

**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. 2658/DEL/2016 ( A.Y 2008-09)**

**ITA No. 2659/DEL/2016 ( A.Y 2009-10)**

**ITA No. 2660/DEL/2016 ( A.Y 2010-11)**

**ITA No. 2661/DEL/2016 ( A.Y 2011-12)**

Pavitra Commercials Ltd. 108, Ansal Bhawan, 16-K.G. Marg, New Delhi AAACP0299F <b>(APPELLANT)</b>	Vs	DCIT Central Circle-20( Now CC-8) ARA Centre Jhandewalan Extn. New Delhi <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Ashwani Seth, Sh. V. K. Jain, CAs</b>
<b>Respondent by</b>	<b>Sh. Kanwaljit Singh, CIT-DR</b>

<b>Date of Hearing</b>	<b>14.02.2019</b>
<b>Date of Pronouncement</b>	<b>15.03.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These four appeals are filed by the assessee against the order dated 29/01/2016 passed by CIT(A)-2, New Delhi for Assessment Year 2008-09, 2009-10, 2010-11 & 2011-12 respectively.

2. The grounds of appeal are as under:-

The issue is common/identical in A.Ys. 2008-09 till 2010-11, therefore grounds for A.Y. 2008-09 are reproduced herein:

**ITA No. 2658/DEL/2016 (A.Y. 2008-09)**

1) *That, the order of the Ld. Commissioner of Income Tax - (Appeals -2), New*

*Delhi is bad in law, wrong on the facts and against the principles of natural justice.*

2) *That on the facts and in the circumstances of the case, the Ld. CIT-(A) in confirming the erroneously additions/disallowances in the impugned assessment order framed u/s 153C of the act on the issues which has no nexus with the alleged material unearthed during the course of search operations and thereby making a de-novo assessment, which needs to be deleted.*

3) *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in law in confirming the addition of Rs. 6,00,000/- on account of Interest income on accrual basis which needs to be deleted.*

3.1) *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in confirming the addition of Rs.6,00,000/- towards notional interest on loan given to Sitapur Plywood Mfg. Co when the recovery of even the principal is doubtful of recovery.*

3.2) *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has completely ignored the fact that similar type of addition was made in Assessment Year 2005-06, 2006-07 and 2007-08 towards notional interest from Sitapur Plywood Mfg. Co. which was deleted by CIT(A)-17, New Delhi in all the 3 years.*

3.3) *That on the facts and in the circumstances of the case, the Ld. CIT-(A) has failed to appreciate that no addition was made in regular assessment u/s 143(3) dated 30.11.2009 after considering the explanation & evidences filed during the course of assessment proceedings.”*

**ITA No. 2661/DEL/2018 (A.Y. 2011-12)**

*“1) That, the order of the Ld. Commissioner of Income Tax-(Appeals)-2, New Delhi is bad in law, wrong on the facts and against the principles of natural justice.*

2) *That on the facts and in the circumstances of the case, the Ld. CIT(A) in confirming the erroneously additions/disallowances in the impugned*

*assessment order framed u/s 153C of the act on the issues which has no nexus with the alleged material unearthed during the course of search operations and thereby making a de-novo assessment, which needs to be deleted.*

*3) That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in law in confirming the addition of Rs. 13,54,992 u/s 14A read with Rule 8D(2)(ii) of the IT Rules, 1962 which needs to be deleted.*

*3.1) That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in confirming the disallowance of Rs. 1354992/- out of interest paid Rs. 1779476/- by applying Rule 8D(ii) and failed to appreciate that the company is NBFC and interest paid is pursuant to financing business and has direct nexus with interest received and thus no disallowance is called for.*

*3.2) That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in confirming the disallowance of Rs. 1354992/- out of interest paid Rs. 1779476/- by applying Rule 8D(ii) and failed to appreciate that there were adequate own funds comprising of Share Capital and Reserves and no interest bearing funds were utilized for making Investments.*

*4) That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in law in confirming the addition of Rs.6,00,000/- on account of interest income on accrual basis which needs to be deleted.*

*4.1) That on the facts and in the circumstances of the case, the Ld. CIT-(A) has erred in confirming the addition of Rs.600000/- towards notional interest on loan given to Sitapur Plywood Mfg. Co. when the recovery of even the principal is doubtful of recovery.*

*4.2) That on the facts and in the circumstances of the case, the Ld. CIT-(A) has completely ignored the fact that similar type of addition was made in Assessment Year 2005-06, 2006-07 and 2007-08 towards notational interest from Sitapur Plywood Mfg. Co. which was deleted by CIT(A)-17, New Delhi in all the 3 years.*

3. We are taking up facts of A.Y. 2008-09 as the same are identical in A.Ys.

2009 and 2010-11 as well. Original return of income was filed declaring total income of Rs. 90,50,461/- on 19.11.2006. The Assessment Order was passed u/s 143(3) of the Income Tax Act, 1961 on 30.11.2010 thereby assessing income at Rs. 4,04,48,040/-. In the original assessment order, there was no addition made for notional interest of Rs. 6,00,000/- on advance of Rs. 50 lacs given to Sitapur Plywood Ltd. Again Assessment Order u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 was passed on 28.03.2013 and notional interest @ 12% amounting to Rs.6,00,000/- was added to the income of the assessee. The CIT(A) vide order dated 29.01.2016 confirmed the said addition.

4. In Assessment Years 2005-06, 2006-07 and 2007-08, similar additions were made in the original assessment orders u/s 143(3) by the then Assessing Officers and the same were deleted in full. The Tribunal in its order dated 31.07.2017 in assessee's own case for A.Ys. 2005-06 to 2007-08 in ITA Nos. 3134/DEL/2009, 944/DEL/2010 and 4066/DEL/2010 deleted the addition on account of notional interest. The Hon'ble Delhi High Court in its order dated 09.02.2018 in ITA No. 146/2018, 149/2018 and 150/2018 for A.Ys. 2005-06 to 2007-08 upheld the order of the ITAT. The Hon'ble Supreme Court, in its order dated 22.11.2018 in SLP (Civil) Dairy No. 41124/2018 arising out of ITA No. 146/2018 dismissed the SLP of the department.

5. The Ld. AR submitted that for Assessment Year 2008-09, the issue is identical that of notional interest only and thus, squarely covered by the Tribunal's decision which is now confirmed up to the Hon'ble Supreme Court in assessee's own case.

6. The Ld. DR relied upon the order of the Assessing Officer order of the CIT(A) but could not controvert the decision of the Tribunal which is now confirm by the Hon'ble Supreme Court.

7. We have heard both the parties and perused the material available on

record. As the issue contested in Assessment Year 2008-09 has already been decided by the Tribunal which is confirmed by the Hon'ble Supreme Court. The appeal of the assessee being ITA No. 2658/del/2016 for Assessment Year 2008-09 is allowed. As regards Assessment Year 2009-10, the issue is similar to A.Y. 2008-09. Therefore, ITA No. 2659/del/2016 is allowed. As regards Assessment Year 2010-11, the issue is identical to A.Y. 2008-09. Therefore, ITA No. 2660/Del/2016 is allowed.

8. As regards Assessment Year 2011-12, the Ground Nos. 3, 3.1 and 3.2 are relating to additions in respect of Section 14A read with Rule 8D. The Ld. AR during the hearing submitted that the disallowance was suo moto made by the assessee. At the time of filing of the income tax return, the Ld. AR further submitted that the said suo moto disallowance was confirmed by the auditor in tax audit report obtained u/s 44AB of the Income Tax Act and amount was calculated as per method suggested in aforesaid provisions of the Act. Since, necessary disallowance was made in the computation no further action has been taken by the Revenue. The Ld. AR further submitted that there was no fresh investment and no loan in earlier year has been taken. Complete details of loans and advances as well as interest receipt was provided by the assessee before the Assessing Officer. Advances which are not in nature of loans but given as business advances are not interest bearing and hence no question of providing interest thereon arises. During the year in assessment, the Company received Rs. 25,85,335/- and against the same interest paid was Rs. 17,79,475/- which shows that the interest earned by the Company is more than the interest paid. The interest paid on unsecured loans has a direct nexus with interest received as the Company is in the business of financing, a NBF Company and there being a net interest income which fully justified payment of interest. The borrowed funds have no links whatsoever with the amount invested in shares, and therefore, no disallowance u/s 14A is warranted in respect of interest paid. Since, the interest received is more than interest paid and there is direct nexus between them no disallowance is

warranted in under Rule 8D (2)(ii). Therefore, no further disallowance was warranted by the Assessing Officer in this regard. The Ld. AR relied upon the decision of the Hon'ble Apex Court in case of Maxopp Investment Ltd. v/s CIT 402 ITR 640 (SC).

9. The Ld. DR relied upon the assessment order as well as the order of the CIT(A) and further submitted that there is a fall in the reserved and loans/advance taken in this year as well.

10. We have heard both the parties and perused the material available on record. We are in agreement with the submissions made by the Ld. AR that interest received is more than interest paid and there is direct nexus between these two aspects as the assessee company is a registered NBFC (non banking financial company). The decision of the Hon'ble Apex Court in case of Maxopp Investment Ltd. (supra) is relevant in the present case. As regards the fall in reserves and the loan as pointed out by the Ld. DR, the same does not affect it much as pointed out in the tax audit report as well as from the records of balance sheet and profit and loss account of the assessee. Therefore, Ground Nos. 3, 3.1 and 3.2 are allowed.

11. As regards to Ground Nos. 4, 4.1 and 4.2 are concerned the issue that of notional interest is identical to that of A.Ys. 2008-09, hence Ground Nos. 4, 4.1 and 4.2 are allowed.

12. Therefore, ITA No. 2661/Del/2016 for Assessment Year 2011-12 is allowed.

13. In result, all the four appeals are allowed.

**Order pronounced in the Open Court on 15<sup>th</sup> March, 2019.**

**Sd/-**

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 15/03/2019  
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	14.02.2019
Date on which the typed draft is placed before the dictating Member	15.02.2019
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	15.03.2019
Date on which the final order is uploaded on the website of ITAT	15. 03.2019
Date on which the file goes to the Bench Clerk	15.03.2019
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	