

आयकर अपीलीय अधिकरण "J" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2012/Mum/2015

(निर्धारण वर्ष / Assessment Year : 2010-11)

Dy. CIT – 20(2), Room No. 217, 2 nd floor, Piramal Chambers, Lalbaug, Parel, Mumbai -400012.	बनाम/ v.	Shri Jagshi J. Chheda, Prop. Silver Developers, 9001, Meru Heights, 268, Telang Road, Matunga, Mumbai – 400019.
स्थायी लेखा सं./PAN : ACYPC2992B		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by :	Shri G. Navitha Kumar
Assessee by :	Shri Sameer G. Dalal

सुनवाई की तारीख /**Date of Hearing** : 29-11-2016

घोषणा की तारीख /**Date of Pronouncement** : 29-11-2016

आदेश / ORDER

PER B.R. BASKARAN, A.M

This appeal, filed by the Revenue, being ITA No. 2012/Mum/2015, is directed against the appellate order dated 30th January, 2015 relates to the A.Y. 2010-11.

2. The grounds of appeal urged by the Revenue in the appeal relate to
- Capitalisation of revenue expenditure amounting to Rs. 49.98 lakhs,
 - Capitalization of interest expenditure amounting to Rs. 132.28 lakhs,
 - Addition of notional interest to the rental income amounting to Rs. 49.05 lakhs and

(d) Assessment of hire charges amounting to Rs. 65.74 lakhs under the head income from house property.

3. The assessee is an individual and engaged in the business of construction activities. The assessee has developed a project in joint venture (JV) with M/s Godrej Properties and Investment Ltd. for development of a property located at Kurla. The assessee had claimed certain expenses as revenue expenses but the A.O. treated the same as expenses related to joint venture project and accordingly he capitalized a portion of purchase expenses and interest expenses by including the same in the work-in-progress (WIP). The Id. CIT(A) gave relief and hence the Revenue is in appeal before the Tribunal.

4. The first issue relates to capitalization of purchase expenses to the tune of Rs. 49.98 lakhs. The assessee had claimed civil labour charges and ULC expenses aggregating to Rs. 84.87 lakhs. The A.O. took a view that these expenses are relatable to the on-going JV project and, hence, it should have been capitalized by the assessee. Accordingly, he computed the proportionate amount of expenses relatable to the closing stock of JV project at Rs. 49.98 lakhs and added to the same to the WIP by disallowing the claim of the assessee for treating the same as revenue expenditure. The Id. CIT(A) noticed that the assessee has incurred these expenditure as per contractual obligation in the joint venture project as per the agreement entered into with M/s Lokmanya Pan Bazar Association Ltd. and M/s Godrej Properties and Investment Ltd. He further noticed that identical disallowance made by the A.O. in the immediately preceding year has been allowed by him. Accordingly, by following the decision rendered by him in A.Y. 2009-10, the Id. CIT(A) set aside the order of the A.O. and held that the entire claim is allowable as revenue expenditure.

5. At the time of hearing, it was pointed out to us that the order passed by the Id. CIT(A) in A.Y. 2009-10 was challenged by the Revenue by filing appeal before the Tribunal and the Tribunal, vide its order dated 24th June, 2016 passed in ITA No. 4760/Mum/2012, has upheld the view taken by the Id. CIT(A).

6. We have gone through the order passed by the co-ordinate Bench of this Tribunal and noticed that identical issue was considered by the Tribunal in para 14 of its order. We further noticed that the Tribunal upheld the view taken by the Id. CIT(A) in para 14.4 of its order. Consistent with the view taken therein, we uphold the order passed by the Id. CIT(A) on this issue.

7. The next issue relates to the disallowance of part of interest expenditure by treating the same as relating to WIP. The A.O., as in the case of purchase expenses, disallowed part of interest expenditure claimed by the assessee by allocating the same to the on-going project. Before the Id. CIT(A), the assessee submitted that the interest paid by it is attributable to the business of earning rental income and not attributable to joint venture project. Alternatively, it was further submitted that as per the terms on MOU each party was required to bear interest on the funds borrowed by them for introducing capital in joint venture. It was further submitted that the joint venture would pay interest to the partners on the funds lying in the name of the partners. Accordingly, it was submitted that the interest expenditure had direct nexus to the funds given to the joint venture from which the assessee has received interest income. Accordingly it was claimed that the A.O. was not justified in allocating the part of interest expenditure to the on-going joint venture project. The Id. CIT(A) noticed that he has considered an identical issue in A.Y. 2009-10 and has accepted the claim of the assessee and accordingly by following the same, the Id. CIT(A) set aside the order passed by the A.O. on this issue.

8. At the time of hearing, it was pointed out that the order passed by the ld. CIT(A) in A.Y. 2009-10 was challenged by the Revenue by filing appeal before the Tribunal and the Tribunal vide its order dated 24th June, 2016 passed in ITA No. 4760/Mum/2012 (supra) has upheld the view taken by the ld. CIT(A).

9. We have gone through the order passed by the co-ordinate Bench of this Tribunal and noticed that an identical issue was discussed by the Tribunal in para 6 of its order. We further noticed that the Tribunal upheld the view taken by the ld. CIT(A) in para 6.3 of its order. Consistent with the view taken by the Tribunal, we uphold the order passed by the ld. CIT(A) on this issue.

10. The next issue relates to the addition of notional interest on interest free deposits received from licencees of properties. The assessee has disclosed the monthly rental of Rs. 3.27 crores and hire charges for amenities of Rs. 2.19 crores. The A.O. also noticed that the assessee has received interest free deposits of Rs. 4.29 crores as rent deposits and Rs. 2.21 crores as amenities deposit. The A.O. took a view that notional interest on interest free deposit is required to be considered as part of rental income in order to arrive at a fair market value of rent u/s 23(1)(a) of the Act. Accordingly, the A.O. computed the interest @ 12% on the interest free deposits and added the same to the rental income declared by the assessee. The ld. CIT(A) deleted the same by following his decision rendered for A.Y. 2009-10. In this regard, the ld. CIT(A) placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. Asian Hotel Ltd. 323 ITR 490.

11. At the time of hearing, it was brought to our notice that an identical addition made by the A.O. in A.Y. 2009-10 has since been deleted by the Tribunal.

12. We have gone through the order passed by the co-ordinate Bench of this Tribunal for A.Y. 2009-10 in ITA No. 4960/Mum/2010 dated 24th June, 2016 and noticed that an identical issue was discussed by the Tribunal in para No. 7 of its order and in para No. 7.3 of the order, the Tribunal has upheld the view taken by the ld. CIT(A). We have also noticed that the ld. CIT(A) has followed the decision rendered by the Hon'ble Delhi High Court in the case of Asian Hotel Ltd. (supra). Accordingly, we uphold the order passed by the ld. CIT(A) in this year also on this issue.

13. The last issue urged by the Revenue relates to the head under which hire charges for amenities was assessable. The assessee declared the hire charges received by it for amenities provided to the licencees or the premises. The A.O. assessed the same under the head income from other sources. The ld. CIT(A), however, accepted the claim of the assessee and accordingly directed the AO to assess the hire charges under the head Income from House Property.

14. At the time of hearing, it was brought to our notice that identical issue was considered by the Tribunal in assessee's own case for A.Y. 2009-10 (referred supra) and the co-ordinate Bench of this Tribunal upheld the view taken by the ld. CIT(A) in A.Y. 2009-10.

15. We have gone through the order passed by the co-ordinate Bench of this Tribunal for A.Y. 2009-10 in ITA No. 4960/Mum/2010 dated 24th June, 2016 and noticed that an identical issue was discussed by the Tribunal in para No. 8 of its order. We have further noticed that the tribunal has

rendered this decision in para 8.3 of its order wherein it was observed that the amenities provided by the assessee constituted an integral part of the premises, i.e., it was seen that the amenities provided by the assessee consisted of electrical panels, AHU rooms and fire control system, water tanks, elevator etc. In view of the above, the Tribunal has accepted the view of the Id. CIT(A) that these amenities constitute integral part of the house property. Since there is no change in facts, consistent with the view taken by the Tribunal in AY 2009-10, we uphold the order passed by the Id. CIT(A) in this year also on this issue.

16. In the result, the appeal filed by the Revenue in ITA No. 2012/Mum/2015 for the assessment year 2010-11 is dismissed.

Order pronounced in the open court on 29th November, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 29-11-2016 को की गई ।

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 29-11-2016

व.नि.स./ R.K., Ex. 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)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "E" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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