

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 2719/MUM/2019 (A.Y. 2012-13)

ACIT – Circle – 3(1)(2) Room No. 607, 6 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020	v.	M/s. Chinsha Property Pvt. Ltd., 41/44, Shapoorji Pallonji Centre Minoo Desai Marg, Coloba Mumbai – 400 005 PAN: AAACC6982A
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Amrita Singh**

Date of Hearing : **22.10.2020**
Date of Pronouncement : **13.11.2020**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 9, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 18.02.2019 for the A.Y. 2012-13 in allowing interest expenditure of Rs.2,06,00,228/- as deduction u/s. 36(1)(iii) of the Act.
2. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought by the assessee. Therefore, I proceed to dispose off this appeal on hearing Ld. DR on merits.

3. Ld. DR submitted that the Assessing Officer while completing the assessment noticed that assessee debited interest of ₹.2,06,00,228/- on loan and has shown income of ₹.11,64,845/- only. Assessee was required to substantiate the allowability of interest expenses. Assessee submitted that it had borrowed funds from its holding company Shapoorji Pallonji & Co. Pvt. Ltd., and the company paid interest of ₹.2,25,46,672/- out of which ₹.19,46,444/- was capitalised and the balance interest of ₹.2,06,00,228/- was claimed as deduction in Profit and Loss Account. It was submitted that loan taken was utilized to advance loan of ₹.11,25,00,000/ (interest free) paid to M/s. Joyous Housing Ltd., as the assessee was engaged in the business of investment in immovable properties. Since the company was engaged in the business of real estate, property in Tulsiwadi was acquired for redevelopment. Hence, commercial expediency/business purpose assessee had invested ₹.11.25 Crores in the project. Therefore, interest cannot be disallowed. Ld. DR submitted that Assessing Officer disallowed the interest observing that assessee had diverted its interest bearing loans to M/s. Joyous Housing Ltd., for non-business purpose and without any commercial expediency and therefore the same was disallowed u/s.36(1)(iii) of the Act. Ld. DR submitted that Ld.CIT(A) after following the decision of the Tribunal in its own case for the A.Y.2010-11 and 2011-12 deleted the disallowance

made by the Assessing Officer. Ld. DR vehemently supported the orders of the Assessing Officer.

4. Heard Ld. DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), I find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and following the order of the Tribunal in assessee's own case for the A.Y. 2010-11 & A.Y. 2012-13 directed the Assessing Officer to delete the disallowance of interest expenditure incurred of ₹.2,06,00,228/- observing as under: -

"4.3 Ground NO. 3 and 4: Both the grounds pertain to the disallowance of ₹.2,04,72,034/- hence are disposed off together below: The assessee company had entered into the shareholders agreement on 15th April, 2004 along with DLF Universal Ltd. and Akruti Nirman Ltd. to regulate their relationship inter se with agreed shareholding pattern in a company named as Mangal Shrusti Gurh Nirmiti Pvt. Ltd. (now JoyousHousing Ltd.). As per the tripartite agreement and in terms of MOU dated 15.04.2004, the assessee company held 37.5% shares; DLF Universal Ltd. 37.5% and Akruti Nirman Ltd. 25% shares of the total paid up capital of Rs. 1 crore. The Joyous Housing Ltd. has undertaken a project of Slum Rehabilitation and Re-development at Tulsiwadi, Tardeo; Mumbai under Urban Renewal Scheme. For the development of the said Project, the assessee company had funded Rs.11,25,00,000/- up to 31st March, 2010 which was interest free as per the terms of agreement read with MOU, wherein, interest was not to be charged up till certain amount. To finance those project, the assessee has taken loan from Shapoorji Pallonji & Co. Ltd. for sum of Rs.12,67,25,000/-. On this loan the assessee has paid interest of Rs.1,54,82,005/- out of which Rs.14,45,950/- was capitalized being paid for paying debts of Swadeshi Mills Ltd. and balance interest of Rs.1,40,36,055/- was claimed as deduction in the profit & loss

account. The Assessing Officer held that such an interest cannot be allowed u/s. 36(1)(iii) as it was not incurred for the business purpose and there was no commercial expediency.

4.5. The appellant has vehemently argued against the addition made by the AO in its submission dated 12.12.2018. The appellant had also drawn attention to the fact that the Hon'ble ITAT, Mumbai has already decided the identical issue in its own case for assessment years 2010-11 and 2011-12. The appellant's contention is verified. It is found that the issue has been covered by the decision of Hon'ble ITAT, Mumbai in appellant's own cases for assessment years 2010-11 and 2011-12. The relevant portion of the decision of the Hon'ble ITAT, Mumbai for assessment year 2010-11 is reproduced herein as follows :-

"Apart from that further amount of Rs. 11.25 crores was funded which was over and above subscription and acquiring of shares which was in the form of interest free. The business of the Joyous Holding Ltd. has already been set-up and commenced. Such a fund deployed out of the interest bearing loan was wholly for the purpose of business of Joint Venture which was to develop project because the assessee was in the business of real estate and earning income therefrom. Further, the assessee was entitled for profit of Rs. 42 crores from the said business, which was stated in the MOU itself. All these aspects have been dealt by the CIT (A) and finding of fact has been given that the said funds were utilized wholly for the business purpose and for the commercial expediency and therefore, any interest paid on such fund has to be allowed as "business expenditure" u/s 36 (1)(iii). Finding recorded by the learned CIT (A) is thus affirmed accordingly."

4.6 Since, the facts and circumstances are the same for this assessment year except for the amount involved, following decision of the Hon'ble ITAT, Mumbai for assessment years 2010-11 and 2011-12, the AO is directed to delete the disallowance of interest expenditure incurred of Rs.2,06,00,228/-. These grounds of appeal are allowed."

5. Since, Ld.CIT(A) followed the order of the Tribunal in assessee's own case for the earlier assessment years on identical issue and decided in favour of the assessee, facts being similar, I do not find any infirmity in the order passed by the Ld.CIT(A) in deleting the disallowance of interest expenditure. Grounds raised by the revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 13.11.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai / Dated 13/11/2020
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum