

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 707/Del/2014
AY: 2010-11**

**Asstt. Commissioner of Inome Tax, vs Renken Partner,
Circle 31(1), DLF Centre, 9th Floor,
New Delhi. Sansad Marg,
New Delhi-110001
(PAN: AAFFR2063P)
(Appellant) (Respondent)**

Appellant by: Shri O.P. Meena, Sr. DR
Respondent by: Shri R.S. Singhvi, CA

**Date of hearing: 03.02.2016
Date of pronouncement:**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

The present appeal is preferred by the Department against the order dated 25.11.2013 passed by the Ld. CIT(A)-XXVI, New Delhi and pertains to assessment year 2010-11. The Department has raised the following grounds of appeal:-

"1 The CIT (A) has erred in deleting the disallowance of Rs. 11,79,27,144/- made by the Assessing Officer u/s 24a of the IT Act as the property was constructed and developed by the partners/ DLF group of the firm.

2. The CIT (A) has erred in directing that rental income of the assessee should be assessed under the head 'income form house property' and not as business income.

3. The CIT (A) has erred in deleting the disallowance of Rs. 14,68,401/- made by the AO u/s 57(iii) of the IT Act/prior period expense.

4. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of appeal.”

2. At the time of hearing before us, it was submitted by the learned counsel that the same issue has already been considered by the ITAT in assessee's own case in I.T.A. No. 1127/Del/2012 and 694/Del/2013 for assessment years 2008-09 and 2009-10 respectively. He submitted that the assessee is one of the group concerns of DLF Group and in this concern which is a partnership firm, certain assets are owned on which rent is being received. The assets are kept as investment and the assets kept in this firm are not stock in trade. The Ld. AR submitted that rent is received year after year and is being disclosed under the head 'income from house property'. In the preceding two years, the income disclosed under the head income from house property has been upheld by the ITAT. He, therefore, submitted that the order of learned CIT (A) should be sustained.

3. Learned DR, on the other hand, fairly admitted that the issue is covered by the order of the ITAT.

4. We have carefully considered the arguments of both the sides and perused relevant material placed before us. We find that in paragraph Nos. 7 and 9, the 'F' Bench of the ITAT, New Delhi in I.T.A. No. 1127/Del/2012 has been held as under:-

“7. After considering the arguments of both the sides and the facts of the case, we do not find any infirmity in the above conclusion of the learned CIT (A). The assessee is owner of one building which was let out from past several years. The asset which is let out is held as investment and not as stock in trade. In all the preceding years, rental income is shown as income from house property and which has been accepted by the Revenue as such. The learned DR has argued at the time of hearing before us that rule of res-judicata does not apply to income tax proceedings. It is true that the rule of res-judicata does not apply to income tax proceedings but, at the same time, the rule of consistency does apply. When the facts are similar and rental income from the same property is accepted as income from house property in the preceding years, there cannot be any justification to treat the rental income as business income in the year under consideration without there being any change in the facts or in law. Moreover, the assessee is not carrying on any activity which can be said to be in the nature of business activity. It is simply receiving the rent of the building owned by it.”

8. XXXXX

“9. However, from the above, it is evident that the partnership deed has mentioned not only the setting up of the commercial complex for sale but also mentioned for letting out and earning rental income therefrom. That it is a common practice that the partnership deed or a memorandum of association of the company are drafted covering large number of activities but which of several activities mentioned in the partnership deed or

memorandum of association is carried on by the assessee will be relevant for the purpose of assessment under the Income Tax Act. When from the facts of the assessee's case it is evident that the assessee owns a commercial complex for letting out and earning rental income then merely because the partnership also permits the assessee to sale the commercial complex will not change the nature of rental income. Ordinarily, the rental income from a building is to be assessed under the head income from house property. In view of the totality of above facts, we do not find any justification to interfere with the order of learned CIT (A). The same is sustained and Revenue's appeal for AY 2008-09 is dismissed."

5. The Department's appeal for Assessment Year 2009-10 was also dismissed on a similar reasoning by the ITAT. In view of the decision of the Coordinate Bench in assessee's own case in 2008-09 and Assessment Year 2009-10, we dismiss ground nos. 1 and 2 of the Department's appeal.

6. The only other ground remaining for adjudication pertains to the issue of disallowance of Rs. 14,68,401/- u/s 57(iii) of the Income Tax Act, 1961 which has been deleted by the Ld. CIT(A).

7. The issue has been dealt by the Ld. CIT(A) in paragraphs 10 and 10.1 of the impugned order and the same are being reproduced for ready reference as under:-

“10. One of the appellants, namely, M/s Renkon partners, has raised the issue of disallowance of loss of interest of Rs. 14,68,401/- due to pre-mature encashment of FDRs. The entire provisions regarding the method of accounting were contained in section 145. As per that section, the income under the head "Profit and gains of business or profession" or "Income from other sources" shall be computed according with either cash or mercantile system of accounting regularly employed by the assessee. In other words, the Income Tax Act recognizes two system of accounting, cash system and mercantile system. The section also provides that the Central Government is authorized to notify from time to time the accounting standard to be followed, particularly in the case of any assessee or in respect of any income. The Central Government has notified certain accounting standards. The Accounting Standard-2 clause (a) provides that a change in the accounting policy shall be made only if the adaptation of a different policy is required by the statute or if it is considered that the change would result in a mere appropriate preparation or presentation of the financial statement of an assessee.

10.1 I have perused the record and find force in the argument of the Ld. AR that the appellant has offered interest of Rs.42,18,273/- on accrual basis on FDRs in the AY 2009-10, which was taxed accordingly in that year. However, due to premature encashment on 09.04.2009, the actual receipt of interest is lesser by Rs.14,68,401/-. Since the appellant has already offered this interest income of Rs.14,68,401/- on mercantile basis in the AY 2009-10, therefore, it claimed non-realization of interest income of Rs.14,68,401/- as loss in the AY 2010-11. Since the appellant is offering interest income on accrual basis as per accounting method followed by it, therefore, I am of the considered view that a reversal entry of the loss of interest of Rs. 14,68,401/- (the interest which has not accrued to the appellant) has to be passed in the books of account of the relevant Assessment Year as this loss has

crystallized in this year due to the premature encashment of FDRs. I have considered the entire issue and come to conclusion that it is not a case of prior period expenses relatable to preceding year as held by the AO because it is not expenditure and in case it is expenditure then it has crystallized in the relevant AY. In case, the AO's action is held valid then it amounts to double taxation, once on accrual basis and twice on receipt/disallowance basis. I think the AO's action is in the nature of changing of accounting method without assigning any valid reason for that. Thus, it is held that the action of the AO holding above mentioned loss of interest as prior period expenses is contrary to the provisions of the law and accounting principle. Accordingly, the addition of interest income of Rs. 14,68,401/- in the hands of M/s Renkon partners is therefore, deleted. The AO is directed to give consequential relief in the case of M/s Renkon partners.”

8. In view of the specific finding of the Ld. CIT (A), which the Department could not controvert before us, we decline to interfere and reject ground no. 3 of the Department's appeal.

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

Order pronounced in the Open Court on 29th April, 2016.

Sd/-

**(N.K. SAINI)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: the 29th of April, 2016

‘GS’

I.T.A. No. 707/Del/2014
Assessment Year: 2010-11

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT 4. CIT(A)
4. DR, ITAT

By Order

ASSTT. REGISTRAR