

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Sri D.K Tyagi, Judicial Member
and Shri Anil Chaturvedi, Accountant Member**

**ITA No. 1714/Ahd/2010
Assessment Year 2006-07**

Income Tax Officer, Ward-4(1) Baroda (Appellant)	Vs	M/s Meeti Investment and Consultancy Pvt. Ltd, 301, Panchsheel, 72, Sampatrao Colony, Alkapuri, Bardoa PAN: AABCM3425B (Respondent)
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**Revenue by: Sri K.C. Mathews, Sr.D.R.
Assessee by: Sri M.K. Patel, A.R.**

Date of hearing : 25-11-2013
Date of pronouncement : 29-11-2013

आदेश/ORDER

PER : D.K. TYAGI, JUDICIAL MEMBER:-

This is the revenue's appeal against the order of Ld. CIT(A)-III
Baroda dated 22-02-2010.

2. The assessee has taken following grounds of appeal:-

“1. The CIT(A) erred in law and on facts, in directing assessing officer to delete the addition of Rs. 14,13,600/- in holding that the assessee was not a “contractor” and the assessee was not governed by AS-7 of the guidelines of institute of chartered Accountants of India, ignoring the underlying fact that the assessee had performed and undertaken all actions as a contractor and camouflaged the performance as “developer”.

2. The CIT(A) erred in law and on facts in deleting interest disallowance of Rs. 13,62,808/- overlooking the fact that the company had diverted the funds for the directors of the company, which caused delayed payment to and charging of interest by the Municipal Corporation.”

3. The first ground relates to rejection of books of account and applying of rate of 8 % on the booking advances.

4. Brief facts of the case are that assessee is engaged in the business of sale/purchase of TDR, income by way of stallage and construction activity. During the assessment proceedings AO found that assessee had received advanced booking amount on account of the construction activity and the WIP was shown at Rs. 1,99,97,296/-. However, the assessee had not shown any profit on the ground that it was following project completion method. The AO rejected the assessee’s method and held that as per AS-7, it has to follow percentage completion method. Accordingly, he rejected the books of account and applied profit rate of 8% on booking advance of Rs. 1,76,70,003/- and made addition of Rs. 14,13,600/-.

5. Ld. CIT(A) deleted this addition following the order of his predecessor for assessment year 2005-06 in assessee's own case wherein it was held that assessee was not a contractor but only a real estate developer on whose case AS-7 would not be applicable. Since the order passed by Ld. CIT(A) for assessment year 2005-06 in assessee's own case has been upheld by the Tribunal vide its order dated 03-02-2012 in ITA No. 2152/Ahd/2008 dated 03/02/2012 by observing as under:-

“4. We have heard the rival contentions and perused the facts of the case. We concur with the views of the Ld. CIT(A) that in the present case, the assessee was not a contractor but was a developer who awards contracts to different contractors for executing civil, electrical, plumbing work etc. Therefore, accounting standard in the present circumstances and facts of the case i.e. AS-7 cannot be made applicable. Accounting standard AS-9 which has been reproduced by the Ld. CIT(A) and has been discussed at pages 4-8 of his order is applicable in the present circumstances and facts of the case. Moreover, it has not been controverted by the Ld. DR appearing for the Revenue that the assessee had awarded the contractors to various other contractors. Also it has not been controverted that there is no construction activity carried out by the assessee during the year and there was a dispute of the parties who had filed civil suit in Mumbai civil court. The assessee had received the advances which are duly reflected in the balance-sheet of the assessee. There is no certainty of the Revenue recognition at this stage. Moreover, all the significant risks and the ownership at this juncture vest in the hands of the owner i.e. the assessee and they have not been transferred to the buyer or the proposed buyer. Therefore, in the circumstance and facts of the case, we find no infirmity in the order of Ld. CIT(A), which appears to be quite reasoned one and he has justified in reversing the order of the AO on the issue. Thus, ground No. 1 of the Revenue is dismissed.”

We feel no need to interfere with the order passed by Ld. CIT(A) and the same is hereby upheld.

6. Ground No. 2 relates to disallowance of interest of Rs. 13,62,808/-.

AO while making this disallowance has observed as under:-

“4. Interest expenses.

