

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, C, मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Ashwani Taneja, Accountant Member**

**ITA NO.3055/Mum/2014  
Assessment Year: 2010-11**

ITO 1(1) (2) R.No.534/579 Aayakar Bhavan, M.K. Rd.  Mumbai-400020 (Revenue)	<b>बनाम/ Vs.</b>	Creator Builders P. Ltd. 1 <sup>st</sup> Floor, Capri Bld. G. Opp HDIL, Tower, Anant Kanekar Marg, Bandra(E) Mumbai-400051 (Respondent)
P.A. No.AACCC7278D		

Revenue by	Ms. Sudha Ramchandran (DR)
Respondent by	Shri Virag Shah (AR)

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>02/05/2016</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>25/05/2016</b>

**आदेश / O R D E R**

**Per Ashwani Taneja (Accountant Member):**

This appeal has been filed by Revenue against the order of Ld. Commissioner of Income Tax (Appeals), Mumbai-1 {(in

short 'CIT(A)}', dated 28.02.2014 passed against assessment order u/s 143 dated 30.03.2013 for the Assessment Year 2010-11, on the following grounds:

*"1.On facts and in circumstances of the case and in Law, the Ld.CIT(A) erred in permitting capitalization of interest of Rs.2,23,82,580/without appreciating that the borrowed funds have not been utilized for the business purpose and consequently capitalization of interest has a direct and substantive implication for calculation of taxable income, may be of subsequent Asstt. Years, necessarily requiring order to be passed in this Assessment Year."*

*"2.On facts and in circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of liability of Rs. 1,50,939/- shown as payable to M/s. CSV Developers when the assessee has not furnished documentary evidence in support of its claim".*

*"3.On facts and in circumstances of the case and in Law, the Ld.CIT(A) erred in deleting the addition u/s.68 of the Act amounting to Rs.20 lacs without appreciating that the cash deposited during the year had no corroborated nexus with the cash withdrawn three years in past."*

*"4.On facts and in circumstances of the case and in Law, the Ld. CIT(A) erred in deleting the addition u/s.68 of the Act amounting to Rs.2 crores without understanding the correct nature of addition."*

**2.** During the course of hearing, arguments were made by Shri Virag Shah, Authorised Representative (AR) on behalf of the Assessee and by Ms. Sudha Ramchandran, Departmental Representative (DR) on behalf of the Revenue.

**3. Ground No.1:** In this ground the Revenue is aggrieved with the action of Ld. CIT(A) in reversing the action of AO in making disallowance of interest of Rs.2,23,82,580/-. On the basis of

facts presented before us, it is noted by us that the impugned amount of interest was not claimed in the year under consideration. The AO disallowed the amount of interest on notional basis on the funds borrowed from Dewan Housing Finance Corporation (DHFL) @ 15% for the period from 01.04.2005 to 31.03.2010. Ld. CIT(A) considered the entire facts of the case and deleted the disallowance by observing as under:

*“8.2. I have considered the facts and circumstances of the case, assessment order and submissions of the appellant. It is noticed from the facts of details of transaction of borrowing from DHFL and the various advances made by the appellant that prima-facie the amounts have been advanced for project survey, land survey (as in Ground No.2) and for carrying out the business by business of residential project for acquiring the titles/ownership of the business asset (as in Ground No.3), as argued and submitted by the appellant. The transactions are made since the earlier years.*

**8.3** *It is also obvious from the records that the amount of interest under question has been though included in work-in-progress but has not been charged to P&L a/c. during the year. Therefore, no notional disallowance can be made for this purpose when same is not charged to the P&L a/c. The AO has not brought on record any material specifying the amount advanced for non-business purpose, and out of borrowed funds and much less that the interest on such non-business advances have been debited/claimed as deduction in the P&L a/c. during the year.*

*In view of these facts and circumstances of the case, there is no basis for the disallowance of Rs.2,23,82,580/- as done by the AO. Accordingly, for the reasons as discussed above, the AO is directed to delete the addition. Hence, Ground No.4 of appeal is allowed.”*

**3.1.** Ld. DR relied upon the order of the AO but she was not able to point out anything wrong in the order of the Ld. CIT(A). It is noted by us that disallowance has been made by the AO disregarding the Income Tax Act. We could not find any provision on the basis of which the impugned disallowance could have been made. The amount was disallowed pertaining to the interest of earlier years that too notional basis. We find that the disallowance has been made in a highly irresponsible and casual manner for the reasons best known to the AO. We find no reasons to interfere in the findings of Ld. CIT(A) and therefore the same are upheld and ground raised by the revenue is dismissed.

