

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

आयकर अपीलीय अधीकरण, न्यायपीठ - "A" कोलकाता,

**BEFORE SHRI RAJPL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

(समक्ष श्री राजपाल यादव उपाध्यक्ष एवं श्री गिरीश अग्रवाल लेखा सदस्य)

**ITA No.23/Kol/2022
Assessment Year: 2013-14**

| | | |
|---|------------|---|
| Sunny Rock Estates & Developers Pvt. Ltd. 17, Colonel Biswas Road, Kolkata-700019. (PAN: AADCS6898J) | Vs. | Deputy Commissioner of Income-tax, Circle-1(1), Kolkata. |
| (Appellant) | | (Respondent) |

Present for:

Appellant by : Shri Soumitra Choudhury, Advocate
Respondent by : Shri Biswanath Das, Sr. DR

Date of Hearing : 02.08.2022

Date of Pronouncement : 09.09.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No.ITBA/NFAC/S/250/2021-22/1037406250(1) dated 01.12.2021 for A.Y. 2013-14 arising out of order passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') by DCIT, Circle-1(2), Kolkata dated 28.12.2015.

2. In the present appeal, essentially there are two issues involved – one relating to treatment of interest income of Rs.89,73,695/- as income from other sources as against business income claimed by the assessee and another relating to disallowance of interest expenses of Rs.41,06,890/- which according to the Ld. AO had to be capitalized towards project development. For these two issues, assessee has taken

as many as nine grounds which are not reproduced for the sake of brevity.

3. Ground nos. 3 to 6 relate to the first issue and ground nos. 7 and 8 relate to the second issue. Ground no. 2 is in respect of challenging the jurisdictional issue for the assessment order passed u/s. 143(3) of the Act which in the course of hearing has been submitted as not pressed by the Ld. Counsel. Accordingly, ground no. 2 is dismissed as not pressed.

4. Brief facts of the case are that assessee is in the business of developing property. It filed its return of income on 23.11.2013 reporting a total income of Rs.44,30,689/-. During the course of assessment, Ld. AO, inter alia, noted that assessee has claimed a deduction in respect of interest on borrowed funds amounting to Rs.43,57,770/- out of which a sum of Rs.2,50,880/- was disallowed u/s. 14A of the Act and the balance of Rs.41,06,890/- was considered to be in respect of 'Sunny Fort' construction project undertaken by the assessee at Rajarhat, New Town, Kolkata which according to Ld. AO had to be capitalized with the cost of the project. Ld. AO noted in this respect that the unsecured loans taken by the assessee were utilized towards the capital work in progress and, therefore, the interest thereon cannot be allowed as an expenses and had to be capitalized with the cost of the project. Ld. AO also noted that assessee had earned an interest income of Rs.89,73,695/- duly reported in the audited P&L Account from Williamson Services Ltd. against the Inter-corporate Deposit (ICD) advance to the said company. Ld. AO held this interest income as income from other sources u/s. 56(2) of the Act and thus completed the assessment at assessed income of Rs.89,73,695/-. Aggrieved, assessee went in appeal before the Ld. CIT(A), who despite detailed submissions made by the assessee, confirmed the

addition/disallowance made by the Ld. AO. Aggrieved, the assessee is in appeal before this Tribunal.

5. Before us, Shri Soumitra Chowdhury, Advocate appeared on behalf of the assessee and Shri Biswanath Das, Sr. DR appeared on behalf of the revenue.

6. Before us, Ld. Counsel referred to the audited financial statements of the assessee placed in the paper book containing total 99 pages. Ld. Counsel also placed on record a cash flow statement for the impugned year along with comparative chart of interest received and paid along with other expenses for the impugned year and subsequent four assessment years upto AY 2017-18. Ld. Counsel also submitted a copy of assessment order passed u/s. 143(3) of the Act dated 15.11.2016 for AY 2014-15 in the assessee's own case.

6.1. Ld. Counsel submitted that in the immediately preceding year i.e. AY 2012-13 assessee had incurred a business loss of Rs.63,356/- which was carried forward. In the said year, assessee had incurred finance cost of Rs.15,716/- which was claimed as a deduction in the P&L Account forming part of the business loss carried forward. This year, AY 2012-13 was assessed u/s. 143(3) of the Act wherein an addition u/s. 68 was made by Ld. AO and the matter travelled upto the Co-ordinate Bench of ITAT, Kolkata in ITA No. 1630/Kol/2016. Vide order dated 20.11.2018, the instant appeal of the revenue was dismissed. Ld. Counsel thus, submitted that in the immediately preceding Assessment Year 2012-13, the claim of deduction towards interest expenses has not been disputed by the Ld. AO in the assessment completed u/s. 143(3) of the Act.

6.2. Further, Ld. Counsel referred to the assessment order in the assessee's own case for the immediately subsequent year i.e. AY 2014-15 wherein also, interest income of Rs.2,30,53,976/- was reported against which interest payment of Rs.35,47,183/- and other expenses of Rs.12,79,153/- were claimed. Return was filed at a total income of Rs.1,82,27,640/-. He pointed out from the assessment order, the observation made by the Ld. AO that "*although during the year, the company had not given any property on rent, but is developing a project named as Sunny Fort at Rajarhat, New Town.*" He thus submitted that Ld. AO has accepted returned income of the assessee comprising of interest income earned on ICD after claiming interest and other expenses. Only small amounts of additions were made by the Ld. AO relating to corporation tax and interest on service tax. He thus submitted that department has accepted the claim of the assessee in respect of interest income as well as interest expenses under the head "business income" in, both the immediately preceding as well as subsequent years.

6.3. Ld. Counsel stated that in the impugned year Ld. AO has wrongly re-characterized the interest income as income from other sources and disallowed the interest expenses towards capitalization of WIP in respect of construction project at Rajarhat, New Town. Ld. Counsel referred to the comparative chart of interest received/paid, other expenses for AY 2013-14 to AY 2017-18 to demonstrate that it has consistently reported its income from interest and claim of interest expenses as business income for which the returns have been filed accordingly and processed u/s. 143(1)/143(3) of the Act. The chart is reproduced as under:

Comparative chart of Interest Received / Paid, Other Expenses

| Assesment Year | A.Y. 2013-2014 | A.Y. 2014-2015 | A.Y. 2015-2016 | A.Y. 2016-2017 | A.Y. 2017-2018 |
|-------------------|-----------------------|-------------------------------|-----------------------|-----------------------|-----------------------|
| Interest Received | 8973695 | 23053976 | 33117190 | 34782275 | 39056612 |
| Interest Paid | 4357770 | 3547183 | 4464032 | 2347770 | 2976094 |
| Other Expenses | 185235 | 1279153 | 369458 | 1231085 | 589448 |
| Net income filed | 4430690 | 18227640 | 28283700 | 31203420 | 35491070 |
| Tax Paid | 1369083 | 5913958 | 9176647 | 10316787 | 11343277 |
| | Processed u/s. 143(1) | U/s. 143(3) passed & accepted | Processed u/s. 143(1) | Processed u/s. 143(1) | Processed u/s. 143(1) |

7. Further, Ld. Counsel referred to the cash flow statement for the impugned year to demonstrate that assessee had interest free own funds which were utilized for the development of the project, forming part of the capital WIP. Ld. Counsel points out that during the year, there is an increase in advance received on flats bookings amounting to Rs.32.18 Cr. against which the increase in capital WIP for the Sunny Fort, Rajarhat project is of Rs.16.48 Cr., leaving the assessee with cash funds of Rs.15.70 Cr. From the said cash flow statement, Ld. Counsel referred to the ICDs which increased by Rs.13.52 Cr.

7.1. He further referred to the cash flow from financing activities and pointed out that apart from the business of developing of property, assessee has also undertaken financing activities which is in accordance with the Memorandum & Articles of Association of the assessee. Cash flow statement is reproduced as under:

SUNNY ROCK ESTATES & DEVELOPERS PRIVATE LIMITED
CIN: U70101WB1995PTC068217
CASH FLOW STATEMENT FOR THE YEAR 2012-13

| PARTICULARS | 2014-15 | | |
|--|--------------------------|--------------------------|-------------------------------|
| A. CASH FLOW FROM OPERATING ACTIVITIES | | | |
| Net Profit/(Loss) Before Taxes & Extraordinary Items | | 44,88,071.08 | |
| Operating Profit before Working Capital Changes | | 44,88,071.08 | |
| <i>Adjustments for:</i> | | | |
| Decrease/(Increase) in Current Assets (WIP) | (16,48,01,794.00) | | Increase in Work In Progress |
| Increase/(Decrease) in Current Liabilities | 32,18,01,911.05 | 15,70,00,117.05 | Increase in Advance for Flats |
| Cash generated from Operations | | 16,14,88,188.13 | |
| Income Tax paid | | 13,69,083.00 | |
| Net Cash (Used In)/From Operating Activities (A) | | 16,01,19,105.13 | |
| B. CASH FLOW FROM INVESTING ACTIVITIES | | | |
| Purchase of Fixed Assets | (5,58,430.00) | | |
| non Current Investments | (1,00,00,000.00) | | |
| Inter-Corporate Deposits | (13,51,89,368.00) | | Increase of ICD |
| Net Cash (Used In)/From Investing Activities (B) | | (14,57,47,798.00) | |
| C. CASH FLOW FROM FINANCING ACTIVITIES | | | |
| Proceeds from long term loans & advances (Net) | (2,70,78,852.00) | | |
| Proceeds from Long term Borrowings (Net) | 1,57,36,374.00 | | |
| Net cash flow from / (used in) financing activities (C) | | (1,13,42,478.00) | |
| Net Increase/ (Decrease) in Cash and Cash Equivalents | | 30,28,829.13 | |
| Opening Balance of Cash and Cash Equivalents | | 1,97,42,823.45 | |
| Closing Balance of Cash and Cash Equivalents | | 2,27,71,652.58 | |

7.2 He referred to sub-clause 7 and 10 of the “objects incidental or ancillary to the attainment of the main objects” of the assessee company as also the clause (2) of the “other objects” for which the company is established which are extracted below:-

“7. To lend and advance money, either with or without security and give credit to such persons (including Government) and upon such terms and conditions as the company may think fit, provided the company will not carry on the business of banking as defined under the Banking Regulations Act, 1949.