4.1 "On going through the profit and loss account filed with the return of income, it is seen that a sum of Rs 15,00,000/- is debited as interest paid to M.C.G.M. and further Rs.6223/- debited as interest paid. From the balance sheet, it is seen that the assessee has given loans and advances to the tune of Rs.1,69,32,750/- to various persons. The assessee was asked to furnish the details regarding the persons to whom such loans and advances were given, along with the purpose of advance and the interest charged. In case no interest was charged, the assessee was asked to give the reasons for the same. From the details furnished, it is seen that loans and advances also include the following:-

Sr. No.	Paid to	Amount	Purpose
1.	Paresh Bhuta (HUF)	15,00,000	Deposit Guest House
2.	Harsha Bhuta	25,00,000	Deposit Mumbai Office
3.	Jayshreeben Bhuta	3,70,000	Mrs. J, P. Bhuta
4	Abhi Builders	5,00,000	For purchase of property
5	Dilip Pandit	1,65,000	Advance
6	Dwarksh Corporation	2,25,125	For purchase of property.
7	Uday Desai	1,35,725	For share trading at Rajkot.
8	Anik Security & finance Ltd.	6,53,572	Advance

9	A.M Investment	23,88,105	For purchase of shares.
10	Arvindhbai	50,000	Advance
11	H.C. Mehta	3,00,000	For purchase of shares
12	Pravinkant	1,00,000	For purchase of shares
13	Shruti Investment	1,97,862	For purchase of shares
	Total	90,85,389	

4.2 It is seen that most of the advances have remained outstanding for the entire year. The assessee has paid interest of Rs.15,00,000/- @15% on the unpaid premium amount of Rs.1 crore to M.C G M. (Municipal Corporation of Greater Mumbai). As far as the advances given by the assessee are concerned, no interest has been charged. Further, the advances given for purchase of shares or for purchase of property appeared as opening balance as on 1st April, 2005 and the same amounts are shown as closing balance as on 31st March 2006. This means that no transaction with reference to the advance given has taken place during the year under consideration. Moreover, no justification has been given for the huge interest free deposits given to Smt. Harsha Bhuta, Smt. Jayshree Bhuta and Paresh Bhuta (HUF), persons specified u/s.40A(2)(b) of the Act. Under the circumstances, the entire of Rs.15.06,203/- cannot be allowed as a deduction, as claimed by the assessee. The assessee has paid interest @ 15% on the unpaid premium, but has not charged any interest on the sum of Rs.90.95 lakhs advanced (as worked above). Adopting the rate of interest at 15% the amount of Rs. 13,62,808/- is disallowed out of the interest expenses as the advances could not be established to have been given for the purpose of business.. In this regard reliance is also placed on the following decisions:-

- (1) Phalthan Sugar Works Ltd. CWT(208 ITR 989)(Bom.)
- (2) CIT Vs. H.R. Sugar factory Ltd (187 ITR 363)(All.)

(3) *Indian Metal & Ferro Alloys Co. Vs CIT (193 ITR 344) (Ori)*

The Honourable Judicial Authorities in the above cases have held that even in case interest free loans are given to its associate concerns, it shall be presumed that the assessee would have not raised interest bearing loans considering that the amount of interest free loans advanced to associate concerns would have been available with the assessee for its business purpose.

Addition Rs.13.62.808/-“

7. Ld. CIT(A) has deleted this disallowance by observing as under:-

“I have given careful consideration to the submissions and to the facts of the case. The appellant has paid Rs. 15,00,000/- to MCGM as interest. It is further seen that it has not paid any interest on advance received on booking and also on unsecured loan. Secured loan is only to the extent of Rs. 2,34,000/-received against vehicle. Though the onus to prove that interest bearing fund has not been utilized for non business purpose is on the appellant, but on the facts of the appellant's case, it does not appear that any interest bearing fund has been utilized for non business purpose. Interest has not been paid on any loan. It has been paid on over due premium installment. Thus, it cannot be said that any interest hearing borrowed fund has been utilized for giving interest free advance, which may or may not be for business purpose. However, this issue becomes immaterial if no interest has been paid on any borrowed fund. Proportionate interest, if any can be disallowed depending on the fact of the case, but an assessee cannot be forced to earn income. Therefore on the facts of the case there is no justification for disallowance on this count. Accordingly, this ground is allowed.”

Since the order of Ld. CIT(A) during the assessment year 2005-06 in assessee's own case on similar facts was upheld by Tribunal vide its order dated 03-02-2012, by observing as under:-

“7. We have heard the rival contentions and perused the facts of the case. There is no dispute to the fact that the assessee had made the payment of interest on the delayed payment of installments payable by

the assessee to MCGM for the office premises. The assessee had not raised any borrowings on which interest is payable. Therefore, there is no question of diversion of interest bearing funds to interest free advances. In the circumstances and facts of the case, we find no error in the order of the Ld. CIT(A), who has rightly allowed the claim of the assessee by reversing the order of Assessing Officer on the issue. Thus, ground No. 2 of the Revenue is dismissed.”

We feel no need to interfere with the order passed by Ld. CIT(A) and the same is hereby upheld.

8. In the result, revenue's appeal is dismissed.

Order pronounced in open court on the date mentioned hereinabove at caption page

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Ahmedabad : Dated 29/11/2013

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(D.K. TYAGI)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद