

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI
BEFORE SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SH. K. N. CHARY, JUDICIAL MEMBER
(Through Video Conferencing)

ITA No.4159/DEL/2015
(Assessment Year: 2011-12)

DLF Limited DLF Centre, (9 th Floor) Sansad Marg, New Delhi-110001 PAN No.AAACD3494N	Vs	Addl. CIT Range-10 404, C. R. Building New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.4794/DEL/2015
(Assessment Year: 2011-12)

Addl. CIT Range-10 404, C. R. Building New Delhi	Vs	DLF Limited DLF Centre, (9 th Floor) Sansad Marg, New Delhi-110001 PAN No.AAACD3494N
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. R. S. Singhvi, CA Sh. Satyajeet Goel, CA
Respondent by	Ms. Nidhi Srivastava, CIT DR

Date of hearing:	14/08/2020
Date of Pronouncement:	29/09/2020

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the cross appeals filed by the assessee as well as The Deputy Commissioner Of Income Tax, Circle 7 (1), New Delhi (the Learned Assessing Officer/AO) against the order of Commissioner Of Income Tax (Appeals) – 3, New Delhi (the learned that CIT A) dated 7 May 2015 for assessment year 2011-12 .
02. The assessee in its appeal in ITA number 4159/Del/2015 has raised following grounds of appeal.

ITA No.4159/Del/2015

- 1.1 *That learned CIT(A) has grossly erred in law and on the facts and in the circumstances of the appellant's case in confirming the net addition of Rs.6,48,480/- [i.e. after allowing standard deduction @ 30% on gross addition of Rs.9,26,400/- which works out to Rs.2,77,920/-] made by the Assessing Officer on account of notional rent, whereas in fact the appellant has not received any rental income from these tenants. [Page 165-170 of CIT(A)'s Order]*
 - 1.2 *That learned CIT(A) has grossly erred in law and on the facts in not appreciating the fact that the taxable income means real income and not a fictional income.*
 2. *That learned CIT(A) has grossly erred in law and on the facts and in the circumstances of the appellant's case in confirming the disallowance of Rs.86,35,131/- out of legal and professional expenses by treating them capital expenditure in nature ignoring the fact that the appellant had itself added back in its computation of total income an amount of Rs.79,73,331/- out of Rs.86,35,1131- and balance amount to the extent of Rs.6,61,800/- is permissible deduction as revenue expenditure. [Page 230-239 of CIT(A)'s Order]*
 3. *That the appellant reserves its right to assail the same on such other ground or grounds as may be advanced at the time of hearing for which the appellant craves leave to amend, vary or add to the grounds hereinbefore appearing.*
03. The learned AO in ITA number 4794/del/2015 has raised following grounds of appeal.

ITA No.4794/DEL/2015

1. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in allowing deduction of Rs. 156,70,77,979/- u/s 80IAB of the Act,*
2. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting in disallowances made by Assessing Officer of Rs. 81,02,00,000/- on account expenses to be allocated from non SEZ projects to SEZ projects .*
3. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting disallowance of Rs 164,38,15,240/- on account of revenue recognition as per POCM.*
4. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the disallowance of Rs. 128,03,19,000/- on account of interest capitalization?*
5. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts*

of the case in deleting the disallowance of Rs. 8,42,19,546/- on account of Brokerage & Commission.

6. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 2,13,314/- on account of contingency deposits received during the year.*
7. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 8,73,812/- on account interest free security deposit.*
8. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 4,54,78,414/- on account of registration charges received from customers.*
9. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 9,99,09,626/- on account of non allocation of proportionate overheads to group companies.*
10. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 232,30,96,000/- made by AO u/s 14A of the I.T.Act, 1961 read with Rule 8D of the Income Tax Rule, 1962.*
11. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in directing the AO to treat income of Rs.14,27,57,756/- as income from House Property .*
12. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 8,49,930/- on account of notional rental income on vacant/leased properties.*
13. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 5,01,672/- on account of recalculation of depreciation.*
14. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 87,65,346/- made by the AO on account of disallowance of prior period expenses.*
15. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 6,66,91,587/- made by the AO by holding them to be in capital nature.*
16. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 2,34,40,014/- made by AO under different heads by holding them being personal in nature.*
17. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 45,15,42,738/- on account of disallowance of expenses for operation and maintenance of helicopter and air craft not being wholly & exclusively for business purpose.*
18. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts*

of the case in deleting the addition of Rs. 257,90,00,000/- on account of notional interest under charged by the assessee.

19. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 1,22,34,040/- on account of carbon credit.*
 20. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs. 3,00,00,000/- made by AO on account of disallowance of legal and professional expenses paid by the assessee company to Mr. Ajay Khanna.*
 21. *The Commissioner of Income Tax(Appeals) has erred in law and on the facts of the case in deleting the addition of Rs.6,22,00,000/- on account of short / non allocation of proportionate overhead expenditure to windmills at Gujarat and Karnataka.*
 22. *The appellant craves to leave, to add, alter or amend any ground of appeal raised above before or during the course of hearing.*
04. Brief facts of the case shows that assessee is a company which is engaged in the business of real estate development. It filed its return of income on 29/9/2011 declaring an income of ₹ 8886954800/- The assessment was completed by the learned assessing officer u/s 143 (3) rws 142 (2A) of the act per order of assessment dated 31/3/2014 . The total income of the assessee was assessed at Rs. 19307716985/- . Total additions/ disallowances of Rs. 10432269625/- were made to total income.
05. Aggrieved by the order of the learned assessing officer, the appellant preferred an appeal before the learned CIT – A passed an order partly allowing the appeal of the assessee on 7th of May 2015. Therefore with respect to the additions deleted by the learned CIT – A, the learned AO is aggrieved and with respect to the addition confirmed by him, the assessee is aggrieved and therefore both are in appeal before us.
06. The learned authorised representative has submitted that in case of appeal of the learned assessing officer all the grounds are covered in favour of the assessee as per order of the coordinate bench for assessment year 2008 – 09 in ITA number 2749 – Del – 2013 dated 27/5/2019. He further submitted that the coordinate bench for assessment year 2008 – 09 followed the order for assessment year 2006 – 07 dated 11 March 2016 in case of the assessee. He submitted that on almost all of the issues the revenue did not prefer any appeal before the honourable High Court and the issues have crystallized and reached the finality in favour of the

assessee. Even otherwise he submitted that the issues are covered in favour of the assessee by the decision of the coordinate bench. He submitted that only new issue that remains to be adjudicated in this appeal is ground number 16 which relates to the disallowance of expenses on account of same not incurred only and exclusively for the business purposes and held them to be of personal nature in case of the assessee amounting to ₹ 23,440,014/- and ground number 20 wherein the disallowance out of legal and professional expenses paid to Mr. Ajay Khanna of ₹ 3 crores is concerned. He otherwise submitted that there is no other issue in the appeal of the AO which are not decided in favour of the assessee. He therefore submitted that his arguments are supporting the orders of the coordinate bench and the learned CIT – A who has allowed the claim of the assessee.

07. Coming to the appeal of the assessee the learned authorised representative submitted that ground number one with respect to the addition made by the learned assessing officer on account of notional rent whether security deposit is received but no rental income is shown wherein the learned assessing officer has made the addition of ₹ 648,480/- is already covered in favour of the assessee by the order of the coordinate bench for assessment year 2008 – 09 dated 27/5/2019 which followed the order of the coordinate bench in assessee's own case for assessment year 2006 – 07 which was rendered on 11th of March 2016. With respect to the second ground of the appeal he submitted that there is a double addition to the extent of ₹ 7,973,331 which has already been disallowed by the assessee in its return of income. He submitted that the out of the total disallowance confirmed by the learned CIT – A of ₹ 8 635131/- there is a double addition to the extent of ₹ 7 973331/-. He otherwise stated that the balance expenditure is also revenue in nature.
08. The learned departmental representative referring to the appeal of the learned assessing officer submitted that the most of the issues have been covered in assessee's own case by the order of the coordinate bench for earlier years. However he submitted that he vehemently supports the order of the learned assessing officer on all these issues.
09. With respect to the appeal of the assessee he submitted that though ground number one has already been decided in case of the assessee for earlier years where there is an addition on account of notional rent with respect to the security deposit is received by the assessee but no rental income has been shown he

supports the order of the learned CIT – A. With respect to ground number two he submitted that if there is a double disallowance, same can be verified by the assessing officer from the competition of the total income.

10. On the above submission made by the respective parties we proceed to decide the appeal of assessee first. The ground number 1 of the appeal of assessee is against the net addition confirmed by the learned CIT – A on account of notional rent where security deposit received but rental income is not shown by the assessee. The resultant addition made by the learned assessing officer is of ₹ 648,480/-. The learned CIT – A also confirmed the same wide para number 19.2 of his order. The learned authorised representative submitted that this issue is covered in hair of the assessee as per the order of the coordinate bench in assessee’s own case for assessment year 2008 – 09 at para number 21 – 24. The coordinate bench dealt with this issue following the order in case of assessee for assessment year 2006 – 07 and 2007 – 08 as Under; –

“21. Coming to the issue of addition on account on notional rent where security deposits were received but no rental was shown, amounting to ₹ 10,91,270/-. It has been pointed out by both the parties that this issue now stands covered in favour of the assessee by the Tribunal in assessee’s own case for the Assessment Year 2007-08 vide order dated 01.11.2017 in ITA No.3846/D/2012.

22. The addition has been made on the ground that assessee despite being owner of the Kiosks has not disclosed rental income in its books and the same has been transferred to M/s. DLF Services Ltd. by over riding title. M/s. DLF Services Ltd is providing maintenance and upkeep services of the mall including Kiosks. In return for consideration for these services, the appellants vide authority letter dated 12/12/2005 has granted M/s DLF Services Ltd., right to recover the rental receipts from the third parties using said Kiosks. Assessee has not claimed any expenditure in the name of M/s DLF Services Ltd. in connection with maintenance services of the mall. In view of above arrangement, M/s. DLF Services Ltd. is showing the receipts from the Kiosk as a part of its income which is duly subjected to tax in its hands and accordingly there is no loss to the revenue.

23. This precise issue had come up for consideration before the Tribunal in assessee’s own case in the earlier year, wherein it has been observed and held as under:

‘42. We have heard the rival submissions and perused the material on record. The ground is regarding addition of ₹ 12,60,000/- as rental income. The Assessing Officer observed that the assessee was owner of Kiosks installed at Malls which were leased to various parties at the lease rent of ₹ 18,00,000/- per annum. The Assessing Officer after

accepting statutory deduction of 30%, considered the net rental income at ₹ 12,60,000/-. The CIT(A) confirmed the finding of the Assessing Officer.

43. The appellant contended that M/s. DLF Services Ltd. was appointed as maintenance agency for upkeep and maintenance of Mall, owned and run by appellant. For maintenance services being rendered by DLF Services Ltd., the appellant assigned the lease rental to DLF Services Ltd. as part of maintenance cost. The appellant contended that the diversion of lease rent was towards reimbursement of maintenance services rendered by M/s. DLF Services Ltd. and as such diversion was towards provisions of maintenance services. It was further contended that the rental income as diverted to DLF Services Ltd. has being subjected to tax in the case of M/s. DLF Services Ltd. and there is no case of subjecting the same income again in the case of appellant. In this connection, the appellant made reference to decision of Supreme Court in the case of M/s. Ashish Plastic Industries Vs. ACIT 373 ITR 45, as per which same income cannot be subjected to tax again in the case of the appellant.

44. The Ld. CIT DR supported the order of the Assessing Officer and CIT(A).

45. After hearing both the parties, we are of the view that the appellant assigned DLF Services Ltd. right to recover lease rent for maintenance and upkeep services of Mall and as such there was a genuine business arrangement between the parties. If the lease income is considered as chargeable to tax in the case of appellant, the appellant may be eligible for claim of expenses on account of maintenance of Mall which was owned and run by the appellant and as such appellant has not derived any tax benefit on the basis of such arrangement and for diversion of lease rent. It is further relevant to take note of the fact that such lease rent has been subjected to tax in case of M/s. DLF Services Ltd.

46. After considering the facts of the case, we are of the view that there is no justification for addition of ₹ 12,60,000/- as same was towards business obligation and for specific services rendered by M/s. DLF Services Ltd. and accordingly the impugned disallowance is directed to be deleted.”

24. Thus, following the aforesaid precedence in assessee’s own case, we decide this issue in favour of the assessee and the impugned addition is directed to be deleted.”

Therefore respectfully following the decision of the coordinate bench, ground number one of the appeal is allowed.

11. Ground number 2 of the appeal is against the confirmation of the disallowance of expenses out of legal and professional expenses by treating them as a capital expenditure amounting to ₹ 8,635,131/-. The claim of the assessee is that out of these expenses assessee itself has disallowed a sum of ₹ 7,973,331 in its return of

income and balance is also of revenue nature. Identical issue has been decided by us in additional ground raised by the assessee in ITA number 4187/del/2015 for assessment year 2000 – 11. This has been dealt with by us in paragraph number 35 – 39 of the order of even date. As per that order we have set aside this issue back to the file of the learned assessing officer for further examination with respect to examination of the computation of total income which is claimed by the assessee to have resulted into double disallowance. Therefore with similar direction, we allow ground number two of the appeal accordingly.

12. In the result appeal of the assessee in ITA number 4159/del/2015 for assessment year 2011 – 12 is allowed for statistical purposes.

13. Now we take up the appeal of the learned assessing officer. We have also identically decided the appeal of the learned assessing officer for assessment year 2010 – 11 on identical facts and circumstances by the order of the even date. Therefore, for all the grounds which are covered by that order we make a reference to the relevant paragraph of that order and decided the grounds in this appeal which are covered by that order by making reference to the paragraph number and our decision as Under:-

Gr No	Particular of the Ground	Issue covered by ITA Order Dated 27/5/2019 for AY 2008-09	Issue on identical facts and circumstances dealt with in order of even date for AY 2010-11	our decision on grounds following the order of AY 2008-09
1	Deletion of addition on account of deduction u/s 80 IA B of the income tax act	Covered by para number 46 – 80 of the order	Covered by para number six and seven of the order	Dismissed
2 and 21	Disallowance deleted by CIT – A with respect to short location of overhead SEZs division	Para number 125 at page number 138 of the order. Further revenue did not prefer any appeal before the	Para number 8	Dismissed

		higher forum.		
3	Disallowance deleted on account of revenue recognition Under POCM	Para number 81 – 87 of the order	Para number 9 of the order	Dismissed
4	Holding that interest expenditure is capital in nature which CIT appeal allowed in favour of the assessee holding it to be revenue in nature	Paragraph 94 – 98 covers the issue in favour of the assessee	Paragraph number 10	Dismissed
5	Disallowance on account of brokerage and commission expenditure deleted by the learned CIT – A	Decided in favour of the assessee as per paragraph number 99 – 103	Decided in favour of the assessee by paragraph number 11 of the order	Dismissed
6	Deletion of disallowance on account of net contingency deposit	Decided in favour of assessee as per paragraph number 108 - 111	Decided in favour of the assessee as per paragraph number 12	Dismissed
7	Deletion of disallowance on account of net interest free security deposit	Covered in favour of the assessee per paragraph number 112 – 115	Covered in favour of assessee by paragraph number 13	Dismissed
8	Deletion of disallowance of net registration charges	Decided in favour of assessee by paragraph number 116 – 120	Decided in favour of assessee per paragraph number 14	Dismissed
9	Deletion of disallowance on account of non-allocation of overhead is to group companies	Decided in favour of assessee by paragraph number 125 – 130	Decided by paragraph number 15 in favour of assessee	Dismissed
10	Deletion of disallowance u/s 14 A	Decided in favour of assessee by paragraph number 131	Decided in favour of the assessee as per paragraph number 16 –	Dismissed

		- 132	18	
11	Deletion of disallowance/reclassification of income of income from house property to income from business and profession	Decided in favour of assessee as per paragraph number 155 - 160	-	Dismissed
12	Deletion of addition on account of notional rent/additional annual letting value in respect of the vacant and least out premises	Decided in favour of the assessee as per paragraph number 161 - 165	Decided in favour of the assessee as per paragraph number 20 of the order	Dismissed
13	Deletion of disallowance of depreciation on DLF Centre building	Decided in favour of the assessee by paragraph number 166 - 170	Decided in favour of the assessee as per paragraph number 21	Dismissed
14	Deletion of disallowance on account of prior period expenditure	Decided in favour of the assessee as per paragraph number 42 - 45	Decided in favour of the assessee is for paragraph number 22	Dismissed
15	Deletion of addition on account of capitalization of legal and professional expenses on assessee SEZ projects	Decided in favour of the assessee by paragraph number 139 - 143	-	Dismissed
17	Disallowance of expenses for operation and maintenance of helicopter and aircraft expenditure not been fully and exclusively incurred for the purposes of the business	-	Allowed in favour of the assessee as per paragraph number 24 dealing with ground number 16 and 17	Dismissed
18	Deletion of addition on account of notional interest income for interest income short book	-	Covered in favour of the assessee by paragraph number 25 - 26 of the order	Dismissed