10. To invest any moneys of the company not immediately required in such investments (other than shares or stock in the company) as may be thought proper and to hold, sell or otherwise deal with such investments.

(c) the other objects for which the company is established are:

(2) To carry on and undertake the business of finance, investment, hire purchase, leasing and to finance lease operations of all kinds and also to trade and deal in shares, debentures and securities of other companies.”

8. In this respect Ld. Counsel placed reliance on the decision of Coordinate bench of ITAT, Mumbai in the case of Chhangalal Khimji & Co. Pvt. Ltd. Vs. DCIT in ITA No. 7674/Mum/2013 dated 23.09.2015 wherein it was held that “It is clear from the findings recorded by the

CIT(A) that the assessee company was engaged in the business of construction as well as lending of money, both constitute its main business activity. Both these objects were clear from the Memorandum and Articles of Association of Assessee Company. From the record we found that the investment and lending activity was a separate stream of business apart from the business activity in real estate, is per clause 55 of Memorandum and Articles of Association, assessee was authorised to carry business of money lending. The detailed finding to this effect has also been recorded by CIT(A) as per reproduced above, which has not been controverted by Ld. DR by bringing any positive material on record. Accordingly, we do not find any infirmity in the order of CIT(A) for directing the A.O. to treat the interest income as business income rather than income from other sources,” Thus, he submitted that when in the Memorandum & Articles of Association assessee is authorized to carry on business of money lending then the interest income should be treated as business income rather than income from other sources.

9. Per contra, Ld. Sr. DR submitted that reference to the immediately preceding year of AY 2012-13 is not in proper perspective as the issue before the Hon'ble ITAT was on addition made u/s. 68 of the Act in respect of genuineness of loans. He further pointed out that since the project is within the development phase, the interest expense ought to be capitalized in the project cost which has been rightly disallowed by the Ld. AO and upheld by Ld. CIT(A). He placed strong reliance on the orders of the Ld. AO and Ld. CIT(A).

10. We have heard the rival contentions and perused the material available on record. Admittedly, the fact is that assessee has received incremental advance of flat bookings of Rs.32.18 Cr. during the year which has been duly reported in the audited financial statement. Also it is fact on record that there is an increase of capital WIP in respect of

development of construction project of Sunny Fort, Rajarhat of Rs.16.48 Cr. during the year. These facts itself evidently demonstrate that assessee had substantial own funds which were interest free and were utilized by it in its financing activities which were in terms of objects mentioned in its Memorandum of Association (supra). It is also a fact that assessee has not completed its development project and earned any income out of the same during the year.

10.1. Income earned during the year by the assessee is on inter-corporate deposit with Williamson Services Ltd. as interest income. We also note that assessee has consistently reported its earning of interest income from ICDs, as business income which has been accepted by the Department as demonstrated by the Ld. Counsel from the records for AY 2012-13 and AY 2014-15. These facts have not been controverted by the Ld. Sr. DR by bringing any positive material on record. Considering the facts, submissions made by the Ld. Counsel and the judicial precedent referred in the case of Chhangalal Khimji & Co. Pvt. Ltd. (supra), we are inclined to accept the contentions of the assessee to hold the interest income of the assessee as business income. Ld. AO is accordingly, directed to treat the same as business income. Thus, grounds relating to this issue are allowed.

11. Coming to the next issue relating to disallowance of interest expenses for the purpose of capitalization into the working in progress of the construction project, ld. AO has noted that since the unsecured loans have been utilized for capital WIP, the interest thereon has to be disallowed and capitalized with the project cost. He noted that during the year, assessee has obtained unsecured loans from three parties, amounting to Rs.1,26,50,000/- which have been used for the development work of the construction project and, therefore, interest thereon amounting to Rs.41,06,890/- is to be capitalized. We noted

that Ld. Counsel has evidently demonstrate from the cash flow statement that there were substantial funds available with it from the advance received on flat bookings amounting to Rs.32.18 Cr. out of which capital WIP has been of Rs.16.48 Cr. during the year under consideration leaving with surplus funds of Rs.15.70 Cr. Thus, interest expenses claimed by assessee is in respect of funds which were not deployed on the development project but were otherwise available to the assessee in its financing activities. Accordingly, from this factual matrix, we find that Ld. AO is not justified in disallowing the claim of interest expense and treating it for capitalization in the project cost. Accordingly, we direct the Ld. AO to allow the claim of interest expenses of Rs.41,06,890/-. Thus, grounds of appeal in this regard are allowed.

12. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 9th September, 2022

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 09.09.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:.
3. CIT(A)-NFAC, Delhi.
4. CIT,
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata