

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.762/Mum/2021
(निर्धारण वर्ष / Assessment Years: 2015-16)

Niagara Financial Consultants Pvt. Ltd. C-201, Kailash Explanade, LBS Marg, Opp. Sheryas Theatre, Ghatkopar (W), Mumbai-400086.	<u>बनाम/</u> Vs.	Pr. CIT, City-6 Room No.501, 5 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCN1918R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Prakash Jhunjhunwala
Revenue by:	Shri Mahesh Akhade (DR)

सुनवाई की तारीख / Date of Hearing: 10/01/2022
घोषणा की तारीख /Date of Pronouncement: 28/01/2022

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 30.03.2021 passed by the Principal Commissioner of Income Tax-06, Mumbai [hereinafter referred to as the "PCIT"] relevant to the A.Y.2015-16 in which the Principal Commissioner of Income Tax-06 has invoked the provisions u/s 263 of the I.T. Act, 1961.

2. The assessee has raised the following grounds of appeal: -

1. *On facts and circumstances of the case and iii law, Ld. Pr. CIT erred in passing the revision order u/s.263 though the reassessment order passed u/s.143(3) is not erroneous anti in so far is not prejudicial to the interests of the revenue*

2.0 *The Ld. Pr. CIT, before setting asides the assessment orde dev.de novo on invoking Sec 263(I), ought to have considered the understated facts, being;*



a) *The Ld. AO had passed the assessment order on conducting proper inquiries on due application of mind and on considering all material facts filed/available on assessment record;*

b) *The Ld. AO had already made the disallowance of huge interest expense of Rs.7,92,27,335/-, out of total finance cost incurred of Rs. 11,49,54,281/-;*

c) *The Ld. AO had verified the genuineness of loan ICDs supported with bank statements and other documents and on considering the fact that major loans/ICDs had been received from reputed Non-Banking Financial Company (NBFC);*

3.0 *The order passed u/s 263 is bad in law since there is no lack of inquiry on part of Ld. AO and the cases involving inadequate inquiry does not empower the Pr. CIT to invoke the revisionary powers u/s Sec 263 of the Act.*

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at time of hearing.”

3. The assessee company filed its return of income on 30.09.2015 declaring total loss to the tune of Rs.(-)11,14,50,265/- for the A.Y.2015-16. The assessment u/s 143(3) was completed on 30.06.2017 determining total loss at Rs.(-) 3,22,22,930/-. The case was selected for limited scrutiny criteria to examine as under: -

(i) *Large increase of unsecured loans during the year.*

(ii) *High interest expenses as compared to business turnover.*

On verification on record, it was found that the assessee has shown to have taken unsecured loans/inter corporate deposits to the tune of Rs.178,42,70,069/- from the following parties: -

Sr. No.	Name of the Lender	Amount of loan taken during the year
1	Aakarshak Synthetic Limited	61,52,24,637
2	Aditya Birla Finance Limited	100,29,90,763
3	Five Star Trading Investment Co. Ltd.	10,46,965



4	Jatayu Textile Industries Limited	17,56,617
5	Kajal Synthetic Silk Mills Limited	7,02,93,469
6	Raj Resorts Pvt. Ltd.	1,00,00,000
7	Mansoon Trading Company Limited	29,89,527
8	Meenakshi Steel Industries Limited	1,29,79,596
9	Nilkanth Engineering Limited	2,01,41,227
10	Sushree Trading Limited	4,68,47,268
	Total	178,42,70,069/-

It was also observed that the long term borrowing was of Rs.117,35,69,248/- on which the assessee has claimed finance costs of Rs.11,49,54,281/- in the profit and loss account. Further, the long term and short term loans and advances was given of Rs.79,84,42,190/- and Rs.1,29,70,062/- respectively. The assessee was borrowing huge money and paying huge interest and finance cost on these borrowings and at the same time advanced these borrowed sums and earned only Rs.43,16,099/-. During the course of assessment proceedings, the AO disallowed the interest expenses of Rs.7,92,27,335/- out of the total finance cost of Rs.11,49,54,281/- on the grounds that the advance of Rs.80,84,42,190/- given to builders/developers/others was not for business purposes of the assessee but at the same time erred in by not disallowing the entire amount of Rs.11,49,54,281/-. The notice was given u/s 263 of the Act dated 12.03.2021 to the assessee and after the reply of the assessee, the PCIT reopened the assessment by passing the order dated 30.06.2017 under challenge. The assessee was not satisfied, therefore, filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The assessment of the assessee was reopened for limited scrutiny on the following reasons: -

(i) *Large increase of unsecured loans during the year.*

(ii) *High interest expenses as compared to business turnover.*

5. The issue has squarely been examined by AO and passed the order dated 30.06.2017, therefore, the reopening is bad in law. The copy of the assessment order dated 30.06.2017 u/s 143(3) of the Act is on the file in which the interest



issue has been examined and for ready reference the para 5 is hereby reproduced as under: -

“5. Disallowance u/s 36: It is observed from the audited P & L a/c, that the assessee company has debited interest expenses of Rs.11,49,54,281/- on borrowed fund of Rs.117,35,69,248/- at an average interest rate of 9.80%. Assessee company was required to submit the details with reference to loans taken, utilization of loans and rate of interest. In response to the same, the assessee company submitted the details and stated that the advances had been given to the various projects and also enclosed the working of interest attributable towards the advance and investment account. The list of the persons to whom advances were given as under: -

Sr. No.	Name, address and particulars of the developers	Amount given (in Rs.)	Interest @ 8.75% (in Rs.)
1	Base Industries Ltd. (PAN: AAACB8821F)	50,00,000	4,90,000
2	Better Equity Services Ltd. (PAN: AACCR6479B)	9,88,66,099	96,88,878
3	Blue Square Properties Pvt. Ltd. (PAN: AADCB1801C)	3,29,00,000	32,24,200
4	Osiris Infotech Pvt. Ltd. (PAN: AAAC06865G)	95,00,000	9,31,000
5	Osiris Realty Pvt. Ltd. (PAN: AABC06617R)	2,59,16,000	25,39,768
6	Suyog Towers Pvt. Ltd. (PAN: AAACR8828G)	1,80,00,000	17,64,000
7	Chamatkar Finstock Pvt. Ltd. (PAN: AACCG4723F)	8,25,000	80,850,
8	Greenback Commodities P. Ltd. PAN: AACCG4723F	5,32,640	52,199
9	Greenback Forex Services Pvt. Ltd. PAN ADZPM3959L	7,00,000	68,600,
10	Lifecycle career Avenues Pvt. Ltd. PAN AQYPK5208Q	19,00,000	186,200
11	Morpheus Media Venture PAN AACCG5382J	2,15,00,000	21,07,000
12	Surface Finance Pvt. Ltd. PAN AAACA3246R	1,00,00,000	9,80,000
13	Tinta Media creations Pvt. Ltd. PAN AACCT8850E	3,80,20,000	37,25,960
14	CNP Business Advisory Services Pvt. Ltd. PAN AADCB1801C	3,80,20,000	37,25,960
15	KK Menon	36,40,000	3,56,720



	PAN ADZPM3959L		
16	Landmark creators	25,00,000	2,45,000
17	Manish Goyal (PAN: AEOPG0248Q)	28,85,000	2,82,730
18	Minal Goyal (PAN: AQEPG6907E)	110,00,000	10,78,000
19	Pranita Chamnkar (PAN: ACPPC6753M)	82,00,000	8,03,600
20	Praveen Agarwal PAN ACSPA7553	50,000	4,900
21	Priya Murlidhar Chaini PAN ADFPC1588D	6,00,000	58,800
22	Satish Kanse PAN AQYPK5208Q	15,00,000	1,47,000
23	TB Mehta PAN AAWPM2485M	10,00,000	98,000
24	PS Chamankar Property Developers Pvt. Ltd. PAN AACCP0964F	30,64,00,605	3,00,27,259
25	Bombay Construction & Engineering Pvt. Ltd. PAN AAACB9795N	2,65,00,000	25,97,000
26	Daksh Developers PAN AAHFD0864C	5,18,00,000	50,76,400
27	Della Enclave Pvt. Ltd. PAN AACCM4457C	2,66,47,019	26,11,408
28	Marudhara Buildwell Pvt. Ltd. PAN AAGCM3644M	5,85,00,000	57,33,000
29	Opening Interest Capitalized	3,24,59,827	31,81,063
30	Burgar King Restaurant	1,00,00,000	9,80,000
	Total	80,84,42,190	7,92,27,335

5.1 A perusal of the detailed working submitted by the assessee shows that the interest on borrowed funds attributable to the advances amounts to Rs. 7,92,27,335/and the same was debited in the P & La/c. Section 36 of the Act provides the deduction in respect of capital borrowed for the purpose of business or profession. The logic behind the provisions to 36(1){iii} of the Income Tax Act is only to ensure that whatever interest is capitalized for books of accounts, it remains capitalized for the purpose of Income-tax. This interest cannot be claimed as deduction u/s. 36(1)(iii) of the Income Tax Act. Borrowing cost that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalized as part of the that cost of a qualifying asset when it is probable that they will result in future economic benefits to the business and the costs can be measured reliably. It can be clearly seen from the details submitted by the assessee that the advances was given to the builders / developers and the same was not for the business of the assessee company. Since the expenses were not incurred for the purpose of business the same cannot be allowed as deduction.



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5.2 In view of the above discussion and the facts of the case, after examination of case records and submissions made, the interest income of Rs. 7,92,27,335/is hereby disallowed u/s. 36 of the Income Tax Act and added to the total income of the assessee company. Further in view of the above discussion, it is clear that the assessee has furnished inaccurate particular of income. Penalty proceeding u/s 271(1)(c) of the I.T Act. is being initiated.

