

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SMT BEENA A. PILLAI, JUDICIAL MEMBER

ITA Nos. 4753 & 4752/DEL/2014
[A.Ys 2006-07 & 2007-08]

The Dy. C.I.T
Circle 1 (1)
Gurgaon

Vs.

DLF Retail Developers Ltd.
Third Floor, Shopping Mall
Arjun Nagar, DLF City
Phase - I, Gurgaon

PAN : AAACJ 1655 P

[Appellant]

[Respondent]

Date of Hearing : 14.02.2019
Date of Pronouncement : 20.02.2019

Revenue by : Shri Mithun Sheth, Sr. DR

Assessee by : Shri R.S. Singhvi
Shri Satyajeet Goel, AR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

These two separate appeals by the Revenue are preferred against the two separate orders of the ld. CIT(A), Faridabad dated 26.06.2014 and 27.06.2014 pertaining to assessment years 2006-07 and 2007-08.

Since common grievance is involved in both these appeals, these are being disposed of by this common order for the sake of convenience and brevity.

2. The first grievance is common in both the appeals and relates to deletion of addition of Rs. 5.73 crores in assessment year 2006-07 and Rs. 2.96 crores in assessment year 2007-08.

3. Briefly stated, the facts of the case are that the appellant has constructed a mall at Saket, New Delhi. Parking space was provided in the basement of the mall. The assessee has made provisions of parking in the basement area of the building. The basement area is also being used for various services, like, keeping various techno mechanical instruments like DG sets, water pumping station, AC plant, Lift etc. The basement area is also the foundation of the building. The assessee incurred cost in making the foundation of the building. The assessee has charged cost of parking area to the cost of project. However, the Assessing Officer was of the opinion that the same should be capitalised.

4. The Assessing Officer, accordingly, made addition of Rs. 6,28,52,182/-, which included Rs. 54,79,059/- pertaining to exclusion of hotel project cost from the budgeted cost and remaining Rs. 5,73,73,123/- pertaining to reduction in budgeted cost on account of parking area.

5. Aggrieved, the assessee carried the matter before the Id. CIT(A) and explained that the parking area is mandatory for any commercial complex and, more so, in the case of a Mall and, therefore, the Assessing Officer has grossly erred in disallowing Rs. 5,73,73,123/- being reduction in the budgeted cost on account of parking area. It was further explained that as per the description of the project, parking is to be constructed and maintained and it consists of 721 lots for car parking and 68 slots for scooters. It was strongly contended that the Assessing Officer erred in loading the cost of parking area to the cost of shops and offices.

6. After considering the facts and circumstances, the Id. CIT(A) was convinced with the claim of the assessee and observed that it is mandatory for the assessee to build parking area in accordance with the rules, bye laws of DDA. The Id. CIT(A) further observed that the

assessee is prohibited from selling any part of the parking area. The cost of lighting, power and water consumption for operation and maintenance of parking area was to be borne by the assessee and the assessee is charging parking fee for this area. The ld. CIT(A), accordingly, directed the Assessing Officer to delete the impugned addition.

7. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

8. On the other hand, the ld. counsel for the assessee relied upon the findings of the ld. CIT(A).

9. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee, in its Mall, has made provision for parking area as per the sanctioned plan and rules and bye laws of DDA. There is no dispute that the assessee cannot sell the parking area nor it can do any other activity in the parking area. The assessee cannot open any commercial shops nor can it let out any space of the parking area for any other commercial use. There is also no dispute that the

assessee has to bear all the expenses, administrative and otherwise, for the maintenance of the parking area. Therefore, it is incorrect to say that the cost of the parking area should be loaded with the cost of the shops and the parking area is a capital asset of the assessee.

10. The only revenue the assessee can derive from the parking area is on account of parking fee charged from the patrons or tenants or any other party. The revenue arising from such parking fee shall obviously be reflected in the assessee's profit and loss account. We find that the Assessing Officer has based his decision on the budgeted cost prepared by the assessee for the project in which the parking area has been specially mentioned as "saleable area". But what the Assessing Officer has ignored is that the saleable area has been mentioned at 0.00 sq ft. This itself shows that the parking area is not a saleable area. Considering the facts of the case in totality, we do not find any error or infirmity in the findings of the CIT(A). Ground No. 1 in both the appeals is dismissed.

11. Ground No. 2 in A.Y 2006-07 relates to the deletion of addition of Rs. 50,99,086/- being interest paid to DLF Ltd on borrowed capital.

12. While making this addition, the Assessing Officer observed that the assessee has paid advances for purchase of shares of certain companies. These companies were owners of land at Banjara Hills, Hyderabad and advances for purchase of shares were disclosed in the balance sheet as share application money. As the amount paid was made on account of investment, the Assessing Officer was of the opinion that proportionate interest paid to DLF Ltd on the funds utilised out of unsecured loans needs to be capitalised as there is a direct nexus between the borrowed capital and investment in shares. The Assessing Officer, accordingly, disallowed interest of Rs. 50,99,086/-.

13. Before the CIT(A), the assessee strongly contended that it had interest free funds and interest bearing funds available with it. It was brought to the notice of the CIT(A) that interest free funds available were far in excess of the investment made by the assessee in the land owning companies at Hyderabad.

