

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

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4157/Del/2017 : Asstt. Year : 2012-13

Deputy Commissioner of Income Tax, Circle-7(1), New Delhi	Vs	M/s DLF New Gurgaon Retail Developers Ltd., 1-E, Naaz Cinema Complex, Jhandewalan Extension, New Delhi-55
(APPELLANT)		(RESPONDENT)
PAN No. AACCD6836G		

**Assessee by : Sh. R. S. Singhvi, CA
Revenue by : Ms. Ashima Neb, Sr. DR**

Date of Hearing: 12.12.2019	Date of Pronouncement: 12.12.2019
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order dated 14.03.2017 of the Id. CIT (A)-3, Delhi.

2. Following grounds have been raised by the revenue:

"1. The Id. CIT (A) has erred in deleting the addition of Rs.4,31,91,217/- made by the AO on account of disallowance of interest expenditure claimed u/s 36(1)(iii) of the I.T. Act but has not appreciated the facts of the case as interest has been incurred on the payment of borrowed funds for acquisition of properties and not for earning income."

3. The assessee filed return of income on 26.09.2012 declaring an income at Nil in the book profit u/s 115JB of the Income Tax Act, 1961 were shown at Rs.98,87,090/-. Subsequently, the case was selected for scrutiny assessment and an assessment order dated 30.03.2015 was passed by the Assessing Officer u/s 143(3) of the Act after disallowing

interest expenses of Rs.4,31,91,217/- claimed u/s 36(1)(iii) of the Act on the alleged ground that no part of this expenditure was attributable to the income received on renunciation of development rights.

4. The Id. CIT (A) deleted the addition. Aggrieved the revenue is in appeal before us.

5. The Id. DR argued that while the assessee received income from renunciation of development rights, the interest expenses paid cannot be treated as expenses incurred for earning the income expended wholly and exclusively for the purpose of business or profession. It was argued that the interest paid on borrowed capital shall be allowed only if the borrowed funds are used to earn income. Relying on the provisions of Section 36(1)(iii), it was argued that since the lands that were purchased were capital assets shall not be allowed as deduction.

6. Rebutting the arguments, Id. AR argued that the inventories purchase are stock in trade as per the balance sheet of the company and submitted the same for perusal. We find that the inventories viz. land was taken into account in stock in trade. We have also gone through the orders of the Id. CIT (A) wherein it was held as under:

"2.1 Having gone through the detailed submission of the appellant, the order of assessment passed by the Assessing office and the material facts placed on the record, it emerges from the facts that the company is engaged in the business of development of real estate. The company has shown the closing stock of the inventory of properties at Rs. 51,92,16,504/-. The company is having capital of Rs. 5,00,000/- and there are the borrowings of Rs. 53,83,68,354/- which have been used for the purpose of the purchase of properties shown in stock in trade. It is evident from the submissions filed by the assessee that funds borrowed by the company have been used for acquiring properties which have been shown in the stock in trade. The interest of Rs. 4,31,91,217/- has been paid for the funds

borrowed for the purpose of business of the development of real estate. The interest of Rs. 4,31,91,217/- is as such allowable u/s 36(1)(iii) of the Act. The disallowance made by the Assessing officer is therefore, deleted and he is directed to modify the order of the assessment accordingly."

7. This factual matrix could not be controverted by the revenue.
8. Further, reliance is also placed on the order of the Hon'ble High Court of Rajasthan in the case of Aditya Propcon Pvt. Ltd.. We find that the facts of the case are squarely identical with the issue before us. Regarding the deduction u/s 36(1)(iii), the Hon'ble High Court has held as under:

The proviso specifically referred to the interest paid in respect of capital borrowed for acquisition of any asset for extension of existing business. The present case is of acquisition of land for its development in course of real estate activity of the assessee. Assessee is about to complete one project and to continue the activities has purchased another land to develop another project. The argument of the Id. DR that the proviso would apply to the assessee's case cannot be accepted. We are of the considered opinion that the purchase of inventory is continuation of the same business activity in routine course and cannot be termed as extension of the business activity. The proviso has been inserted to disentitle claim of interest on funds borrowed for acquisition of capital assets for the period upto the asset is put to use. The term 'put to use' here applies to capital asset only because a capital assets is held to facilitate the business activity and sometimes it needs to be prepared after its acquisition for being used to facilitate the business activity. As against this, purchase and holding of inventory item itself is a business activity. In absence of this proviso, section 36(1) (iii) earlier entitled assessee to claim interest in respect of capital assets, even for the period during which they were under construction as held in various judgments pointed out by the Id. AR of the assessee. The interest was found allowable despite its capitalization in the books of accounts in the judgments. We are therefore, of the opinion that the interest on funds borrowed to purchase land which is part of inventory of the assessee company is an

allowable deduction u/s 36(1)(iii). We accordingly reject this ground of the departmental appeal also."

10. Counsel for the respondent has supported the order of the authorities and contended that the both the authorities have rightly held in favour of the assessee inasmuch as even if the contentions which have been advanced by the department, no tax liability has been reduced or there is any case of evasion of tax."

9. In the light of factual and legal position, we hereby hold that the interest expense on the borrowed funds utilized for purchasing the properties which have been a part of the inventory is an allowable deduction under the provisions of Section 36(1)(iii).

10. In the result, the appeal of the revenue is dismissed
Order Pronounced in the Open Court on 12/12/2019.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 12/12/2019

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR