

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5269/DEL/2015 (A.Y 2011-12)

Discovery Estates Pvt. Ltd. 17-B, MGF House, Asaf Ali Road New Delhi AABCD4163D (APPELLANT)	Vs	DCIT Circle-10(1) New Delhi (RESPONDENT)
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Appellant by	Sh. Keshav Prasad, CA
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	11.02.2019
Date of Pronouncement	11.02.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 23/06/2015 passed by CIT(A)-III, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

1. **"Ground No. 1:**

The Ld. Commissioner of Income Tax (Appeals) - III, New Delhi (hereinafter referred to as 'CIT(A)') has erred in law and in the fact & circumstances of the case by passing the order dated 23.06.2015 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act') in gross violation of the principles of natural justice.

Ground No. 2:

The CIT(A) has erred on facts and circumstances of the case in holding that the AO is correct in treating the lease rental income earned by the Appellant from commercial properties as Income From House Property instead of business income.

Ground No. 3:

The CIT(A) has erred on facts and circumstances of the case in confirming the conclusion of AO with regard to the taxing of rental income on account of commercial mall as income from house property instead of income from business on the basis of Hon'ble Delhi High Court order dated 18.02.2013. The Appellant contends that the order of Hon'ble Delhi High Court has not attained finality as the Appellant has already filed an appeal in this regard before Hon'ble Supreme Court.

Ground NO. 4

The CIT(A) has erred on facts and circumstances of the case in holding that the AO is correct in holding that interest income on FDR's should be treated as 'Income from Other Sources'. The Appellant contends that the interest income should not be categorized under the head 'Income from other sources' and it should be treated as Business Income.

The appellant prays that he may be allowed to add, amend, alter or forego any of the above grounds of appeal as the circumstances may warrant.”

3. At the time of hearing, the Ld. AR submitted that the issue contested by the assessee in the present appeal has been decided against the assessee by the Hon'ble Supreme Court in earlier Assessment Years in light of the decision of M/s Ansal Housing Finance & Lease Company Ltd. decided on 31/10/2012 in assessee's own case being ITA No. 1089 & 1090/ 2011 dated 18/2/2013 CIT(A) Vs. Discovery States Pvt. Ltd. The Ld. AR further submitted that the assessee has filed SLP before the Hon'ble Supreme Court which is yet pending but as of today, the issue is covered against the assessee. The Ld. AR submitted Form No. 8 as under:-

“FORM NO. 8
[See rule 16]

Declaration under section 158A(1) of the Income-tax Act, 1961 to be made by an assessee claiming that identical question of law is pending before the High Court or the Supreme Court

I, **Khem Chand Agrawal**, son/daughter/wife of Shri G. S. Agrawal being the Director of the Appellant do hereby declare:

1. That the following question of law is pending in the case of Discovery Estates Private Limited before the Supreme Court on an appeal under section 261 in respect of the assessment year 2006-07. A copy of the judgment of the High Court and Record of proceedings related the Supreme Court are enclosed.
2. That the said question of law is identical with the question of law arising in the case of Discovery Estates Private Limited in respect of the assessment year AY 2011-12 which is pending before the Hon'ble Income Tax Appellant Tribunal, Delhi, “Bench-F”.
3. That if the Hon'ble Income Tax Appellant Tribunal agrees to apply to the case referred to in paragraph 2 above the final decision on the question of

law in the case referred to in paragraph 1 above, the assessee mentioned in paragraphs 1 and 2 above, shall not raise the said questions of law in the case referred to in paragraph 2 above in appeal before any appellate authority or for a reference before the High Court under section 256 or the Supreme Court under section 257 or in appeal before the Supreme Court under section 261.

Signature of the declarant:

Permanent Account No: AABCD4163D

New Delhi-110002”

4. The Ld. DR relied upon the order of the Hon'ble High Court in assessee's own case for earlier Assessment Years.

5. We have heard both the parties and perused the material available on record. The assessee through its AR has rightly submitted that the issue contented in the present appeal is decided against the assessee by the Hon'ble Jurisdictional High Court. Therefore, this appeal is dismissed but in light of the SLP pending before the Hon'ble Supreme Court. The assessee is at liberty to take appropriate action if the Hon'ble Apex Court decided the issue in favour of the assessee.

6. In result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 11th FEBRUARY, 2019.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 11/02/2019
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	11.02.2019
Date on which the typed draft is placed before the dictating Member	11.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	11.02.2019
Date on which the final order is uploaded on the website of ITAT	11.02.2019
Date on which the file goes to the Bench Clerk	11.02.2019

Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	