14. It was further explained that the assessee has collected a sum of Rs. 17.39 crores from the customers against the sale of properties in South Court Mall, Saket. It was explained that the entire advances for

share application money has been given out of own funds and no interest bearing or borrowed funds were utilised. It was further explained that the investment in share capital of the companies is made in respect of those companies which own land and the ownership of those companies is for furtherance of the business of the assessee. Therefore, proportionate disallowance made by the Assessing Officer is not correct on the facts of the case.

15. After considering the facts and submissions, the CIT(A) observed that the Assessing Officer has not proved that the conditions laid out in section 36(1)(iii) of the Act have not been fulfilled by the assessee. The CIT(A) found that the only reason for making disallowance is the comment of the Special Auditor in its Audit Report mentioning that the borrowed funds have been utilised to purchase shares which have been shown as investment. Drawing support from several judicial decisions, the CIT(A) directed the Assessing Officer to delete the addition of Rs. 50,99,086/-

16. Before us, the Id. DR could not add anything to what the Assessing Officer has observed in the assessment order for making the impugned disallowance.

17. On the other hand, the Id. AR reiterated what has been stated before the lower authorities.

18. We have given a thoughtful consideration to the orders of the authorities below. In our considered opinion, the three conditions for disallowance of interest u/s 36(1)(iii) of the Act are (i) the appellant should have borrowed capital, (ii) capital should have been borrowed for the purpose of business and (iii) interest should have been paid on the borrowings. There is no dispute that the assessee has borrowed funds for its business. There is also no dispute that the assessee was having sufficient interest free funds to make the investment in shares of Hyderabad based companies. Assuming, yet not accepting, the borrowed funds have been utilised for purchase of shares for getting controlling interest in the land owned by the companies so that it can construct malls/multiplexes at Hyderabad. This strategic investment clearly shows that the borrowed funds, if any, have been utilised for expansion of the business and is for the business purposes.

19. The Hon'ble High Court of Delhi in the case of Reebok India Company 259 Taxmann 199 has held that once it is established that there was a connection and nexus between the interest paid and

claimed by the assessee as expenditure and the purpose of business which need not necessarily be business of the assessee itself, the revenue cannot assume role and occupy the arm chair of a business man to decide whether expenditure was reasonable. In assessee's sister concern, DLF Brand Limited, the Tribunal had the occasion to consider a similar issue in ITA No. 4760/DEL/2012 and has allowed the claim of interest expenditure on the amount borrowed for investment in subsidiary companies. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the CIT(A). Ground No. 2 is accordingly dismissed.

20. Ground no. 3 relates to deletion of addition of Rs. 4,45,425/-.

21. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has recognised interest on delayed payment from customers only upto 25.03.2006 and not till 31.03.2006. The Assessing Officer was of the firm belief that the assessee has not recognised any income for six days and accordingly computed interest for six days at Rs. 3,01,730/-. The Assessing Officer further found that the assessee has not charged interest from two persons, namely, Shri Kiran Deep Mann and Shri Rajpal Singh amounting

to Rs. 69,056/- and Rs. 74,639/-. The Assessing Officer, accordingly, made addition of Rs. 4,45,425/-.

22. Before the CIT(A), the assessee explained that he has adopted 25th March as the cut off date and accordingly, interest on delayed payment has been charged upto that date. It was strongly contended that the Assessing Officer has grossly erred in assuming interest for six days. It was explained that the interest is being charged every year upto 25th March. In respect of non charging of interest from two parties, it was explained that the same was not charged because of moral and social obligations.

23. After considering the facts and detailed submissions, the Id. CIT(A) found that the assessee is in fact charging interest upto the cut off date being 25th March every year. Therefore, he was of the opinion that no interest can be assumed for six days. In so far as non charging of interest from two customers is concerned, the CIT(A) was convinced that he plea of moral and social obligations and accordingly, directed the Assessing Officer to delete the addition of Rs. 4,45,425/-.

24. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

25. Per contra, the ld. AR relied upon the findings of the CIT(A).

26. We have given a thoughtful consideration to the orders of the authorities below qua the issue. There is no dispute that the cut off date has been chosen by the assessee as 25th March. It is also true that every year the assessee is charging interest upto 25th March. This, in itself, complete one full year. There is no reason why interest should be assumed for six days. We, therefore, do not find any error or infirmity in the findings of the CIT(A) to this extent.

27. In so far as non exclusion of interest income from two customers, namely, Shri Kiran Deep Mann and Shri Rajpal Singh is concerned, we are of the considered opinion that a business man has to discharge many social and moral obligations and while discharging such obligations, the business man may not charge anything from the customers. We, therefore, do not find any error in such practice of the assessee. No interference is called for. Ground no. 3 is dismissed.

28. Last ground relates to the deletion of addition of Rs. 3,46,460/-.

29. The Assessing Officer has disallowed this expenditure since he has disallowed proportionate interest of Rs. 50,99,086/- on borrowed capital being used for making investment in shares. The Assessing Officer has disallowed this expenditure only because he was of the opinion that travelling and other related expenses incurred for acquisition of shares of land owning companies need to be disallowed also.

30. The CIT(A) allowed the grievance of the assessee by deleting the expenditure since he has deleted the disallowance of proportionate interest.

31. Since we have confirmed the findings of the CIT(A) vide Ground No. 2 [supra], this ground is also dismissed.

30. In the result, the appeals of the Revenue in ITA Nos. 4753/DEL/2014 and 4752/DEL/201 is dismissed.

The order is pronounced in the open court on 20.02.2019.

Sd/-

[BEENA PILLAI]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 20th February, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
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