**4 Ground No.2:** This ground deals with the action of Ld. CIT(A) in disallowance of liability of Rs.1,50,939/- shown as payable to M/s. CSV Developers.

**4.1.** During the course of hearing, it was fairly stated by the Ld. DR that she was not able to point out anything wrong in the order of the Ld. CIT(A). It is noted that Ld. AO made this addition on the basis of permission that the amount payable M/s. CSV Developers ceased to exist and accordingly made addition u/s 41(1). Ld. CIT(A) deleted the addition by making following observations:

*“I have considered the facts and circumstances of the case, the assessment order and the submissions of the appellant. The AO has made the addition particularly by holding that the amount of Rs.150939/- is a non-existent liability and that assessee has no explanation to offer. However, in*

*the assessment order itself in para-5 it is noted by AO that "you have filed a confirmation dtd.30.11.2012 in regards to the outstanding balance as on 31.03.2010". It seems that appellant had also filed ledger account. However, the AO has concluded that no documentary evidence to prove the transaction is existing for this purpose. It is also noted in para-5 pg.24 of the assessment order that "Mere filing of audited balance sheet of CSV Developers does not prove the transaction or its genuineness. It is, therefore, concluded that you have failed to discharge the onus cast on you". Therefore, the conclusion derived by the AO by ignoring the confirmation, ledger account and audited balance sheet of transacting parties is not justified for this purpose. The decision relied upon by the appellant DSA Engineers (Bombay) v. ITO [2009] 30 SOT 31 and also the decision in the case of CIT vs. Sugauli. Sugar Works Pvt. Ltd. (1999) 236 ITR (SC) on the issue of section 41 of the I.T. Act (supra) is applicable, thereby making the edition invalid as per I.T. law. Hence, the AO is directed to delete the addition."*

**4.2.** It is noted by us that assessee showed existence of the impugned liability in the form of confirmation duly signed by the said party containing name, address and PAN Numbers of all the partners of the said party etc. We are not able to understand that on what basis AO reached to the conclusion that the impugned liability was no more payable. This addition was made in a casual manner. The Ld. CIT(A) has rightly deleted the same and therefore, his order is upheld and ground no.2 of revenue's appeal is dismissed.

**5. Ground No.3:** In this ground the revenue has challenged the action of Ld. CIT(A) in deleting the addition u/s 68 amounting to Rs. 20 lakhs.

**5.1.** The brief facts are that the AO made addition of Rs.20 Lacs on account of cash deposited during the year, disregarding the opening balance of cash as shown in the balance sheet of the last year. It was submitted by the assessee before the Ld. CIT(A) that the AO made addition on account of cash deposit by the assessee in its bank account with Axis Bank and Union Bank of India for Rs.10 lakhs each on 07.02.2010. The assessee has submitted cash summary of the entire year showing cash withdrawal and deposited in the bank account time to time as well as balance sheet for earlier years showing opening amount of cash available with the assessee. The Ld. CIT(A) considered all the evidences and deleted addition by observing as under:

*“5 I have considered the facts and circumstances of the case, the assessment order and the submissions of the appellant. The appellant has furnished copies of Balance Sheet for the F.Ys.2006-07, 2007-08 and 2008-09 and bank statement highlighting the cash withdrawal and cash ledger before the A.O. explaining that withdrawals in the months of April/May, 2006 were made from its own account aggregating to Rs.23,47,000/- for business purposes. In fact the audited Balance Sheet of the appellant for the Immediately preceding year -2009-10 was also filed before A.O. where Rs.22,20,49/- is recorded as cash balance under Schedule—E of the said Balance sheet as submitted and documents filed in this behalf. It is further explained that the amounts of Rs,10 lakhs each, totaling to Rs,20,00,000/- was deposited in the two accounts of the appellant from the available cash in hand, duly recorded in the final accounts of the appellant and available with it in duly explained manner. The A.O. has ignored the above noted explanation of the appellant by simply observing that 'assessee has not brought*

*anything on record to prove this point'.*

*10.6 The A.O. has further presumed that the amounts earlier withdrawn from the bank account of the appellant cannot be for the purpose of accumulation and utilization of deposits three years later, This presumption is a general and vague proposition, particularly when the explanation of the appellant for withdrawing the amounts for business purpose, is on record and supported by its bank accounts and audited books of account, in fact, the specific explanation offered by the appellant for the deposits of Rs.20 lakhs in question has neither been considered nor contradicted by the A.O. by any evidence or material. At the same time, the explanation of the appellant is duly supported by documentary evidence of bank account, Balance sheet of the relevant years relevant for explaining the credit/deposit in its account, Therefore, for the reasons above, A.Q. is directed to delete the addition and accordingly, Ground No.7 of appeal is allowed.”*

**5.2.** During the course of hearing before us, Ld. DR was not able to point out anything incorrect in the findings of the Ld. CIT(A). On the other hand, Ld. Counsel of the assessee had drawn our attention on various pages of the paper book in support of findings of Ld. CIT(A). We agree with the observations of Ld. CIT(A) that the AO cannot deny the benefit of cash available with the assessee on the basis of mere presumption that the cash withdrawn on earlier occasions might have been utilized elsewhere, unless the AO is able to bring on record contrary evidences in this regard. The balance sheet and other records submitted by the assessee which have been accepted in the earlier years cannot be simply brushed aside and making a presumption against the assessee. Under

these circumstances, we find the action of Ld. CIT(A) was justified as per law and facts and therefore, same is upheld. Ground raised by the revenue in this regard is rejected.

**6. Ground No.4:** In this ground, the Revenue has challenged the action of Ld. CIT(A) in deleting the addition u/s 68 amounting to Rs. 2 crores. The AO had made addition on account of difference in the balance as shown by M/s. Pooja Construction in the account of the assessee and the balance as shown by the assessee in the name of M/s. Pooja Construction. In the appeal before the Ld. CIT(A) the assessee submitted that the addition has been made by the AO without properly understanding the facts of the case. The Ld. CIT(A) after considering the complete facts found that actually there was no different and addition was wrongly made and accordingly he deleted the same.

**6.1.** Being aggrieved the revenue filed before the Tribunal.

**6.2.** During the course of hearing assessee relied upon detailed and well reasons order of Ld. CIT(A) whereas Ld. DR relied upon the order of the AO.

**6.3.** We have gone through the orders of lower authorities and also considered submissions made by both the sides. It is noted by us that when impugned difference was pointed out by the AO to the assessee during the course of assessment proceedings, the assessee submitted that actually there was

no difference but the difference in the accounts is appearing due to the reason of difference in timing in recording the entries by M/s. Pooja Construction and by the assessee in its books of accounts. The assessee had given following explanation to the AO:

**“Transaction with Pooja Construction:**

*Sir, kindly note that during the year under consideration, the assessee company has agreed to purchase plot of Land No.604 located at Pinacal House, Khar, Mumbai from Pooja Construction at cost of Rs.12,00,00,000/-. As per the terms of the agreement, on 03/04/2009, the assessee company had paid a sum of Rs. 10,00,00,000/- as an advance money, Since execution and possession of said flat has not been received till the end of F.Y.2009-10 relevant to A.Y.2010-11, the aforesaid advance money had been shown under the head 'Loans c Advance' Subsequently, on 22/06/2010, the agreement for sale of said flat had been executed and immediately, the said advance a/c has been credited by creating liability of Rs.2 crores in favour of Pooja Construction. Copy of ledger account of Pooja Construction from 01/04/2009 to 31/03/2011 marked as Annexure 6 is attached herewith for your verification. Based on above factual submission, the amount of Ps. 2 crores shown as receivable in the books of accounts of Pooja Construction has been in-conformity with the books of accounts of the Assessee Company and hence, no adverse view may please be taken.”*

**6.4.** But the AO did not appreciate the facts properly and made addition u/s 69B by treating the amount of difference as unexplained investment made by the assessee.

**6.5.** Before Ld. CIT(A), the assessee reiterated the submissions and provided further details to clear all the doubts in this

regard, and after considering the same Ld. CIT(A) held as under:

*“I have considered the facts and circumstances of the case, assessment order and submissions of the appellant, It can be seen that the A.O. has made the addition based on the confirmation of one M/s. Pooja Construction where Rs.2 crores has been shown as closing balance, whereas assessee has not shown any such liability in its accounts. However, as per explanation of the appellant there was a transaction of purchase of plot for Rs.12 crores, for which R5.10 crores advance was given as per the agreement of purchase of plot. Since execution and possession of said plot was not received till the end of F.Y.200910 i.e. A.Y,2010-11 under reference, the entry of advance of Rs.10 crores remained intact. Subsequently, the agreement was executed on 22.06.2010 i.e. A.V.2011-12 and the resultant liability of Rs.2 crores was recorded in the accounts of the appellant.*

*11.3 The appellant has also furnished the copy of accounts. The A.O. made the addition based on the confirmation letter of a third party. However, the related transaction of advance and its adjustment for the purchase of plot has been done by the appellant on the basis of agreement dated 22.06.2010 (A.Y.2011-12) and possession of land, when the transaction is completed. The A.O. has ignored the date of transaction of purchase of plot in terms of agreement dated 22.06.2010, which was as such not recorded in the books of appellant as concluded transaction, rightly so because the transaction is liable to be considered completed in terms of date of agreement i.e. A.Y.2011-12. It is not case of contradictory amounts and entries or omission of amounts and entries as compared to a third party ledger, rather the entries carried out by the appellant are supported by agreement and the legal position in this behalf which are in order as per the available documents and evidence in this behalf. There is no question raised by the A.O. on the nature of transaction, on the amounts*

and on the genuineness of the transaction. 'The **Hon'ble Supreme Court in CIT vs. Mehrotra Brothers SLP (c) 37076/2004** dismissed the SLP of Revenue where M.P. High Court has dismissed the Revenue Appeal, holding that assessee had explained satisfactorily **the cash credit in the books of account** of the firm and discharged the burden and Department had not brought any material or evidence to rebut the same; and so cash credits were not income of the firm."

*Therefore, under the facts and circumstances of the case, there is no reasons and basis for invoking section 69B of the I.T. Act as done by the A.O. Hence, A.O. is directed to delete the addition and Ground No.8 of appeal is allowed for the reasons above."*

**6.6.** It is noted by us that in this case facts were not properly understood by the AO. The assessee had made agreement to purchase a plot of land for an aggregate amount of Rs. 12 crores from M/s. Pooja Construction. As per the terms of the agreement, the assessee paid a sum of Rs.10 crores as advance money during the year under consideration. The transaction was completed in the next year and accordingly balance amount of Rs. 2 crore was paid in the next year. The assessee debited in its books of accounts a sum of Rs.10 crores in the year under consideration on the basis of actual payment and therefore, it showed a debit balance of Rs.10 crores in the name of M/s. Pooja Construction. But M/s. Pooja Construction debited the account of the assessee in its books of accounts for full amount of Rs. 12 crores. But in the subsequent years accounts of both the parties matched with each other and finally there was no difference when the transaction was completed. The impugned difference is clearly not on account of any income of the assessee. It was purely a

matter of difference in timing of recording of entries by the parties in their respective books of accounts. Further, in any case, no addition could have been made under these facts u/s 69B of the Act. This was not at all a case of unexplained investment. We find that the order of the Ld. CIT(A) is well reasoned, based upon correct appreciation of facts and does not require any interference and therefore, same is upheld. Thus, ground no.4 is dismissed.

**7. In the result, this appeal filed by the Revenue is dismissed.**

Order pronounced in the open court on 25<sup>th</sup> May, 2016.

Sd/- (Joginder Singh)	Sd/- (Ashwani Taneja)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 25/05/2016

*Patel, P.S.* नि.स.

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

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**