(Disallowance of Rs. 7,92,27,335/-)

6. The assessee upon the query of AO has also submitted the reply by virtue of letter dated 16.06.2017 and letter dated 30.05.2017 which lies at page no. 13 to 15 of the paper book. The submission in the letter dated 16.06.2017 is hereby reproduced as under: -

To,

Dy. Commissioner of Income Tax,

Circle-14(2)(2),

Mumbai.

Dear Sir,

Re: Submission in the assessment matter of M/s.

Niagara Finance Consultants Pvt. Ltd.

Asst. Year: 2015-16

In continuation of my earlier submission dated 30.05.2017 and under instruction from my above said client, I hereby submit the following details:

(i) Party-wise details of loans/ICD along with their address PAN Number.

Also, the confirmation of account of fresh loans/ICD received during the year is enclosed;

(ii) Details of other liabilities;

(iii) Party-wise details of, long term advances given for acquisition of properties/Investments;

(iv) Party-wise details of advance recoverable of Rs.1 crore along with their address;



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(v) Party-wise details of interest paid of Rs.11.49 crores.

(vi) Confirmation of brokers account on profit/loss in trading in commodities;

(vii) Working of interest capitalised to properties/Investment account.

I hope the above details would satisfy the requirements and oblige.

A letter of authorities in my favour is enclosed herewith.

Thanking you,

Yours faithfully,

Chartered Accountant.

7. The submission of letter dated 30.05.2017 is hereby as under: -

To,
Dy. Commissioner of Income Tax,
Circle-14(2)(2),
Mumbai.
Dear Sir,

Re: Submission in the assessment matter of
M/s. Niagara Financial Consultants Pvt Ltd.
Asst. Year; 2015-16
PAN -AACCN1918R.

In response to notice u/s.143(2) and under instruction from my abovesaid client, I hereby state as under:-

In response to notice u/s.143(2) and under instruction from my abovesaid client, I hereby state as under:- The assessee is a private limited company engaged in the „business of providing finance to developers and builders, buying and selling in „properties finance related activities and trading in derivatives. The assessee provides the funds to various developers/ builders and makes the block booking of flats/shops/offices in their under-construction projects as -a result of which the ~ assessee is able to acquire the properties at discounted price. Thereafter, on substantial completion of the construction activities, the assessee would sell the properties and earn profit thereon. During impugned year, the assessee filed its return of income vide Ack no. 839031591300915 on 30/09/2015 on disclosing the



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total Loss of Rs(-)11, 14, 50,265/-. The other details submitted are stated as under:-

- 1 I.T. acknowledgement receipt;
2. Computation of income (original);
3. Revised Computation of income. The original return of income filed on 30/09/2015 disclosing the total loss of Rs.11,14,50,265/ is revised since the entire interest paid of Rs.11,49,54,281/- was claimed as deductible u/s.36(1)(lii) of the Act. However, since, the assessee had utilized the loans also for purchase of properties/ assets, accordingly there exist debate as to whether the interest is revenue or capital expenditure. The assessee, to avoid controversies in revised statement of income, has capitalized the interest in proportionate manner of Rs.7 ell 335k to the extent of funds utilized for properties/ assets;
4. Audited Balance sheet;
5. Tax audit report;
6. 26AS Statement;
7. 43B Challans;
8. Details of registered office;
9. Details of shareholders alongwith their address;
10. Details of bank accounts alongwith confirmation of bank balance;
11. There is no addition to share capital/ premium made during the year
- 12, There is no fixed assets held by the assessee.

In respect of other details, a short adjournment may be allowed and oblige.

Thanking you,

Yours faithfully,

Chartered Accountant

8. The assessee also submitted the relevant record before the AO which was examined by AO as requested. Thereafter, the AO disallowed the interest to the tune of Rs.7,92,27,335/-. Once the AO has examined the issue and one possible



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view has already been taken, therefore, the assessment u/s 263 of the Act is not liable to be reviewed in view of the decision of Hon'ble High Court in the case of **CIT Vs. Ballarpur Industries Ltd. 85 Taxmann.com 37, Grasim Industries Ltd. Vs. CIT 188 Taxman 327, CIT Vs. Kelvinator of India Ltd. 12 Taxmann.com 445 & CIT Vs. Mepco Industries Ltd, 163 Taxman 648**. If it is assumed that the inquiry was not correct or conducted properly, therefore, the revisional power u/s 263 of the Act is not liable to be invoked in view of the decision of **MOIL Ltd. Vs. CIT 81 Taxmann. Com 420, CIT Vs. Development Credit Bank Ltd. 196 Taxman 329, CIT Vs. Vikas Polymers 194 Taxman 57**. Taking into account of all the facts and circumstances, we set aside the order passed by PCIT in question and allowed the appeal of the assessee.

9. In the result, the appeal of the assessee is hereby allowed

Order pronounced in the open court on this 28/01/2022

Sd/-

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 28/01/2022
Vijay Pal Singh (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार //(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai