



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

**आयकर अपीलीय अधिकरण “ऐ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं  
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।  
**BEFORE SHRI SAKTIJIT DEY, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

1. आयकर अपील सं./ I.T.A. No.6977/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2007-08)  
&
2. आयकर अपील सं./ I.T.A. No.4198/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2008-09)  
&
3. आयकर अपील सं./ I.T.A. No.6978/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2010-11)  
&
4. आयकर अपील सं./ I.T.A. No.6979/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2011-12)  
&
5. आयकर अपील सं./ I.T.A. No.4199/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2012-13)  
&
6. आयकर अपील सं./ I.T.A. No.4200/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2013-14)

<b>Laxmi Industrial Estate</b> 99, Prabhu Niwas Jawahar Nagar, Road No.15 Goregaon (W), Mumbai-400 062.	<b>बनाम/</b> Vs.	<b>ACIT-31(2)</b> Pratyakshkar Bhavan, Room No.708 C-11, Bandra Kurla Complex, Bandra Mumbai-400 051.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAAFL-1382-N</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri Reepal Tralshawala –Ld. AR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri Satish Chandra Rajore-Ld. DR



Laxmi Industrial Estate  
Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

<b>Date of Hearing</b>	:	27/08/2019
<b>Date of Pronouncement</b>	:	21/11/2019

## आदेश / O R D E R

### Per Bench: -

1.1 Aforesaid appeals by assessee for various Assessment Years (AY) contest separate orders of first appellate authority on certain common grounds of appeal. Since common issues were involved, the appeals were heard together and now being disposed-off by way of this consolidated order for the sake of convenience & brevity.

1.2 For ease of reference, the details of assessment framed in these years and the impugned orders could be tabulated as follows: -

No.	Assessment Year	Assessment Framed u/s	Date of Assessment Order	Date of order passed by first appellate authority
1.	2007-08	143(3) r.w.s. 147	05/03/2015	30/08/2016
2.	2008-09	143(3) r.w.s. 147	18/02/2016	06/04/2017
3.	2010-11	143(3)	26/03/2013	30/08/2016
4.	2011-12	143(3)	21/03/2014	30/08/2016
5.	2012-13	143(3)	27/03/2015	06/04/2017
6.	2013-14	143(3)	18/02/2016	06/04/2017

1.3 We take-up AY 2011-12 as the lead year since the proceedings in this year forms the basis for reopening of assessment for earlier years. The assessee has raised additional grounds of appeal *qua* legal & professional fees since the same is stated to have remained to be raised due to an inadvertent error. We find that this issue was subject matter of assessee's



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

appeal before first appellate authority and therefore, finding force in the submissions, we take the same on record as Ground No. D. Finally, the grounds as well as additional grounds read as under: -

**A) Treating revenue expenses as capital expenses**

1. The learned CIT(A) erred in confirming the interest expenses of Rs.3,19,23,663/- as capital expenses as against revenue expenses claimed in the return of income on the ground that the same relates to the project cost to be added to WIP without appreciating the fact that with respect to interest expense, the appellant has been following the said method of accounting and taxation since past several years i.e. from AY 1991-92 onwards and have been accepted all along by the department in regular scrutiny assessment for earlier years and hence, the interest expenses be directed to be treated and accepted as revenue expenses.

2. The learned CIT(A) failed to appreciate that principle of consistency needs to be adopted and more particularly when there is no overall tax impact and no loss to revenue by change in method of taxation and hence, the interest expenses capitalized is without any basis, unjustified and liable to be treated as revenue expenses.

3. Without prejudice to the above, the learned CIT(A) failed to appreciate that the interest expenses is revenue expense and in the nature of periodic cost and without specifically related to construction of any particular project / building and hence, is correctly reflected as revenue expenses and thus, capitalizing the same is unjustified and may be deleted.

**B) Without prejudice to above & without accepting, WIP ought to be recomputed and profit re-worked on the basis of revised WIP**

4. Without prejudice to the above and without accepting, the Ld. CIT(A) ought to have directed the AO to re-worked the WIP of the appellant and allowed the same to be carried forward to subsequent years so as to give benefit of deduction of the same and hence, instead of alleging the appellant for not submitting the revised computation, direction ought to be given to the AO to re-work the figure of WIP to be allowed to the appellant.

5. The Ld. CIT(A) failed to appreciate that it was for the AO to give logical conclusion by re-working the income of the appellant once the interest expenses were treated as capital expenses and added to WIP since the proportionate WIP is to be reduced from the sale of galas constructed and therefore once the WIP is revised, the profit from sale of galas would also have to be re-worked and hence, only considering the interest expenses as capital expenses without giving full effect to the same is without any justification and the profit may be recomputed considering the revised WIP.

**C) Addition of Loft Regularization Charges – Rs.35,17,297/-**

6. The Ld. CIT(A) erred in confirming the addition made towards loft regularization charges amounting to Rs.35,17,297/- without appreciating the fact that these expenses were incurred for and on behalf of the gala owners / purchasers of gala in the industrial estate, which were reimbursed by them to the appellant and instead of netting out the receipt and payment, the disclosure was made separately in the profit & loss account



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

and hence, the addition confirmed of loft regularization charges of Rs.35,17,297/- is without any justification and liable to be deleted.

7. The Ld. CIT(A) failed to appreciate that receipt of loft regularization charges was duly reflected in the profit and loss account in income side and since this is not the income of the appellant, the same ought to have been netted out with the payments made (reflected as expenses in the profit and loss account) since these are neither the income or expenses of the appellant and hence, the disallowance confirmed of the loft regularization charges shown as expenses and also taxing the amount received as income of the appellant is without any justification and the disallowance may be deleted.

**D) Treating legal & professional fees as capital expenses instead of revenue expenses**

8. The learned CIT(A) erred in confirming the legal & professional fee expenses of Rs.17,79,779/- as capital expenses as against revenue expenses claimed in the return of income on the ground that the same relates to the project cost to be added to WIP without appreciating the fact that these expenses are incurred in general and not any building or gala specific are revenue expenses and hence, the legal & professional fees expenses be directed to be treated as revenue expenses.

9. Without prejudice to the above and without admitting and accepting, the Ld. CIT(A) ought to have directed the Ao to re-work the WIP of the appellant and allow proportionate cash against sales of the year and balance to be carried forward to subsequent years so as to give benefit of deduction of the same and hence, instead of alleging the appellant for not submitting the revised computation, direction ought to be given to the AO to re-work the figure of WIP to be allowed to the appellant.

2.1 Facts in brief are that the assessee being resident firm sated to be engaged as developer of industrial galas was assessed for year under consideration u/s 143(3) on 21/03/2014 wherein the income of the assessee was determined at Rs.78.71 Lacs after certain additions / disallowances as against returned loss of Rs.275.79 Lacs filed by the assessee on 28/09/2011.

2.2 During assessment proceedings, it transpired that the assessee was constructing industrial galas at Oshiwara, Andheri (West), Mumbai and reflected sale of Rs.99.95 Lacs during the year under consideration. The assessee had shown closing work-in-progress (WIP) against various buildings at Rs.20.61 Crores and reflected certain advance for TDR at



Rs.15.06 Crores. The assessee had, *inter-alia*, claimed deduction of interest and Legal & professional expenses for Rs.319.23 Lacs & Rs.17.79 Lacs respectively as revenue expenditure in the Profit & Loss Account. These expenses, in the opinion of learned AO, were to be treated as capital expenses. In defense, the assessee submitted that expenses directly related to project were already capitalized. Since there were 2-3 projects simultaneously carried out by the assessee and hence, it was difficult to apportion the interest to various projects. It was also argued that borrowed funds were utilized for WIP which was a current asset for the assessee and therefore, the interest expenditure was to be treated as revenue expenditure.

2.3 However, noticing that the assessee had outstanding loans of Rs.22.48 Crores at year-end and also advances for booking for Rs.6.55 Crores and these funds were utilized for WIP and purchase of TDR and therefore, the interest expenditure as well as professional expenses, in the opinion of Ld. AO, being directly relatable to be project were to be capitalized. Accordingly, it was held that expenditure aggregating to Rs.337.03 Lacs was capital expenditure.

2.4 Another addition stem from the fact that during assessment proceedings, it was noted that the assessee debited loss on account of loft regularization charges for Rs.35.17 Lacs stated to be paid towards Architect / Consultants Fees, Development Charges, Penalty, MCGM fees etc. The particulars of the same has already been tabulated on page-3 of the quantum assessment order. The assessee explained that the said



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

expenditure was reimbursable in nature. However, not satisfied, treating the expenditure to be penal in nature, the same was disallowed u/s 37.

3.1 Before learned first appellate authority, with respect to interest & legal expenses, the assessee raised the plea of consistency and submitted that it was following consistent method of accounting since past many years for interest costs and therefore, the same were to be allowed since interest cost was periodic cost and not relatable to any specific project / building. However, observing that the assessee was following project completion method of accounting, learned CIT(A) held that closing WIP should include related costs including interest cost also. The judgments relied upon by the assessee were distinguished on factual matrix. Rather reliance was placed on the decision of Special Bench of Tribunal rendered in **Wall Street Construction Ltd. V/s JCIT 101 ITD 156** to arrive at conclusion that interest identifiable with the project should be allowed in the year when the project was completed and corresponding income from that project was offered for taxation.

3.2 The plea of consistency was rejected at para 5.3 by observing as under: -

5.3 As regards the claim of the assessee that it is following the same method of accounting since a number of years it is held that the same is without any substance. In this connection, it is necessary to note that the assessee is the owner of a 1,10,000 square yard plot of land at village Oshiwara, Taluka Andheri and the assessee was permitted to develop the land for construction of industrial Units in about 35 phases on 1971 or so. Till 2009 the assessee had developed 24 phases. The assessee had been making building and inter alia constructing several galas in each of the buildings spread over a basement and six upper floors). The assessee is doing the development work in a piecemeal fashion (building by building approach) and in essence has treated the development work as several separate projects under the umbrella of Laxmi Industrial Estate. This can be seen from the fact that the assessee has got registered seven



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

different co-operative societies till 2009 to manage the industrial units. The total building to be constructed are 12. For all practical purposes, each construction of the building is an independent project and the assessee cannot claim that the loan funds are fungible. The assessee was required to maintain project wise accounts which it has not done. Also the assessee cannot claim that the ongoing constructions carried out by the assessee since the beginning of its construction activities constitutes one unified project. Such a claim would be ludicrous. In any case the onus was on assessee to prove the source and application of the loan funds, which it has not done. Under the circumstances, it is confirmed that since the loan funds were used for the ongoing projects of the assessee they were required to be capitalized.

3.3 Proceeding further, it was also noted that the assessee had not given details of legal & professional charges paid and lead evidences that the expenses were incurred for the purposes of ongoing WIP only. Regarding assessee's plea that Ld. AO failed to identify the building under construction and interest cost attributable to them, it was held that onus was on assessee to establish the same in terms of Section 114 of The Indian Evidence Act, 1872 and therefore, the value of WIP could not be re-worked in the absence of any workings submitted by the assessee. Finally, the action of Ld. AO in treating the expenditure to be capital in nature, was upheld.

3.4 Regarding disallowance of Loft Regularization Charges, upon perusal of agreement of sale, it was observed that the agreement prohibited the buyer to make any addition or alteration in the said premises without obtaining the prior written permission of the assessee which was in contrast to the averments made by the assessee that the residents themselves made mezzanine floors in their individual galas and were served with individual show cause notices by Municipal Corporation and approached the assessee to liaise with the authorities to get the lofts regularized. As per the terms of supplementary agreement entered into by the assessee with



the gala owners, the assessee was requested to utilize the balance FSI / TDR available with it to regularize the unauthorized construction against certain consideration. The assessee took money from the gala owners to meet the expenses involved for regularization of the lofts and net surplus was offered for tax. However, noticing that assessee's approval was necessary before making any structural changes, the said submissions could not find favor with Ld. CIT(A). Further, finding that the nature of expenses incurred by the assessee was not clear and the expenditure pertained to financial year 2009-10 and therefore, the same could not be allowed due to lack of evidences and explanations. Finally, the action of Ld. AO in treating the expenditure as capital expenditure was upheld. Aggrieved, the assessee is under appeal before us.

4. We have and considered the rival submissions, written as well as oral and deliberated on judicial pronouncements & the material placed before us.

5.1 First, we take up the issue of capitalization of expenditure. As noted by Ld. CIT(A), the assessee was constructing 12 buildings on a large piece of land. Each building comprised-off of number of galas which were being sold by the assessee under separate sale agreement to different buyers. As on 31/03/2007, the buildings were stated to be at various stages of construction as tabulated below: -

No.	Building No.	No. of Galas	Remarks
1.	1.	58	Completed
2.	2.	48	Completed
3.	3.	45	Completed
4.	4.	38	Completed



5.	5.	162	Under-Construction
6.	6.	46	Completed
7.	7.	65	Completed
8.	8.	274	Under-Construction
9.	9.	343	Under-Construction
10.	11 (New) Earlier (10,12,14)		No Construction

The Ld. AR has pleaded that the assessee is carrying on same business for the last more than 30 years and consistently following the same method of accounting since the very beginning. This method of accounting is that upon construction of gala, sale agreement is executed and possession is handed over and the sale is recognized in respect of such gala and profit offered to tax. In other words, the revenue is recognized immediately upon sale of a gala, irrespective of the status of building in which it is situated. It has further been submitted that only actual construction related expenses are debited to Work-in-progress (WIP) account of a particular building and all other costs including interest cost is considered as periodic costs and claimed as revenue expenditure in the Profit & Loss Account. This peculiar accounting methodology is stated to have been followed by the assessee and also accepted by revenue under various scrutiny assessments since AY 1991-92 onwards. Regarding difficulty in identifying and apportioning the interest cost to a particular building / galas, Ld. AR has pleaded that 2 to 3 projects were simultaneously being carried out by the assessee at any given point of time making it impossible to exactly allocate the interest expenses to any particular project and no such exercise was ever carried out since the beginning as this method was accepted by the department



also. Since loans were borrowed in earlier years and are carried forward from year to year with additions and deletions every year, the said fact would make it impossible to identify & apportion the cost to a particular building or gala. In fact, the revenue was recognized immediately upon sale of a particular gala irrespective of the construction stage of the corresponding building. Against the revenue offered, proportionate WIP and periodic expenses are claimed including interest expenses. Upon due consideration, we find substantial force and logic in these submissions since the stated facts as averred by Ld. AR has remained uncontroverted by revenue before us.

5.2 Another plea raised by Ld. AR is the plea of tax neutrality since the exercise of disturbing the accounting methodology would ultimately be tax neutral and there would be no impact on final tax liability and therefore, plea has been raised not to disturb the same. To support these submissions, reliance has been placed on following binding judicial precedents: -

- (i) CIT V/s Excel Industries Ltd. -2013 358 ITR 295 – Hon'ble Supreme Court
- (ii) CIT V/s Nagri Mills Co. Ltd. 1958 33 ITR 681 – Hon'ble Bombay High Court
- (iii) CIT V/s Vishnu Industrial Gases Pvt. Ltd. – IT Ref. No. 229 (Delhi) of 1988 dated 06/05/2008

To support the plea of consistency, reliance has been placed on following judicial pronouncements: -

- (i) Godrej & Boyce Mfg. Co. Ltd. V/s DCIT -2017 394 ITR 449- Hon'ble Supreme Court
- (ii) Radhasoami Satsang V/s CIT – 1991 193 ITR 321– Hon'ble Supreme Court
- (iii) CIT V/s Darius Pandole- 2010 330 ITR 485- Hon'ble Bombay High Court



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

5.3 Upon due consideration, we are inclined to accept the argument that the whole exercise of disturbing the accounting methodology would ultimately be tax neutral since the genuineness of the expenditure is not under dispute. Even if the interest expenditure is allowed to be capitalized as urged by the revenue, the assessee will ultimately get the deduction of the expenditure on proportionate basis in various years corresponding to years in which the galas have been sold by the assessee and offered to tax. Further, we are of the considered opinion that there should be finality to the issues and facts being identical, the revenue would be debarred from changing its stand and unsettle the settled position. We are quite conscious of the fact that res-judicate is not applicable to Income Tax Proceedings and each year of assessment is separate unit, however, there is a need for consistency and existence of strong and compelling reasons for departure from settled position has to be spelt out as observed by Hon'ble Supreme Court in **Godrej & Boyce Mfg. Co. Ltd. (2017 394 ITR 449)**. In fact, it is noted that the AY 2009-10 was reopened by the revenue, however interest expenditure claimed as periodic cost was not disturbed while framing the assessment. Similarly, the assessment for AY 2014-15 was also framed u/s 143(3) r.w.s. 144 wherein the said position has again not been disturbed by the revenue. Therefore, treating the similar expenditure as periodic cost in few years while disturbing the same sporadically in other years, could not be held to be justified. The Hon'ble Supreme Court, in **CIT V/s Bilahari Investment Ltd. 2008 299 ITR 1** held that every assessee was entitled to arrange its affairs and follow the method of accounting, which the



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

department has earlier accepted. It is only in those cases where the department records a finding that the method adopted by the assessee results in distortion of profits, the department can insist on substitution of the existing method. Particularly when the whole exercise would be revenue neutral, no interference would be warranted. The Hon'ble Bombay High Court, in **CIT V/s Darius Pandole (330 ITR 485)**, similarly observed as under: -

3. Both for the assessment years 1997-98 and 2002-03, scrutiny assessments were framed under section 143(3). In the course of the assessment proceedings for the assessment year 2002-03, a notice was issued to the assessee under section 142(1) on November 7, 2003 in which the assessee was called upon to clarify as to why the loss on the sale of shares had been debited to the profit and loss account as a business expense. The assessee submitted a representation on December 16, 2003 in support of his contention that his business consisted of the purchase and sale of shares. The letter of the assessee recorded that during the course of discussions, the Assessing Officer had pointed out that he intended to treat the loss under the head "Income from capital gain" mainly on account of the fact that his stock of shares had been shown under the head "investments" in the balance-sheet. The assessee submitted on the basis of precedent that the trading receipt would not cease to be so by being written up in the books of account in a particular manner and that the entries in the books of account could not alter or affect the character of the transaction. The same position obtained for the assessment year 1997-98 where a similar query was raised by the Assessing Officer to which the assessee had replied on September 18, 1999. Assessments were thereafter completed for the assessment years 1997-98 and 2002-03 and the contention of the assessee was duly accepted.

4. It is in this factual background that the Tribunal, while deciding the appeal for the assessment year 2003-04 has observed that there was no change in the set of facts and circumstances as they obtained for the assessment years 1997-98 and 2002-03. The Tribunal was correct in holding that there was due application of mind by the Assessing Officer to the very same issue during the course of the earlier two assessment years and that the assessments were finalized after considering the reply filed by the assessee specifically to the query raised by the Assessing Officer. In the circumstances, the Tribunal was, in our view, justified in following the decision of the Supreme Court in *Radhasoami Satsang v. CIT* [1992] 193 ITR 321/ 60 Taxman 248. While the principle of *res judicata* could not as an abstract principle apply to assessment proceedings since each year of assessment has to be considered separately, yet when a fundamental aspect was duly considered after a query was raised by the Assessing Officer and was answered by the assessee on the same facts, a change in view, was evidently not warranted for the assessment year in question. So construed, we do not



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

find that the decision of the Tribunal will give rise to any substantial question of law. The view which we have taken is consistent with the principle laid down by the Division Bench of this court in *Karsondas Ranchhoddas v. CIT* [1972] 83 ITR 256 . The appeal is hence dismissed.

5.4 Keeping aforesaid principles in mind, we are inclined to accept the arguments raised by Ld. AR, in this regard. Therefore, we hold that interest expenditure claimed by the assessee would be allowable as revenue expenditure. So far as the capitalization of legal & professional charges is concerned, it has been alleged that the assessee had not furnished the details of the same and explained the nature of expenditure. Therefore, the matter, to that extent, stand restored back to the file of Ld. AO for adjudication de-novo, with a direction to the assessee to provide complete details therefore and explain the circumstances which entitle the assessee to claim the said expenditure as revenue expenditure. In the result, the ground (A) stand allowed. Ground (D) stand allowed for statistical purposes. Ground (B), being alternative ground, becomes infructuous.

6.1 Regarding issue of loft regularization charges, Ld. AR has pleaded that the expenditure was merely reimbursable expenditure in nature since the same was incurred on behalf of the buyers of the galas. Our attention is drawn to the fact that the assessee, in fact, credited a sum of Rs.37.67 Lacs on this account, in the Profit & Loss Account against expenditure of Rs.35.17 Lacs and offered differential amount i.e. Rs.2.50 Lacs to tax. It has further been averred that the notices were issued by the Municipal Authorities against gala owners directly who themselves carried out unauthorized construction in their respective galas and the assessee was



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

merely liaising with the authorities on behalf of the gala owners to get the unauthorized construction regularized. Our attention has also been drawn to the fact that the assessee has not carried out any unauthorized construction requiring regularization and therefore, the expenditure could not be held to be penal in nature.

6.2 We find that financial documents as well as sample sale agreement & other correspondences as placed before us support these arguments. The perusal of Profit & Loss Account for the year, as placed on record, establishes that the assessee has credited loft regularization charges of Rs.37,67,703/- and debited a sum of Rs.35,17,297/- which lend credence to the argument that expenditure was in the nature of reimbursement and the assessee, in fact, has offered differential amount to tax. This is further fortified upon perusal of various documents as placed on page nos. 75-90 of the paper-book of this year. These documents are in the nature of sample copy of notices received by the owner /occupier from Municipal Authorities and the request from owner /occupier to the assessee to get the unauthorized construction regularized on behalf of the buyer at their cost and risk. Therefore, on the given facts and circumstances, the aforesaid addition could not be sustained. By deleting the same, we allow Ground No. (C) of the appeal.

7. The appeal may be treated as partly allowed in terms of our above order.

**Assessment Years : 2012-13 & 2013-14**

8.1 Facts as well as issues are identical in these years. In AY 2012-13, the only issue involved is capitalization of interest and legal /professional fees. The assessment has been framed u/s 143(3) on 27/03/2015 wherein an amount of Rs.429.43 Lacs as claimed by the assessee as revenue expenditure has been disallowed, treating the same as capital expenditure. The learned CIT(A), rejected assessee's claim on similar reasoning, against which the assessee is under appeal before us with identical grounds of appeal.

8.2 Facts being pari-materia the same, our observations, findings as well as adjudication as for AY 2011-12 shall *mutatis-mutandis* apply to this year also. Accordingly, the interest expenditure would be allowable as revenue expenditure. The issue of legal / professional fees stands restored back to the file of Ld. AO on similar lines with similar directions. In the result, the appeal stands partly allowed.

9.1 In AY 2013-14 also, the only issue involved is capitalization of interest and legal / professional fees & Brokerage expenses paid on loan. The assessment has been framed u/s 143(3) on 18/02/2016 wherein an amount of Rs.526.06 Lacs as claimed by the assessee as revenue expenditure has been disallowed, treating the same as capital expenditure. The learned CIT(A), rejected assessee's claim on similar reasoning, against which the assessee is under appeal before us with identical grounds of appeal.

9.2 Facts being pari-materia the same, our observations, findings as well as adjudication as for AY 2011-12 shall *mutatis-mutandis* apply to this year



also. Accordingly, the interest expenditure as well as brokerage paid thereupon would be allowable as revenue expenditure. The issue of legal / professional fees stands restored back to the file of Ld. AO on similar lines with similar directions. In the result, the appeal stands partly allowed.

### **Assessment Year: 2010-11**

10.1 In this year, the assessment has been framed u/s 143(3) on 26/03/2013 after certain additions. The Ld. AO did not disturb the interest expenditure of Rs.43.85 Lacs as claimed by the assessee as periodic cost but the same was, in fact, disallowed by Ld. CIT(A) during appellate proceedings on more or less similar reasoning as given in AY 2011-12. Therefore, facts being *pari-materia* the same, our observations, findings as well as adjudication as for AY 2011-12 shall *mutatis-mutandis* apply to this year also. Accordingly, the interest expenditure would be allowable as revenue expenditure. Ground (C) stand allowed which makes Ground (D) infructuous.

10.2 In this year, the following quantum additions as made by Ld. AO and confirmed by Ld. CIT(A) are also the subject matter of appeal before us: -

- (i) Unexplained expenditure – Rs.31,915/-
- (ii) Interest paid to related parties – Rs.22.42 Lacs

10.3 Brief facts are that during assessment proceedings, it transpired that the assessee made purchases of Rs.31,915/- from a suspicious dealer namely M/s S.M. Trading Co. The Ld.AO, relying upon investigation carried out by Sales Tax Department, Maharashtra disallowed the same. The same, upon confirmation by first appellate authority is under challenge



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

before us. Upon due consideration, we find that Ld. AO has primarily relied upon the investigation being carried out by other authority while making the disallowance. However, no further investigation is done by Ld. AO. Keeping in view the assessee's nature of business, we restrict the addition to 12.5% of these purchases. Ground (A) stand partly allowed.

10.4 Upon perusal of interest payment chart, it transpired that the assessee paid interest in the range of 12% to 15% to unrelated parties as against interest of 18% paid to related parties. The Ld. AO proceeded to disallow interest in excess of 15% and accordingly, made addition of Rs.22.42 Lacs in the hands of the assessee for excess payment of interest. The first appellate authority, confirmed the same, on the logic that loans obtained from related parties were more secure and therefore, less interest was payable to related parties. Aggrieved, the assessee is under appeal before us.

10.5 Upon perusal of factual matrix, it is noted that the assessee has paid brokerage at average rate of 2.43% while availing loans from outside parties while no such brokerage is stated to have been paid against loans obtained from related parties. Keeping in view the same, the difference in interest rate would only be marginal. Another fact is that there is no immediate benefit to the assessee since it has incurred losses during the year and also assessed at loss figures. Therefore, in terms of CBDT circular No. 6P of 1968 dated 06/07/1968 as well as the decision of Hon'ble Bombay High Court rendered in **CIT V/s Indo Saudi Services (Travel) P. Ltd. (2009 310 ITR 306)**, no disallowance would be warranted when there



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

was no attempt to evade taxes. Keeping in view the same, we delete the impugned disallowance of Rs.22.42 Lacs as made u/s 40A(2)(b). Ground (B) stand allowed.

10.6 The appeal stands partly allowed.

### **Assessment Years: 2007-08 & 2008-09**

11. In AY 2007-08, the assessment has been framed u/s 143(3) r.w.s. 147 of the Act on 05/03/2015. The assessment for AY 2008-09 was similarly framed u/s 143(3) r.w.s. 147 of the Act on 18/02/2016. Both the years were reopened on the basis of assessment proceedings of AY 2011-12 to disallow the interest expenditure of Rs.25.83 Lacs & Rs.54.29 Lacs claimed by the assessee as revenue expenditure. In AY 2008-09, the assessee had paid brokerage on loans for Rs.2.68 Lacs which has also been disallowed, treating the same as capital expenditure. The assessee contested the legality of assessment proceedings and quantum additions on merits, for both the years, which were rejected by first appellate authority. Aggrieved, the assessee is under appeal before us wherein beside contesting the issue on merits, the assessee is contesting legality of reassessment proceedings. So far as the issue on merits is concerned, we find that the same has already been adjudicated by us in assessee's favor for AY 2011-12 which form the very basis of reopening the assessment of these two years. Therefore, facts being pari-materia the same, our observations, findings as well as adjudication as for AY 2011-12 shall *mutatis-mutandis* apply to these two years also. Accordingly, the interest expenditure for both the



Laxmi Industrial Estate

Assessment Years: 2007-08 to 2008-09, 2010-11 to 2013-14

years and brokerage expenses for AY 2008-09 would be allowable to the assessee as revenue expenditure. The grounds in both the years, to that extent, stands partly allowed. The said adjudication would render the legal grounds merely academic in nature and therefore, not dealt with by us. The appeal for both the years stands partly allowed.

### **Conclusion**

12. All the appeal stands partly allowed to the extent indicated in the order.

*Order pronounced in the open court on 21<sup>st</sup> November, 2019*

Sd/-  
(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-  
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/11/2019  
Sr.PS:-Jaisy Varghese

### **आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai