

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.618/PUN/2017

निर्धारण वर्ष / Assessment Year : 2009-10

The Assistant Commissioner of Income Tax,
Circle – 2, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Jayant Maniklal Lunawat,
1206/B/22, Lunawat Court,
Shivajinagar, Pune – 411005

PAN : AAYPL3026H

.....प्रत्यर्थी / Respondent

Assessee by : Shri Shrenik Gandhi
Revenue by : Shri P.S. Naik

सुनवाई की तारीख / Date of Hearing : 16-04-2019

घोषणा की तारीख / Date of Pronouncement : 22-04-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 25-10-2016 for the assessment year 2009-10.

2. The Revenue has raised following grounds assailing the order of Commissioner of Income Tax (Appeals) :

- “1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the deduction of interest expenses & legal and professional expenses, which needed to be capitalized and added back in the WIP.

2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in not considering the issue of capitalization of interest expenses & legal and professional expenses in his order and allowing these expenses only on the basis that TDR trading business cannot be distinguished from routine business.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in not considering the fact that the assessee is following project completion method in respect of the project undertaken and therefore, all the expenses including interest expense and legal/professional expenses relating to such projects can only be allowed in the year in which revenue is recognized and therefore, the said expenses have to be included in the Closing WIP.*
4. *The appellant craves leave to add, alter, amend or omit any of the above grounds of appeal during the course of the appellate proceedings.”*

3. Shri P.S. Naik representing the Department submitted that the assessee had claimed interest and financial charges amounting to Rs.87,77,780/- and legal and professional charges Rs.15,90,742/- as expenditure. The Assessing Officer after examining the facts of the case held the expenditure towards payment of interest and financial charges as capital in nature. Similarly, the legal and professional charges paid by the assessee were also held to be on capital account. In First Appellate proceedings, the assessee assailed the above additions. The Commissioner of Income Tax (Appeals) deleted the additions without assigning any reasons in a non-speaking order.

4. On the other hand Shri Shrenik Gandhi appearing on behalf of the assessee vehemently defended the order of Commissioner of Income Tax (Appeals).

5. Both sides heard. Orders of the authorities below perused. The assessee is a builder and developer. The assessee is also engaged in trading of TDR. The assessee had claimed interest expenditure, legal and professional charges on revenue account. The Assessing Officer held the same to be on capital account. In first appeal, the Commissioner of

Income Tax (Appeals) reversed the findings of Assessing Officer. A perusal of impugned order shows that the order of Commissioner of Income Tax (Appeals) is sketchy and a non-speaking order. The contention of the assessee is that interest and financial charges and legal and professional charges are unrelated to TDR business. Since, the assessee has prepared consolidated Profit and Loss Account for his entire business activities the facts are not clearly emerging. Without commenting on the merits of the additions, we deem it appropriate to restore this file to Commissioner of Income Tax (Appeals) for passing speaking and detailed order. The impugned order is set aside and the appeal of Revenue is allowed for statistical purpose.

6. In the result, the appeal of Revenue is allowed for statistical purpose.

Order pronounced on Monday, the 22nd day of April, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22nd April, 2019.

RK

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)-3, Pune
4. The Pr. Commissioner of Income Tax-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune