AR further submitted that the assessee is a builder and developer and had two project under construction during the year called “Lata Soni C.H.S.” and “Kamal Vishranti Kutir” at Bandra and during the year under consideration both the projects were under construction and the assessee had received interest income of Rs.15,45,880/-. The assessee has debited, under the head ‘Financial Expenses’ an amount of Rs.31,13,778/- on account of interest and fiancé brokerage. It was further submitted that closing stock of W.I.P. is valued at cost and cost includes all expenses including administrative and net interest cost incurred to finance the project as per clause 12(a) regarding method of valuation of closing stock of Tax Audit Report. This is just matter of accounting policy which is consistently followed by company. So the assessee has correctly charged net interest cost to closing W.I.P. It was further submitted that during normal course of business any surplus fund utilized by the company as advances to director and interest earned on that advances is liable to set off against interest cost incurred by the company to the extent interest earned by the company and that is what assessee has done by capitalizing net interest cost to the project by reducing interest cost to the extent interest received by the company on advances made out of surplus fund.

6. On the other hand, ld. DR relied upon the orders passed by the Revenue Authorities.

7. We have heard the counsels for both the parties on this ground and we have also perused the material placed on record as well as the orders passed by the revenue authorities. After considering the entire facts as well as circumstances of the present case, we are of the considered view that the issue of taxability of a receipt under the head business income or income from other sources is a debatable issue and hence the same is not a mistake apparent to be rectified u/s 154. Even the revenue authorities have failed to appreciate that the interest receipt are business receipt of the assessee and because of that WIP is reduced as per the consistent method of accounting followed by assessee. Therefore, on that account additions of Rs.15,45,880/- had not at all justified to be added by virtue of an order passed u/s 154 of the Act as the same cannot be held as a “mistake apparent” to be rectified u/s 154 of the Act more particularly when the assessment in this case was completed u/s 143(3) on 29.12.08. Ld. AR also drawn out attention to page no. 1 to 39 of the paper book which consist of Audited Financial Statements for the financial year 2005-06, Report of the Auditor in form 3CA containing particulars in Form 3CD with Annexure for AY 2006-07.

8. Therefore under these circumstances we set aside the order of CIT(A) and delete the additions of Rs.15,45,880/- made by AO while passing the order u/s 154 of the IT Act. Hence these grounds of appeal filed by assessee are allowed.
9. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 28th September, 2016

Sd/-
(R.C. Sharma)

लेखा सदस्य / Accountant Member

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :28.09.2016
Ps. Ashwini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai