

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF AUGUST, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE RAVI V. HOSMANI

**I.T.A.No.636/2016**

**BETWEEN :**

M/S. SOUTHERN HILLS DEVELOPERS PVT. LTD.,  
[FORMERLY KNOWN AS NITESH  
ESTATES PROJECTS PVT. LTD.,]  
7<sup>TH</sup> FLOOR, NITSH TIMESQUARE  
# 8, M.G. ROAD, BANGALORE-560001  
PAN : AACCN3865H.

...APPELLANT

(BY SRI A.SHANKAR, SENIOR COUNSEL  
A/W. SRI BHAIKAV KUTTAIAH ADV.)

**AND :**

THE DEPUTY COMMISSIONER OF INCOME-TAX  
CIRCLE-12[2], BMTc BUILDING  
80 FEET ROAD, KORAMANGALA  
6<sup>TH</sup> BLOCK, BANGALORE-560095.

...RESPONDENT

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 29.07.2016 PASSED IN ITA No.707BANG/2013, FOR THE ASSESSMENT YEAR 2008-09, PRAYING THIS HON'BLE COURT [A] TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT; [B] TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE ITAT, BENGALURU BENCH 'B' IN ITA

No.707/BANG/2013 DATED 29.07.2016 FOR THE ASSESSMENT YEAR 2008-09 [ANNEXURE-A]; ETC.,

THIS APPEAL COMING ON FOR HEARING, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

This appeal is filed by the assessee under Section 260A of the Income Tax Act, 1961 [‘Act’ for short] challenging the order dated 29.07.2016 passed in I.T.A.No.707/Bang/2013 by the Income Tax Appellate Tribunal, Bangalore Bench “B” [‘Tribunal’ for sort] relating to the Assessment Year 2008-09.

2. The appeal was admitted to consider the following substantial questions of law:

*“1. Whether the Tribunal was justified in law in upholding the disallowance of Rs.1,45,72,724/- out of the finance charges without appreciating the material on record and consequently recorded a perverse finding both on facts and in law on the facts and circumstances of the case?”*

2. *Whether the Tribunal is justified in law in disallowing a sum of Rs.21,12,666/- being part of the amount incurred on Nitesh Buckingham Gate project on surmise and consequently passed a perverse order on the facts and circumstance of the case?*

3. *Whether the Tribunal is justified in law in not allowing a sum of Rs.1,02,94,505/- being common interest debited in head office account and consequently passed a perverse order on the facts and circumstance of the case?*

4. *Whether the Tribunal failed to appreciate in law that interest of Rs.18,75,385/- has already been taken to work in progress account and thus not claimed as expense in the profit and loss account and hence has not been claimed as deduction and consequently passed a perverse order on the facts and circumstance of the case?*

5. *Whether the Tribunal was justified in law in not granting relief in respect*

*of bank charges of Rs.2,90,168/- and consequently passed a perverse orders on the facts and circumstance of the case?*

3. The assessee is a private limited company incorporated under the Companies Act, 1956, and was carrying on the business of executing engineering contracts and development of real estates. The Assessing Officer during assessment proceedings, noted that the assessee has shown sales on the basis of the recognition of revenue from a project which was jointly executed with a partner. The Assessing Officer opined that finance charges claimed by the assessee was not related to the borrowings used for the said project but may be used in respect of loan raised for work in progress where revenue had not been recognized. Accordingly, the Assessing Officer disallowed the entire amount claimed as finance charges and treated the same as capitalized under work progress.

4. Being aggrieved by the said order of the learned Assessing Officer, the appellant filed an appeal before the learned Commissioner of Income Tax [Appeals]-III, Bengaluru.

5. The First Appellate Authority allowed the appeal in part granting relief of financial charges up to 61.60% being relatable to the NBC project and the balance amount was disallowed.

6. Being aggrieved by the said order, the assessee filed an appeal before the Tribunal which came to be dismissed. Hence, the present appeal by the assessee.

7. Learned senior counsel representing the appellant-assessee submitted that the Tribunal was not justified in upholding the disallowance in respect of finance charges amounting to Rs.1,45,72,724/- from out of the original disallowance of Rs.3,43,72,724/-

holding that the finance charges pertaining to 'Nitesh Buckingham Gate' [NBG] alone is allowable. The learned Senior Counsel argued that the entire finance charges of Rs.3,43,72,724/- incurred by the appellant was allowable under section 36[1][iii] of the Act as the same pertains to the interest on borrowed funds used for the purpose of the business and there was no justification to allow only part of the interest. It was further argued that the Tribunal failed to appreciate that the work in progress has been taken to the profit and loss account and the observation of the Tribunal that the work in progress was taken directly to the balance sheet is devoid of factual situation and contrary to the material on record. The Tribunal failed to appreciate that the bank charges incurred cannot be allocated project wise and the same ought to have been allowed in its entirety.

8. Learned senior counsel has placed reliance on the following judgments:

1. *Deputy Commissioner of Income-tax V/s. Core Health Care ltd., [(2008) 167 Taxman 206 (SC)]*
2. *Taparia Tools Ltd., V/s. Joint Commissioner of Income-tax, Nasik [(2015) 55 taxmann.com 3621 (SC)]*
3. *Commissioner of Income-tax V/s. Sridev Enterprises [(1991) 59 TAXMAN 439 (KAR)]*
4. *S.A.Builders Ltd., V/s. Commissioner of Income-tax [Appeals], Chandigarh [(2007) 158 Taxman 74 (SC)].*

9. Learned counsel for the Revenue argued that the assessee is following the percentage completion method of accounting. Referring to Section 145 of the Act, it was submitted that as per Sub-section [1], income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of Sub-section [2], be computed in accordance with either cash or mercantile

system of accounting regularly employed by the assessee. As per Sub-section [2], any class of assessee or in respect of any class of income, income computation and disclosure standards to be followed as notified by the Central Government in the Official Gazette from time to time. In terms of the said Sub-section [2], the assessee was following the percentage completion method of accounting. Both the percentage completion method and project completion method accounting are projects specific. As such, the finance charges has to be capitalized which are related to fund used for the project shown in the work in progress. Thus, the learned counsel argued that the Tribunal was justified in dismissing the appeal. Learned counsel has placed reliance on the following decisions:

1. *Commissioner of Income-tax, Bangalore V/s. Prestige Estate Projects [P] Ltd., [2020] 116 taxmann.com 554 (Karnataka)*



2. *Tuticorin Alkali Chemicals & Fertilizers Ltd., V/s. Commissioner of Income-tax, [(1997) 93 Taxman 502 (SC)]*

10. Section 36 [1][iii] of the Act reads thus:

*“(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession:*

*Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.”*

11. Section 37 of the Act reads thus:

*“37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of*

*the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession."*

12. The assessee has claimed interest expenses incurred towards NBG project at Rs.2,19,12,666/- However, CIT[A] has allowed only Rs.1,98,00,000/- out of the same which was arrived at by apportioning the finance charges based on the percentage of costs incurred towards the NBG total project incurred. CIT[A] has arrived at this decision on the basis of the remand report submitted by the Assessing Officer. The Assessing Officer in his remand report has submitted that the assessee has incurred expenses on 10 different projects including the project NBG during the Assessment Year 2008-09. The details of which are summarized as under:

	<b>Opening balance as on 1.4.2007</b>	<b>Cost of sales</b>	<b>Operating expenses</b>	<b>Total expenses as on 31.3.2008</b>
<b>NBG</b>	1,36,63,619	13,23,41,681,	0	14,60,05,308
<b>Head office</b>	0	20,226	4,31,34,724	4,31,54,950
<b>Projects other than NBG</b>	2,99,64,522	7,45,12,060	1,35,20,780	11,79,97,362
	4,36,28,141	20,68,73,975	5,66,55,504	30,71,57,620

13. Thus, it is observed that the expenditure on project NBG and the head office forms 61.60% of the total expenditure as on 31.03.2008 and the balance expenditure of 38.40% is towards projects other than NBG which is transferred to the work in progress. Considering these facts, CIT[A] has allowed the interest expenses of Rs.1,98,00,000/- [61.60% of Rs.3,22,00,000/-]. The amount of Rs.18,75,385/- indeed was already deducted by the assessee while claiming the finance charges. Again deducting the said amount results in double deduction. Bank charges of Rs.2,19,168/- claimed by the assessee are the charges imposed by the banks for the services rendered by

them. It includes service charges, taxes on those service charges, RTGS and NEFT charges, cheque book issue charges etc., these charges are usually debited by the bank directly to the account of the account holder it cannot be said that the bank charges were incurred only towards a specific project. These are the charges incurred for the business as a whole and claimed as revenue expenditure as and when the same is incurred. These aspects require to be considered by the Tribunal in a right perspective.

14. Similarly, submission of the learned Senior Counsel for the assessee that Section 36[1][iii] of the Act does not distinguish the interest on funds borrowed for capital purposes or revenue purposes; the assessee is entitled to claim on borrowed capital provided that capital is used for business purpose irrespective of what may be the result of using the capital which the assessee has borrowed, placing on the judgment of the

Hon'ble Apex Court in the case of **Core Health Care Ltd.**, supra, merits consideration.

15. The judgment referred to by the learned counsel for the Revenue in the case of **Prestige Estate Projects [P] Ltd.**, supra and **Tuticorin Alkali Chemicals & Fertilizers Ltd.**, supra are distinguishable. In **Tuticorin Alkali Chemicals & Fertilizers Ltd.**, supra, the Hon'ble Apex Court was dealing with the case where the claim was adjustment of the expenditure against interest assessable under Section 56 of the Act. It is also significant to note that there is difference between Section 36[1][iii] and Section 37[1] of the Act. The finding of the Tribunal that the finance charges has to be capitalized and the work in progress is not taken to the profit and loss account as such the corresponding expenditure which forms the cost of work in progress cannot be debited to the profit and loss account goes against the finding of the CIT[A].

16. The arguments now advanced by the learned counsel for the Revenue that even in the case of percentage completion method of accounting the assessee is entitled to claim the finance charges after the completion of the project goes contrary to the findings of the authorities. The Tribunal has failed to appreciate the judgment of the Hon'ble Apex Court in the case of **Core Health Care Ltd.**, supra, as well as **Taparia Tools Ltd.**, supra in a right perspective. It is also significant to note that finance charges claimed by the assessee were allowed in the previous year of the assessee in support of the contention that the assessment made during the earlier years ought to have been considered during the year in question, the judgment relied on **Sridev Enterprises** supra also has not been properly appreciated by the Tribunal. Having regard to these facts and circumstances of the case, we deem it appropriate to set aside the impugned order and

remand the matter for re-consideration by the Tribunal keeping open all the rights and contentions of the parties. The Tribunal shall pass appropriate orders in accordance with law in an expedite manner.

17. Hence, the following:

**ORDER**

- 1) The appeal is allowed in part.
- 2) The impugned order dated 29-07-2016 passed by the Income Tax Appellate Tribunal, Bangalore Bench "B", in ITA No.707/Bang/2013 relating to the assessment year 2008-09 is set aside.
- 3) The matter is remanded to the Tribunal for reconsideration, keeping open all the rights and contentions of the parties.

- 4) In view of the aforesaid, no substantial questions of law raised in this appeal are answered.
- 5) The Tribunal shall decide the matter in accordance with law, in an expedite manner.

**Sd/-  
JUDGE**

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JUDGE**

NC.