

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 3914/Mum/2023
(Assessment Year: 2015-16)

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| DCIT, Central Circle-1(2) 906, Prathishtha Bhavan, Old CGO Building, M K Road, Mumbai-400 020 | Vs. | Evita Construction Pvt. Limited 514, Dalal Tower 211, FPJ Marg, Nariman Point, Mumbai-400 021 |
| PAN/GIR No. AABCE 7779 C | | |
| (Assessee) | : | (Respondent) |
| Assessee by | : | Shri Pradip Kapasi |
| Respondent by | : | Shri P. D. Chougule |
| Date of Hearing | : | 16.05.2024 |
| Date of Pronouncement | : | 12.08.2024 |

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals)-47, Mumbai ('Id.CIT(A) for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16, in deleting the addition made on account of interest income received on fixed deposits amounting to Rs.1,87,44,483/- and netting off of interest receipt on bank fixed deposits with interest expenditure capitalized in the closing work-in-progress.

2. The brief facts of the case are that the assessee company is engaged in the real estate business of development and construction of residential and commercial premises and had filed its return of income on 30.09.2015, declaring loss of Rs.4,84,78,892/-. The assessee's case was selected for limited scrutiny and notice u/s. 143(2) and 142(1) were

duly issued and served upon the assessee for the purpose of verifying the interest income received out of the fixed deposits which has not been offered to tax by the assessee in its return of income.

3. The Id. Assessing Officer ('A.O.' for short) passed the assessment order u/s.143(3) on 29.12.2017 where the total loss was determined at Rs.2,94,97,640/- after making an addition on the interest income amounting to Rs.1,87,44,483/- and addition u/s. 36(1)(va) r.w.s. 2(24)(x) of the Act amounting to Rs.2,36,769/- on the delayed deposits of employees contribution to PF.

4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 01.08.2023 had deleted the addition on the interest income received out of the fixed deposits on the ground that the said fixed deposits was not out of the surplus fund and that the Tribunal has held this in favour of the assessee for A.Y. 2014-15.

5. The Revenue is in appeal before us, challenging the order of the Id.CIT(A) on this ground.

6. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee company had a total term loan of Rs.675.81 crores and had also availed bank over draft facility against such fixed deposit for the purpose of the banking requirements during the year under consideration. The Id. AR further stated that the interest on bank over draft was more than the interest received on fixed deposits by 1% and the term loan is also at a higher interest rate than that of the bank over draft facility. The Id. AR contended that the fixed deposits were made only for the purpose of

banking requirements where the promoter's contribution for the business was a requirement. The ld. AR contended that the fixed deposits are not out of the surplus funds and is only an arrangement for availing banking facility. The ld. AR also stated that the interest out of the said fixed deposits has direct nexus to the business of the assessee and that the assessee had rightly netted off the interest income with the interest expenses during the year under consideration. The ld. AR relied on the various decisions in support of the assessee's contention.

7. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said facts and relied on the order of the ld. A.O.

8. We have heard the rival submissions and perused the materials available on record. It is observed that during the year under consideration the assessee has shown the interest income out of the fixed deposit aggregating to Rs.1.87 crores and had incurred interest expenditure of Rs.88.19 crores on the bank over draft facility and on the existing term loans. The assessee had netted off the same. The ld. A.O. observed that the assessee has claimed the funds cost of Rs.88.19 crores on interest and other charges on borrowing which was transferred to inventories as WIP. The ld. A.O. also observed that the assessee had advanced interest free loan of Rs.440,31,75,517/- to related parties which according to the ld. A.O. was that the assessee had utilized the interest bearing funds for interest free loans. The assessee's contention that the said advances were given to the wholly owned subsidiaries who were the owners of the land which was developed by the assessee company and for which the assessee has extended advances to various vendors, for goods and services in the normal course of business of the project. The assessee

contends the same to be for commercial expediency and that the assessee had income from various sources such as share capital, interest free loans from promoters and from sales and that for the said reason the interest bearing funds is not said to be utilized for advancing the interest free funds to its subsidiaries. The assessee reiterated that the borrowed funds were utilized only for the business. The Id. A.O. held that the loan advance by the assessee to its following related parties without charging interest :

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| i. | Lucifer Construction P. Ltd. | Rs.1,83,61,89,768/- |
| ii. | Nestor Construction P. Ltd. | Rs.25,21,39,236/- |
| iii. | Blanca Properties P. Ltd. | Rs.24,49,50,605/- |
| iv. | Somnus Properties P. Ltd. | Rs.41,87,16,084/- |
| | Total | <u>Rs.2,75,19,95,693/-</u> |

aggregating to Rs.2,75,19,95,693/- was not for business exigency for the reason that when the assessee itself was paying interest on the borrowed funds, there is no justification in holding that it had advanced interest free advances to its subsidiaries. The Id. A.O. relied on the decision of Hon'ble Punjab & Haryana High Court in the case of *CIT vs. Abhishek Industries Ltd.* 205 CTR P H 304, 2006 286 ITR 1 P H), wherein it was held that on identical facts, the Hon'ble High Court had disallowed the interest. The Id. A.O. disallowed the netting off thereby reducing the inventory in WIP from Rs.7,32,70,123/- to Rs.704,74,60,471/- and made an addition on the impugned interest income. The Id. CIT(A), on the other hand, held that the fixed deposits credited by the assessee was not out of the surplus fund, but it was only for availing banking facilities and that the assessee company was already paying a higher interest rate against bank over draft facilities and the existing term loan. The Id. CIT(A) relied on the decision of his predecessor in assessee's case for A.Y. 2014-15 where on identical grounds the addition

on interest income was deleted and the same was upheld by the Tribunal vide order dated 11.12.2020.

9. In the above factual matrix of the case, it is observed that the Id. CIT(A) for the year under consideration and for the earlier year has held the interest earned out of fixed deposit to be a capital receipt which was capitalized and reduced from WIP. The co-ordinate bench for A.Y. 2014-15 upheld the order of the Id. CIT(A) by holding that the fixed deposits was created as margin for availing bank loan which was utilized for the business of the assessee, thereby establishing a nexus between the interest earned out of the FD with the business of the assessee and further held that the interest income was rightly netted off with the interest expenditure claimed by the assessee. The co-ordinate bench had relied on various decisions of the Hon'ble High Court and the Tribunal which held that the interest income out of such fund are to be treated as 'business income' and not 'income from other sources'. It is also pertinent to point out that the Id. A.O. has failed to corroborate the fact that the FD made by the assessee is out of the surplus funds held by the assessee in a case where the assessee has borrowed huge advances from banks and has also availed over draft facility for the purpose of its business resultantly expending higher rate of interest than that received out of the FD. The assessee has established that the said funds were incidental to the assessee's business activity and, therefore, the same cannot be said to be 'income from other sources'. We, therefore, draw support from the decisions relied upon by the assessee and by the Id. CIT(A) on this issue and thereby find no infirmity in the order of the Id. CIT(A).

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12.08.2024.

Sd/-

Sd/-

(B R Baskaran)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 12.08.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,



(Dy./Asstt. Registrar)
ITAT, Mumbai