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14. Now we come to ground number 16 of the appeal which is against the disallowance of expenses deleted by the learned CIT – A holding that these expenditure are personal in nature. The brief fact of the case shows that the disallowance has been made by the learned assessing officer holding that same is personal expenditure of employees and therefore same is not allowable as deduction. The identical issue has been dealt with by us as per ground number 16 and 17 of the appeal of the learned assessing officer for assessment year 2000 – 11 as per paragraph number 24 wherein we have held that the company cannot have any personal expenditure as it is a distinct assessable entity is per definition of person u/s 2 (31) of the act. Such is also the mandate of the decision of Honourable Gujarat High Court in 253 ITR 749. The learned CIT – A has also followed the same. In view of this we do not find any infirmity in the order of the learned CIT – A in deleting the disallowance is of expenses of ₹ 23,440,014. Accordingly ground number 16 of the appeal is dismissed.
15. Ground number 19 of the appeal is with respect to the addition on account of carbon credits amounting to Rs. 122,34,040/-. The assessee has submitted that this issue is squarely covered in favour of the assessee by the decision of the honourable on the per the High Court in Commissioner of income tax versus my home Power Ltd 365 ITR 82. Assessee has claimed the above sum as a capital receipt whereas the learned assessing officer has made the addition on the ground that the decision of the coordinate bench in case of my home Power Ltd dated 2 November 2012 has not been accepted by the revenue and is further challenged. Now we find that above decision has been confirmed by the honourable Andhra Pradesh High Court in [2014] 46 taxmann.com 314 (Andhra Pradesh)/[2014] 225 Taxman 8 (Andhra Pradesh)(MAG.)/[2014] 365 ITR 82 (Andhra Pradesh)/[2015] 276 CTR 92 (Andhra Pradesh wherein it has been held that:-
- “3.** We have considered the aforesaid submission and we are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an offshoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns." We agree with this factual analysis as the assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with

power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal.”

The learned departmental representative could not controvert the above decision and therefore respectfully following the decision of the honourable Andhra Pradesh High Court we confirm the order of the learned CIT – A in deleting the addition of Rs. 122,34,040 on account of Carbon credit receipt holding the same to be a capital receipt. Accordingly ground number 19 of the appeal is dismissed.

16. Ground number 20 of the appeal is with respect to the disallowance of legal and professional expenses paid to one Mr. Ajaykumar Khanna. The learned assessing officer has disallowed the above expenditure holding that the assessee has failed to prove the business expediency and further as there is no clause in the agreement which describes the nature of services rendered by that service provider. However the learned CIT – A noted that the evidence produced by the assessee showing the copy of the agreement filed during the assessment proceedings. The learned assessing officer disputed the above agreement stating that this service provider has been appointed as an advisor and is providing wider range of construction and other business activities. Recipient of the above income was stated to be providing legal and professional services to the assessee and same was paid as a return shall fees for the period 1 April 2010 2/31 of March 2011. The main reason for disallowance of this expenditure by the learned assessing officer is that there was no clause in the agreement regarding the nature of services rendered and the business expediency has not been proved by the assessee. The learned CIT – A on examination of the same agreement held that the terms and condition and the scope of the work is clearly mentioned in the agreement. He further noted a fact that the service recipient was one of the employees of a group company as its managing director and therefore due to his continuous ill-health he left the services and was engaged by the assessee company as a consultant on retainer basis. The assessee further claimed before the learned CIT – A that these expenses have already been allowed in the earlier years and therefore same cannot now be disallowed without any new facts coming to the knowledge of the assessing officer. The learned CIT – A following the decision of the honourable Delhi High Court in 254 ITR 377 allowed the claim of

the assessee. He further held that the term commercial expediency is to be judged from the angle of the assessee/businessman. With respect to the provision of the services he also held that services have been availed by the assessee in earlier years also. Accordingly he deleted the disallowance. The learned departmental representative could not controvert the decision of the learned and CIT – A. We also find that when the expenditure has been allowed to the assessee in earlier year, no new facts are coming into the knowledge of the assessing officer which proves otherwise, the agreement supports the payment, the recipient was providing services to the company, he was also an employee of the group concern and the services of that gentleman availed by the assessee during the year the disallowance has rightly been deleted. Accordingly ground number 20 of the appeal of the learned assessing officer is dismissed.

17. Ground number 22 is general in nature and therefore same is dismissed.
18. In the result ITA number 4794/del/2015 filed by the learned assessing officer for assessment year 2011 – 12 is dismissed.
19. In the result appeal filed by the assessee as well as the learned assessing officer for assessment year 2011 – 12 are disposed of accordingly.

Order pronounced in the open court on 29/09/2020.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

NEHA

Date:- 29-09-2020

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

