

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, J , मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "J", MUMBAI**

**श्री अमित शुक्ला, न्यायिक सदस्य एवं  
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Amit Shukla, Judicial Member, and  
Shri Ashwani Taneja, Accountant Member**

**ITA No.4273/Mum/2014  
Assessment Year: 2006-07**

Janus Investments P. Ltd., 3 <sup>rd</sup> Floor, Jain Tower, 17 <sup>th</sup> Mathew RD. Opera House Mumbai-400004	<b>बनाम/ Vs.</b>	DCIT, 5(2)(2) 567, Aayakar Bhavan, M.K. RD Mumbai-400020
(Assessee)		(Revenue)
P.A. No.AAACJ1252E		

**ITA No.2218/Mum/2014  
Assessment Year: 2006-07**

ITO, 5(2)(2) 567, Aayakar Bhavan, M.K. RD Mumbai-400020	<b>बनाम/ Vs.</b>	Janus Investments P. Ltd., 3 <sup>rd</sup> Floor, Jain Tower, 17 <sup>th</sup> Mathew RD. Opera House Mumbai-400004
(Revenue)		(Respondent)
P.A. No.AAACJ1252E		

**ITA No.2164/Mum/2014  
Assessment Year: 2009-10**

ITO, 5(2)(2) 567, Aayakar Bhavan, M.K. RD Mumbai-400020	<b>बनाम/ Vs.</b>	Janus Investments P. Ltd., 3 <sup>rd</sup> Floor, Jain Tower, 17 <sup>th</sup> Mathew RD. Opera House Mumbai-400004
(Revenue)		(Respondent)
P.A. No.AAACJ1252E		

**ITA No.2165/Mum/2014**  
**Assessment Year: 2010-11**

ITO, 5(2)(2) 567, Aayakar Bhavan, M.K. RD Mumbai-400020	<b>बनाम/</b> Vs.	Janus Investments P. Ltd., 3 <sup>rd</sup> Floor, Jain Tower, 17 <sup>th</sup> Mathew RD. Opera House Mumbai-400004
(Revenue)		(Respondent)
P.A. No.AAACJ1252E		

Appellant by	Shri R.C. Jain & Sandeep Maheshwari (AR)
Respondent by	Shri Asghar Zain V.P. (DR)

सुनवाई की तारीख/ <b>Date of Hearing:</b>	<b>02/06/2016</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>24/06/2016</b>

**आदेश / O R D E R**

**Per Ashwani Taneja (Accountant Member):**

These appeals are filed by the assessee and revenue pertaining to same assessee and filed against separate orders of Ld. order of Ld. Commissioner of Income Tax (Appeals), {(in short 'CIT(A)'}, passed against assessment order u/s 143(3) r.w.s. 147 of the Act by the AO.

**2.** During the course of hearing, arguments were made by Shri Shri R.C. Jain & Sandeep Maheshwari, Authorised Representative (AR) on behalf of the Assessee and by Shri Asghar Zain V.P., Departmental Representative (DR) on behalf of the Revenue.

**First we shall take up appeal of the Revenue in ITA No.2218/Mum/2014 for A.Y. 2006-07:**

The revenue has filed following grounds of appeal:

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.63,86,544/- (1/5<sup>th</sup> deduction u/s.24(b) of the I.T. Act) being accumulated interest of construction period?"*

*"2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that when the property was under construction, the assessee treated the same as business assets and the interest on loan was already capitalized?"*

*3. The appellant prays that the order of the Ld. CIT(A) be set aside and the order of the AO be restored.*

*4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary."*

**3.** The solitary issue raised in this appeal by the revenue is for contesting the action of Ld. CIT(A) in deleting the disallowance of Rs.63,86,544/- made by the AO being 1/5 of the amount of accumulated interest of construction period claimed by the assessee u/s 24(b) of the Act.

**3.1.** During the course of hearing it was brought to the notice by the Ld. Counsel that identical issue was involved in A.Y. 2007-08 wherein it was found by the Tribunal vide its order dated 09.04.2014 in ITA No.5057/Mum/2010 that this amount was principally allowable to the assessee but for the limited purpose of verification of the fact that the assessee had not claimed deduction of the same amount under some other provision of law, this issue was sent back to the file of the AO.

