**IN THE INCOME TAX APPELLATE TRIBUNAL**
**“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &**
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA Nos.1964/Mum/2021**
**(A.Y.2013-14)**

| M/s Skyline Prashasti (formerly known as M/s Sky Star) Skyline Oasis, Premier Road, Nr. Vidyavihar Station, Ghatkoper (W) Mumbai – 400086 | Vs. | Deputy Commissioner of Income Tax-CC-8(2) 6th Floor, Room No. 658, Aaykar Bhawan, Maharshi Karve Road Mumbai - 400020 |
|---|---|---|
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABCFS0618M | | |
| Appellant | .. | Respondent |

**ITA Nos.2451/Mum/2021**
**(A.Y.2013-14)**

| Deputy Commissioner of Income Tax-CC-8(2) 6th Floor, Room No. 658, Aaykar Bhawan, Maharshi Karve Road Mumbai - 400020 | Vs. | M/s Skyline Prashasti Skyline Oasis, Premier Road, Vidyavihar (w) Mumbai – 400086 |
|---|---|---|
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ABCFS0618M | | |
| Appellant | .. | Respondent |

| Appellant by : | Mahaveer Jain & Charmi Shroff |
|---|---|
| Respondent by : | Pitta Samuel |

| Date of Hearing | 19.09.2022 |
|---|---|
| Date of Pronouncement | 12.10.2022 |

# आदेश / O R D E R

**Per Amarjit Singh (AM):**

These two appeals by the assessee and the revenue are directed against the order dated 24.09.2021 of the CIT(A)-50, Mumbai.

**ITA No.2451/Mum/2021 (Revenue's Appeal)**

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in accepting the contention of the assessee that since the asssessee is a real estate developer the revised AS-7 prescribing percentage completion method is not applicable and the AS-9 which provides for project Completion method is applicable.*
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> *2. On the facts and circumstance of the case and in law the Ld. CIT(A) erred in deleting the addition of Rs.17,12,054/- made by the assessing officer applying percentage completion method (Revised AS-7) by taking net profit percentage after depreciation @ 8% of the work in progress.*
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> *3. On the facts and circumstances of the case, the learned CIT (A) erred in deleting the decision of Assessing Officer for disallowing proportionate interest expenditure and municipal taxes of Rs.1,11,97,219/- and Rs.20,10,237/- which is in proportion to the non let out area, while calculating 'income form House property.*
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> *4. On the facts and circumstances of the case, the learned CIT (A) erred in deleting the decision of the Assessing Officer for disallowing proportionate expenditure of Rs. 1,01,82,603/- which is in proportion to the non let out area, while calculating 'Business Income'.*
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> *5. The appellant craves leave to add to, alter, to delete from or substantiate the above ground of appeal."*

2. The fact in brief is that return of income declaring income of Rs.7,75,64,410/- was filed on 28.09.2013. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 04.09.2014. The assessment u/s 143(3) of the Act was finalized on 27.01.2016 assessing the total income of the assessee at Rs.10,26,86,580/-. The assessee was engaged in the business of development of immovable properties by constructing building. The further facts of the case are discussed while adjudicating the ground of appeal filed by the assessee as follows:

**Ground No. 1 & 2:**

3. During the course of assessment the A.O noticed that assessee has shown WIP of phase -1 of Sky Line Icon at Rs.2,14,00,678/-. However, the assessee had not shown any income from the said activity. On query the assessee explained that property was under construction therefore same was shown as capital WIP in the accounts of the assessee company. Since there was no sale, therefore, Accounting Standard-7 was not applicable to the case of the assessee. The A.O has not agreed with the explanation of the assessee he was of the view that as per AS-7 the builders/developers were required to declare profit on the basis of percentage of work completed. Therefore, the AO had estimated the profit of Rs.17,12,054/- @ 8% of the work-in-progress on Phase-1 of Rs.2,14,00,678/- and added to the total income of the assessee.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after following the decision of ITAT, Mumbai, in the case of assessee itself.

5. During the course of appellate proceedings before us the ld. D.R. supported the order of the A.O. On the other hand, the ld. A.O relied on the order of ld. CIT(A) and submitted that identical issued on similar fact has been adjudicated by the ITAT, Mumbai in the case of the assessee itself vide ITA No. 7741/Mum/2012 for A.Y. 2009-10 & ITA No. 2416/Mum/2015 for A.Y.2010-11 & ITA No. 2422/Mum/2011 for A.Y. 2007-08.

6. Heard both the sides and perused the material on record. The A.O had adopted profit @ 8% of the work –in-progress of Rs.2,14,00,678/- and made addition of Rs.17,12,054/-. With the assistance of the ld.

Representative we have gone through the decision of ITAT, Mumbai ITA No. 2422/Mum/2011 for A.Y. 2007-08 in the case of the assessee itself. The relevant part of the decision is reproduced as under:

> *"2.10 The fact that project is completed only upto 16% has also not been controverted by the revenue. According to aforementioned decision of Tribunal in the case of Awadhesh Builder (supra), the assessee has option to adopt work completion method. If the same is taken into consideration, as project has not been completed during the year and only 16% of the project is completed, the income could not be assessed even with reference to AS-7. Moreover, the other undisputed fact is also not controverted that assessee did not sell any portion of the impugned project and has started earning lease rental from the said project on long term basis. Therefore, keeping in view all these facts, we are of the opinion that Ld. CIT(A) has rightly deleted the addition. We decline to interfere and all grounds raised by the revenue in its appeal are dismissed."*

We have also perused the decision of ITAT vide ITA No. 69/Mum/2013 for A.Y. 2009-10. The relevant part of the decision is reproduced as under:

> *"19. At the outset, the Ld. A.R. brought to the notice of the Bench that the issue raised by the Revenue in the present appeal is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.2124/M/2011 for A.Y. 2007-08 and others vide order dated 31.07.12 and ITA No.6580/M/2007 for A.Y. 2003-04 vide order dated 11.05.16.*
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> *20. The Ld. D.R. fairly agreed to the contention of the Ld. A.R. that issue is covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's own case.*
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> *21. Having heard rival contentions of both the parties and perused the material on record and after carefully perusing decisions of the co-ordinate bench of the Tribunal, we observe that the identical issue has been decided by the co-ordinate bench of the Tribunal in the earlier years in favour of the assessee. The Ld. CIT(A) also allowed the appeal of the assessee by holding that the assessee was not holding the work in progress as stock in trade but as capital work in progress and accepted the contention of the assessee that assessee has no profit on the said construction which can be estimated by applying the percentage completion method. We, therefore, following the decision of the co-ordinate benches of the Tribunal and maintaining the consistency therewith, uphold the order of the Ld. CIT(A) and dismiss the appeal of the Revenue."*

In the light of the above facts and finding we observe that ld. CIT(A) has decided the issue in favour of the assesse after following the decision of

ITAT, Mumbai in the cases of assessee adjudicated on identical issue and similar fact as referred supra in this order. Therefore, following the decision of ITAT, Mumbai in the case of the assessee itself as supra. We don't find any infirmity in the decision of ld. CIT(A), therefore, the ground nos. 1 & 2 are stand dismissed.

**Ground No. 3:**

7. During the course of assessment the AO observed that as per the statement of computation of income the assessee had shown income from house property at Rs.1,69,92,056/- and also shown income from business at Rs.1,10,68,317/-. The A.O had also noticed that assessee claimed set off of interest u/s 24(b) of the Act to the amount of Rs.4,66,55,080/- from the gross rental income. In this regard the A.O observed that the assessee had constructed total area of 315000 sq. ft. and out of the same the assessee had let out 329887 sq. ft. of area during the year under consideration. Therefore, A.O observed that assessee had actually leased out 76% of the total constructed built up area, therefore the assessee was entitled to claim of interest u/s 24(b) only to the extent of built up area leased out. Therefore, AO was of the view that assessee was eligible to claim only proportionate interest expenses in the ratio of the built up area which were actually let out from the year under consideration i.e @ 76%. Accordingly, the A.O has disallowed proportionate interest expenses of Rs.1,11,97,219/- along with amount of Rs.20,10,237/- being proportionate municipal taxes and added to the total income of the assessee.

8. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) decided the issue in favour of the assessee after following the decision of coordinate bench of the ITAT in the case of the assessee itself

vide ITA No. 69/Mum/2013 for A.Y. 2009-10, ITA No.3103/Mum/2015 for A.Y. 2010-11, ITA No. 7741/Mum/2012 for A.Y. 2009-10 & ITA No.2416/Mum/2015 for A.Y. 2010-11.

9. Heard both the sides and perused the material on record. It is noticed that this was also a recurring matter which was covered by the order of the decision of ITAT of earlier years adjudicated in the case of the assessee itself. The relevant part of the decision of the ITAT in the case of assessee vide ITA No.7741/Mum/2022 dated 27.03.2018 is reproduced as under:

> *"8. We have heard both the parties and perused carefully the relevant material on record as placed before us. The undisputed facts of the case are that the assessee is engaged in the business of construction of properties for the purpose of letting out. Till the year end 31.03.08 the assessee constructed and completed six floors out of total 8 floors thereby completing construction of 3,15,000 sq. ft. till the year end. Whereas the area let out during the year was only to 2 parties namely M/s. Vodafone Essar Ltd. approximately 40,000 sq. ft. and M/s. Indus Tower Ltd. of 11,819 sq. ft. thus aggregating to 51,819 sq. ft. which worked out to 16.45% of the total area constructed. We find merit in the argument of the Ld. A.R. that even if the notional rent in respect of the area which is not let out during the year is taken , the assessee will be entitled to vacancy allowance as per section 23 of the Act and proviso to section 23 provides for deduction of municipal taxes under the head income from house property on payment basis. Similarly, provisions of section 24 ,2nd proviso and explanation to section 24 provided for deduction of interest incurred on the borrowed capital for the construction of the property and no restriction of any kind whatsoever has been provided in the said section. After carefully going through the facts of the case and arguments of both the parties, we are of the considered view that the interest and municipal taxes have to be allowed in toto and cannot be restricted in proportion to the area let out during the year. The intention of the assessee is very clear that the property was constructed for the purpose of letting out and in the subsequent year the entire property was let out. The ground no 1 raised by the assessee is allowed and AO id directed accordingly."*

It is noticed that ld.CIT(A) had adjudicated the issue in favour of the assessee after following the decision of coordinate bench of the ITAT. The relevant part of the decision of CIT(A) is reproduced as under:

*"8.4.1 I have considered the submissions of the appellant and have perused the materials available on record The appellant has requested to delete the impugned disallowances of Rs.1,11,97,219/- being proportionate disallowance out of interest expenses and disallowance of Rs.20,10,237/- being proportionate disallowance out of municipal taxes. The appellant has submitted that the said issue is recurring one and the same has been decided in its favour by the Hon'ble ITAT in earlier years.*

*8.4.2 The Hon'ble ITAT, Mumbai vide its combined order dated 27.03.2018 in the cases of M/s Sky Star and M/s Skyline Prashasti in ITA Nos. 69/M/2013 for AY 2009 10, 3103/M/2015 for AY 2010-11 ITA No. 7741/M/2012 for AY 2009-10 and ITA No 2416/M/2015 for AY 2010-11, while deciding the Assessee's appeal on similar issue has held as under:*

> *8. We have heard both the parties and perused carefully the relevant material on record as placed before us. The undisputed facts of the case are that the assessen is engaged in the business of construction of properties for the purpose of letting out. Till the year end 31.03.08 the assessee constructed and completed six floors out of total 8 floors thereby completing construction of 3,15,000 sq ft. till the year end. Whereas the area let out during the year was only to 2 parties namely M/s Vodafone Essar Ltd approximately 40,000 sq. ft. and Ms Indus Tower Ltd of 11,819 sq. ft. thus aggregating to $1,619 sq ft which worked out to 16 45% of the total area constructed We find merit in the argument of the Ld AR that even if the notional rent in respect of the area which is not let out during the year is taken the assessee will be entitled to vacancy allowance as per section 23 of the Act and proviso to section 23 provides for deduction of municipal Taxes under the head income from house property on payment basis Similarly, provisions of section 24 2nd proviso and explanation to section 24 provided for deduction of interest incurred on the borrowed capital for the construction of the property and no restriction of any kind whatsoever has been provided in the said section After carefully going through the facts of the case and arguments of both the parties we are of the considered view that the interest and municipal taxes have to be allowed in toto and cannot be restricted in proportion to the area let out during the year. The intention of the assessee is very clear that the property was constructed for the purpose of letting out and in the subsequent year the entire property was let out. The ground no 1 raised by the assessee is allowed and AO id directed accordingly."*
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> *Similarly, the Hon'ble ITAT Mumbai vide its order dated 17 05.2018 in the case of M/s Skyline Prashasti for AY 2011-12 in ITA Nos 2293/Mum/2016 and ITA No 3616/Mum/2016, while deciding the Assessee's appeal has held as under*
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> *3. At the outset of hearing the Id. Authorized Representative (AR) of the assessee submits that grounds of appeal in both the appeals are covered in favour of assessee and against the revenue in assessee's own case for Assessment Year 2009-10 & 2010-11 The id AR for the assessee filed the copy of order of Tribunal in assessee's own case for Assessment Year*

*2009-10 & 2010-11 in ITA No. 7741/M/2012 and ITA No 2416/M/2015 for AY 2009-10 and 2010-11 respectively On going through the copy of the decision the Id DR for the revenue conceded that the ground of appeal in both the appeals are covered in favour of assessee*

*4. In ITA No 2293/Mum/2016 Ground No 1 to 3 relates to confirming the disallowance of proportionate interest expenditure and municipal taxes to non let out area and not allowing the expenditure from non let out area while calculating business income and assessing interest income separately as business income We have noted that identical ground of appeal was raised by assessee in appeal for Assessment Year 2009-10 The Co-ordinate Bench of this Tribunal while considering the identical ground passed the following:*

> *8. We have heard both the parties and perused carefully the relevant matenal on record as placed before us. The undisputed facts of the case are that the assessee is engaged in the business of construction of properties for the purpose of letting out Till the year end 31.03 08 the assessee constructed and completed six floors out of total 8 floors thereby completing construction of 3.15.000 sq ft till the year end Whereas the area let out during the year was only to 2 parties namely M/s Vodafone Essar Ltd approximately 40.000 sq. ft. and M/s Indus Tower Ltd of 11,819 sq ft thus aggregating to 51.819 sq f which worked out to 16 45% of the total area constructed We find merit in the argument of the Ld AR that even if the notional rent in respect of the area. which is not let out during the year is taken, the assessee will be entitled to vacancy allowance as per section 23 of the Act and proviso to section 23 provides for deduction of municipal taxes under the head income from house property on Similarly, provisions of section 24, 2nd proviso and explanation to section 24 provided for deduction of interest incurred on the borrowed capital for the construction of the property and no restriction of any kind whatsoever has been provided in the said section After carefully going through the facts of the case and arguments of both the parties we are of the considered view that the interest and municipal taxes have to be allowed in toto and cannot be restricted in proportion to the area let out during the year The intention of the assessee is very clear that the property was constructed for the purpose of letting out and in the subsequent year the entire property was let out. The ground no 1 raised by the assessee is allowed and AO is directed accordingly*

*5. Therefore considering the decision of Co-ordinate Bench in assess's own case and following the principle of consistency the ground of appeal raised by assessee is allowed."*

*Further the Hon'ble ITAT. Mumbai vide its order dated 18.07 2018 in the case of M/s Skyline Prashasti for AY 2012-13 in ITA Nos 1413/Mum/2017, while deciding the Assessee's appeal has held as under*

*7 We have heard the rival submissions and perused the relevant materials on record Similar issue arose before the ITAT J Bench Mumbar in the case of the assessee for the AY 2009-10 (ITA No 7741/M/2012) Similar ground of appeal was raised as mentioned below:*

> *1. On the facts and circumstances of the case the learned CIT (A) erred in affirming the decision of Assessing Officer for disallowing proportionate interest expenditure and municipal taxes of Rs 2.04 11.342 and Rs 11,60 281/ which is in proportion to the non-let out area, while calculating income form House property."*
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> *The Tribunal vide order dated 27.03 2018 held as under:*
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> *"8. We have heard both the parties and perused carefully the relevant material on record as placed before us. The undisputed facts of the case are that the assessee is engaged in the business of construction of properties for the purpose of letting out. Till the year end 31.03 08 the assessee constructed and completed six floors out of total 8 floors thereby completing construction of 3,15.000 sq ft till the year end Whereas the area let out during the year was only to 2 parties namely M/s Vodafone Essar Ltd approximately 40,000 sq ft. and M/s Indus Tower Ltd of 11 819 sq ft thus aggregating to 51.819 sq. ft which worked out to 16 45% of the total area constructed We find merit in the argument of the Ld AR that even if the notional rent in respect of the areal which is not let out during the year is taken the assessee will be entitled to vacancy allowance as per section 23 of the Act and proviso to section 23 provides for deduction of municipal taxes under the head income from house property on payment basis Similarly, provisions of section 24 2nd proviso and explanation to section 24 provided for deduction of interest incurred on the borrowed capital for the construction of the property and no restriction of any kind whatsoever has been provided in the said section After carefully going through the facts of the case and arguments of both the parties, we are of the considered view that the interest and municipal taxes have to be allowed in toto and cannot be restricted in proportion to the area let out during the year The intention of the assessee is very clear that the property was constructed for the purpose of lotting out and in the subsequent year the entire property was let out The ground no 1 raised by the assessee is allowed and AO id directed accordingly."*

*Facts being identical we follow the above order of the Co-ordinate Bench and allow the 1st ground of appeal."*

*8.4.3 Since, the facts and circumstances of the case, on this issue remain same as that of earlier years in appellant's own case, so respectfully following the decisions of the Hon'ble ITAT in appellant's own case as discussed above. the impugned disallowances of Rs.1,11,97,219/-, being proportionate disallowance out of interest expenses and disallowance of Rs 20,10,237/-, being proportionate*

> *disallowance out of municipal taxes are DELETED. The Ground No 2 raised in appeal is ALLOWED."*

Following the decision of coordinate benches of the ITAT as elaborated supra in the finding of ld. CIT(A), we don't find any infirmity in the decision of ld. CIT(A). Accordingly, this ground of appeal of the revenue stand dismissed.

**Ground No. 4:**

10. During the course of assessment the A.O observed that in the statement of computation the assessee had shown Rs.6,10,38,317/- under the head income from business mainly provided on account of providing services to the tenants. After taking into consideration the fact that assessee had utilized only 76% of the total area for leasing out and provided services to the customer the A.O observed that assessee was entitled for claim of other expenses debited to the profit and loss account only to the extent 76%. Therefore, A.O had disallowed 24% of such expenses to the worked out to the amount of Rs.1,01,82,603/- and added to the total income of the assessee.

11. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed this ground of appeal of the assessee after following the decision of ITAT, Mumbai, in the earlier years decided on the similar issue and identical facts in the case of the asessee itself vide ITA No. 69/Mum/2013 for A.Y. 2009-10, 3013/Mum/2013 for A.Y. 2011-12, ITA No. 7741/Mum/2012 for A.Y.2009-10 & ITA No. 2416/Mum/2015 for AY 2010-11.

12. Heard both the sides and perused the material on record. After perusal of the material on record it is observed that this is also recurring issue which has already adjudicated by the ITAT in the case of the

assessee itself as referred in the decision of ld. CIT(A). The relevant part of the decision of CIT(A) is reproduced as under:

> *"13. Having heard the rival submissions of both the parties and perusing the material on record, we find that in this case the assessee has entered into separate agreements one for lease of premises and second for providing various amenities for which service charges were charged by the assessee and the same was not treated as part of the house property income and as such shown under the bead income from the business The assessee also claimed expenses incurred on the maintenance of the entire property which is not even let out during the year resulting into the loss from the business at Rs.2,09,41,853 It is worth noting that the same service charges received in the subsequent years under the same and similar agreements was shown as income from business right from 2010-11 to 2014-15 and accepted in the scrutiny assessment which was finalized from 2010-11 to 2012-13 and pending for disposal for the AY 2013-14 and 2014-15 In our opinion the assessee has charged separately for providing various amenities to the tenants which has nightly been shown under the head income from business and nightly claimed the various expenses incurred by the assessee which has resulted into a loss of Rs.2,09,41,853/ Once it is proved that the business of the assessee is to construct complete and let out the properties then the expenses have to be allowed to the assessee Under these circumstances we are not in a position to sustain the order passed by the Ld CIT(A) which is not correct, in view of the underlying facts Accordingly we set aside the order of the Ld CIT(A) and direct the AO to treat the income from service charges as income from business income and allow the claim of the expenses as claimed by the assessee Accordingly, this ground is allowed.*
>
> *14. The issue raised in ground No 3 is against the confirmation of proportionate disallowance of expenditure of Rs 2.65 79 851/- as made by the AO in relation to the area not let out during the year while computing the business income The facts in brief are that the AO observed during the assessment proceedings that out of total area constructed up to the year and only 51819 sq ft which works out to 16 45% was let out till the year end However, the entire expenses of phase 1 of Sky Line Icon building (completed on 30.11.08) from December to March were claimed by the assessee under the head income from business on the plea that once the constructed space is available for use and is not under work in progress the expenses incurred on in maintaining the space is allowable as business expenditure and accordingly the AO disallowed the 83 55% of such expenses thereto reducing the loss from the business in the appellate proceedings, the Ld CIT(A) did not deal with these issue raised by the assessee The Ld. AR submitted that when the assessee has already commenced its business, the imposition of condition by the AO to the proportionate allowance is wrong and against the established principle of business norms The Ld AR submitted that once the business has commenced the expenses have to be allowed fully and not in parts. The Ld AR prayed that the disallowance as worked out by the AO on the basis of area not let out ie. 83 55% should be deleted.*

*15. The Ld DR on the other hand, relied on the order of AO on this issue and submitted that since the assessee has not let out the premises fully during the year therefore, the proportionate disallowance was very much correct as per the accepted business principles.*

*16. Having heard both the parties and perused the material on record we find that the AO has disallowed proportionate expenses equal to 83 55% which represented the area not let out during the year thereby disallowing Rs 2 65 79.851/ being expenses from December 2008 to March 2009 in respect of Sky Line Icon building which was completed on 30.11.08. We find that the building has been completed and available for use in the business and once it is proved that the assessee has commenced its business, the proportionate disallowance on the basis of area not let out during the year is not correct In view of the same, we are inclined to direct the AO to delete the disallowance of Rs 2.65.79.851/ The ground raised by the assessee is allowed.*

*Similarly, the Hon'ble ITAT Mumbai vide its order dated 17.05.2018 in the case of M/s Skyline Prashasti for AY 2011-12 in ITA Nos. 2293/Mum/2016 and ITA No 3616/Mum/2016, while deciding the Assessee's appeal has held as under:*

> *"3. At the outset of hearing the Id Authorized Representative (AR) of the assessee submits that grounds of appeal in both the appeals are covered in favour of assessee and against the revenue in assessee's own case for Assessment Year 2009-10 & 2010-11 The ld AR for the assessee filed the copy of order Tribunal in assessee's own case for Assessment Year 2009-10 & 2010-11 in ITA No.69/M/2013 7741/M/2012 and ITA No 2416/M/2015 for AY 2009-10 and 2010-11 respectively On going through the copy of the decision the Id DR for the revenue conceded that the ground of appeal in both the appeals are covered in favour of assessee.*
>
> *4. In ITA No.2293/Mum/2016. Ground No 1 to 3 relates to confirming the disallowance of proportionate interest expenditure and municipal taxes to non let out area and not allowing the expenditure from non let out area while calculating business income and assessing interest income separately as business income. We have noted that identical ground of appeal was raised by assessee in appeal for Assessment Year 2009-10 The Co-ordinate Bench of this Tribunal while considering the identical ground passed the following order:*
>
> > *8. We have heard both the parties and perused carefully the relevant material on record as placed before us. The undisputed facts of the case are that the assessee is engaged in the business of construction of properties for the purpose of letting out. Till the year end 31 03 08 the assessee constructed and completed six floors out of total 8 floors thereby completing construction of 3.15.000 sq ft till the year end. Whereas the area let out during the year was only to 2 parties namely M/s Vodafone Essar Ltd approximately 40,000 sq. ft. and M/s Indus Tower Ltd. of 11,819 sq ft thus aggregating to 51.819 sq ft which worked out to 16.45% of the total area constructed We find merit in the argument of the Ld. AR that even if*

> *the notional rent in respect of the area which is not let out during the year is taken, the assessee will be entitled to vacancy allowance as per section 23 of the Act and proviso to section 23 provides for deduction of municipal taxes under the head income from house property on Similarly provisions of section 24. 2nd proviso and explanation to section 24 provided for deduction of interest incurred on the borrowed capital for the construction of the property and no restriction of any kind whatsoever has been provided in the said section. After carefully going through the facts of the case and arguments of both the parties, we are of the considered view that the interest and municipal taxes have to be allowed in toto and cannot be restricted in proportion to the area let out during the year The intention of the assessee is very clear that the property was constructed for the purpose of letting out and in the subsequent year the entire property was let out. The ground no 1 raised by the assessee is allowed and AO is directed accordingly."*

*5. Therefore considering the decision of Co-ordinate Bench in assess's own case and following the principle of consistency, the ground of appeal raised by assessee is allowed.*

*Further the Hon'ble ITAT Mumbai vide its order dated 18.07.2018 in the case of Ms Skyline Prashast for AY 2012-13 in ITA Nos. 1413/Mum/2017, while deciding the Assessee's appeal has held as under:*

*9. It is found that similar ground of appeal was raised before the Tribunal by the assessee for AY 2009-10 which reads as under:*

> *3. On the facts and circumstances of the case and in law, the learned CIT (A) erred in affirming the decision of the Assessing Officer for disallowing proportionate expenditure of Rs.2,65,79,851/- which is in proportion to the non-let out area to total constructed area, while calculating Business Income.*
>
> *10 The Tribunal held as under*
>
> *"Having heard both the parties and perused the material on record we find that the AO has disallowed proportionate expenses equal to 83 55% which represented the area not let out during the year thereby disallowing Rs 2,65,79,851 being expenses from December 2008 to March 2009 in respect of Sky Line Icon building which was completed on 30.11.08 We find that the building has been completed and available for use in the business and once it is proved that the assessee has commenced its business, the proportionate disallowance on the basis of area not let out during the year is not correct In view of the same, we are inclined to direct the AO to delete the disallowance of Rs 2,65,79,851/ The ground raised by the assessee is allowed."*

*11. Facts being identical, we follow the above order of the Co-ordinate Bench and allow the 2nd ground of appeal."*

*9.4.3 Since, the facts and circumstances of the case, on this issue remain same as that of earlier years in appellant's own case, so respectfully following the decisions of the Hon'ble ITAT in appellant's own case as discussed above the impugned disallowances of Rs.1,01,82,603/- being proportionate disallowance out of other expenses debited in P & L account is DELETED. The Ground No.3 raised in appeal is ALLOWED."*

Following the decision of coordinate benches of the ITAT as elaborately discussed in the finding of ld. CIT(A) as supra, we don't find any reason to interfere in the decision of ld. CIT(A), therefore, this ground of appeal of the revenue stand dismissed.

**ITA No.1964/Mum/2021**

13. During the course of assessment the A.O on examination of the computation of work-in-progress noticed that assessee had deducted a sum of Rs.1,27,160/- under the head interest on FDR from the gross work in progress. The A.O was of the view that interest earned on FDR was required to be assessed u/s 57 of the Act as income from other sources. Accordingly, the A.O has assessed the said interest on FDR under the head income from other sources as against claimed by the assessee as income from business.

14. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) dismissed the appeal of the assessee stating that assessee has not pressed this ground of appeal.

15. Heard both the sides and perused the material on record. It is noticed that similar issue on identical fact has been adjudicated by the coordinate bench of the ITAT in the case of the assessee itself in A.Y. 2007-08 vide ITA No.2124/Mum/2011. The relevant finding of the ITAT is reproduced as under :

> *"3. So far as it relates to assessee's appeal we find that Ld. CIT(A) has rightly decided that since the assessee has capitalized all the cost of the project, the interest earned by it from FDR cannot be set off against interest paid. We find no infirmity in the order of Ld. CIT(A) while such addition has been upheld. Therefore, the appeal of the assessee is also dismissed."*

Following the decision of coordinate bench of the ITAT as supra, we don't find any infirmity in the order of the ld. CIT(A), therefore, this ground of appeal of the assessee stand dismissed.

16. In the result, both the appeals are dismissed.

Order pronounced in the open court on 12.10.2022

| Sd/- | Sd/- |
|---|---|
| (SANDEEP SINGH KARHAIL) | (AMARJIT SINGH) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Mumbai, Dated 12.10.2022
PS: Rohit

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

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

**आदेशानुसार/** BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai