

**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. 4153/Del/2017 : Asstt. Year : 2011-12

ITA No. 4154/Del/2017 : Asstt. Year : 2012-13

Deputy Commissioner of Income Tax, Circle-7(1), New Delhi	Vs	M/s DLF Emporio Ltd., 9 th Floor, DLF Centre, Sansad Marg, New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AACCR0093B		

Assessee by : Sh. R. S. Singhvi, CA

Revenue by : Ms. Nidhi Srivastava, CIT DR

Date of Hearing: 10.12.2019	Date of Pronouncement: 16.12.2019
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ORDER

Per Bench:

The present appeals have been filed by the revenue against the orders dated 14.03.2017 of the Id. CIT (A)-3, Delhi.

2. Since, the issues involved in both the appeals are common, they were heard together and are being disposed off by common order.

3. In ITA No. 4153/Del/2017, following grounds have been raised by the revenue:

"1. Ld. CIT (A) has erred in deleting the addition of Rs.44,17,99,718/- made by the A.O. u/s 24(b) of the I.T. Act on account of interest on term loan taken after construction/development of commercial property from ICICC bank and not also utilized to repay the existing loan for construction/development of commercial property."

4. During the year under consideration, the assessee company was engaged in the business of leasing and maintenance of constructed properties (rental income is offered for tax under income from house property and service receipts is offered for tax under profits and gains from business and profession). During the year, the assessee has claimed interest cost and finance charges amounting to Rs.53,59,56,913/- which includes Rs.38,54,50,563/- as interest on loan from ICICI Bank for F.Y. 2010-11 and Rs.5,63,49,155/- as 1/5th of interest paid for pre-construction period. The Assessing Officer disallowed the interest expenses of Rs.44,17,99,718/- (Rs.38,54,50,563 + 5,63,49,155) relating to the term loan from ICICI Bank on the grounds that it is a post property acquisition interest.

5. The Id. CIT (A) held that the interest is an allowable expenditure.

6. Heard the arguments of both the parties who relied on the orders of the respective authorities. We find that the issue has been before the Tribunal for the assessment years 2009-10 and 2010-11. In the earlier years, the Co-ordinate Bench of the ITAT referred the matter back to the file of the Assessing Officer to examine the claim of the assessee that the new loan was sanctioned by ICICI Bank and utilized for repayment of old loans which in turn utilized for acquisition and construction of property. Since, the fact of utilization of new loan whether for repayment of old loan or not has not been clearly established before us, we hereby remand the matter back to the file of the Assessing Officer to re-examine the issue and allow the deduction in accordance with the provisions of Section 24(b) of the Income Tax Act, 1961.

7. In the result, both the appeals of the revenue are allowed for statistical purposes.

Order Pronounced in the Open Court on 16/12/2019.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 16/12/2019

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