It was submitted that AO had verified the fact and allowed the same. It was further submitted that during the appeal before the Ld. CIT(A) for the impugned year i.e. A.Y. 2006-07 also this fact was verified by the AO during the remand proceedings as remand report was called for by the Ld. CIT(A). The AO found the submissions of the assessee as correct during the remand proceedings and accordingly remand report was sent by him. Ld. CIT(A) after considering remand report allowed the relief to the assessee and therefore, the appeal filed by the revenue is not maintainable and has been filed without any basis and contradicting own stand of the AO.

**3.2.** Per contra, Ld. DR was not able to rebut factual submissions made by the assessee. In response to specific query from the bench that why this appeal was filed when the AO had himself given the remand report after verifying the facts of this case in favour of the assessee. It was further noted that the AO who had sent remand report and the AO who has signed the grounds for filing of appeal before us is same. Ld. DR had no reply, whatsoever.

**3.3.** We have gone through the facts of this case, orders passed by both the authorities as well as remand report issued by the AO. It is noted by us that assessee had claimed 1/5<sup>th</sup> of the accumulated interest of the construction period against the amount of rent received for computing the correct amount to be assessed under the head income from house property. The same was disallowed by the AO for want of proper

verification of facts and under some misconception of law. In A.Y. 2007-08, the Tribunal found this claim to be allowable as per law and sent the matter back for the limited verification of facts. The AO verified the claim and allowed the same in A.Y. 2007-08 in the appeal effect order passed by him. Subsequently, during the course of hearing of appeal for impugned assessment year i.e. AY 2006-07 before the Ld. CIT(A) also, the AO submitted a remand report dated 18.11.2013 wherein it has been clearly admitted by him that the impugned house property was not shown as stock in trade and was shown as part of fixed assets. On facts also nothing wrong has been found by the Ld. AO with regard to claim of interest. After considering the said remand report Ld. CIT(A) had no other choice but to give the relief to the assessee and rightly so. Accordingly, Ld. CIT(A) correctly allowed the relief to the assessee and deleted the disallowance made by the AO. We find that Ld. CIT(A) has rightly allowed the claim of the assessee. The order of the Ld. CIT(A) is based upon remand report of the AO and it is also in accordance with the order of the Tribunal in assessee's own case for the A.Y. 2007-08. The claim of assessee is correct as per law and facts. One-fifth of the interest of the construction period is allowable to the assessee u/s 24(b) of the Act.

**3.4.** But, still being aggrieved, the Revenue filed appeal before the Tribunal. We are surprised to note that same AO has filed an appeal before the Tribunal. The grounds before us have been signed by the same AO who had prepared the remand

report dated 18.11.2013. In the grounds filed before the Tribunal, the AO is contradicting his own stand and that too without any basis. This kind of approach has led to misuse of process of law, and has wasted the productive time of the government machinery as well as the taxpayers. Such kind of approach should be discouraged. Various courts of our country have time to time given strict instructions to the Revenue officials to be more careful while filing the appeals and avoid the practice of filing of frivolous appeals as this practice not only causes undue hardships to the taxpayers but also makes misuse of productive time and machinery of the government. Hon'ble Bombay High Court has also issued such instructions in many judgments. In one such judgment, Hon'ble Bombay High Court in the case of **CIT vs M/s. Larsen and Toubro Ltd** (vide order dt 31<sup>st</sup> July, 2014 in ITA No. 424 of 2012, 425 of 2012, 483 of 2012) observed as under:

*“6. Time and again we have to deal with such Appeals. Merely because they are filed that they get listed on the Daily Admission Board. The Advocates filing them and routinely, so also those instructing them do not have authority to withdraw them. Consequently, they are pressed and argued resulting in a hearing, may be brief and an order of this Court dismissing them. Sometimes there are at least 35 such cases on our daily board. We do not understand why higher officials do not have the courage to take bold decisions particularly of not pursuing such matters upto this court or higher. Because the Assessee is a leading Public Limited Company should not*

*act as a deterrent for them to take an informed, rational decision and sub-serving larger Public Interest. A realization of this nature is a need of the hour as higher courts do not have to deal with Tax and Revenue matters only but all those involving life and liberty of citizens, their property rights, Rights of Children, Women and Senior Citizens. These rights are also precious and the legitimate expectations of such persons or groups of easy and expeditious justice also have to be fulfilled by the higher judiciary. The biggest litigant, namely, the State ought to be aware of the Pendency of Cases in High Courts of Bombay, Madras, Calcutta and Allahabad for example. If their policies particularly on litigations are not aimed at reducing frivolous and speculative litigations, then, the least that can be said is that the State has failed to act for public good and in Public Interest. The State is expected to act as a Model Litigant. It must set an example for the Public to follow and we hope that this order acts as a reminder for all concerned to at least now take remedial steps and measures. It is therefore that despite the persuasive skills of Mr. Suresh kumar, who fervently pleaded not to pass any order imposing costs, that we are constrained to impose costs.*

*7. The Revenue officers must realize that just like other powers an executive power conferred in them is in the nature of a Trust. They hold office as trustees of the public at large. They deal with public revenue and public money and that cannot be wasted in such frivolous litigation. We,*

*therefore, dismiss these appeals with costs quantified at Rs.1,00,000/ each. Costs shall be paid to the Maharashtra State Legal Services Authority, Mumbai within a period of four weeks from today.”*

**3.5.** It is noted that various courts have time to time passed severe strictures upon revenue officers for filing frivolous appeals. It was informed that some internal instructions were also issued by the Board in the past. But, these are not sincerely complied with while filing revenue appeals.

**3.6.** When we further analysed this situation with more depth, we found that in fact there are no clear guidelines available with the officers for filing of revenue's appeals. Thus, assessing officers alone cannot be held responsible for such fallacies. In our opinion, there is an urgent need of guidelines from the Board in this regard. Therefore we suggest that Central Board of Direct Taxes should formulate a set of appropriate guidelines for its officers so that such kinds of situations are avoided and proper appeals are filed by the officers raising valid issues. The registry of the tribunal is directed to send one copy of our order to the Chairperson, Central Board of Direct Taxes, New Delhi as well the Principal Chief Commissioner of Income Tax, Mumbai for requisite follow up actions in this regard and for setting up a mechanism to ensure that appeals by the Revenue are filed as per given parameters.

**3.7.** No interference is called for in the order of Ld. CIT(A) and the therefore same is hereby upheld.

**4.** In the result, the Appeal of the Revenue is dismissed.

**Now we shall take up appeal filed by the assessee in ITA No.4173/Mum/2014 for A.Y. 2006-07:**

**5.** It is noted that the assessee has filed an appeal challenging the validity of reopening of this case u/s 147 of the Act by the AO. Since, we have allowed the relief on merits, we do not find it necessary to go into this aspect on this stage and we dismiss the appeal by treating the same as infructuous.

**Now, we shall take up appeal filed by the revenue in ITA No.2164 & 65/M/2014 for the A.Ys. 2009-10 and 2010-11:**

**6.** It is noted by us that appeal for these two years have also been filed on the same ground by the revenue as in A.Y. 2006-07. It is noted that the issues involved are identical. The facts are same; no distinction has been made by any party before us and the same has been claimed to be covered by the earlier year order, and therefore following our order of earlier years we dismiss these appeals filed by the revenue.

7. As a result all the three appeal filed by the revenue and one appeal filed by the assessee are dismissed.

Order pronounced in the open court on 24<sup>th</sup> June, 2016.

Sd/-  
(Amit Shukla )

Sd/-  
(Ashwani Taneja)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 24/06/2016

*Patel, P.S./नि.स.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. कर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai.
6. गार्ड फाईल / Guard file.
7. The Chairperson, Central Board of Direct Taxes, Ministry of Finance, North Block, Secretariat Building New Delhi (for implementing suggestions given in Paras' 3.4. to 3.6 of the Order)
8. The Principal Chief Commissioner of Income Tax, ROOM NO. 321, AAYAKAR BHAVAN, M.K. ROAD, MUMBAI-400020 (for implementing suggestions given in Paras' 3.4. to 3.6 of the Order)

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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