

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DLEHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.3299/Del/2013  
Assessment Year:2008-09**

DCIT, Circle 6(1),  
New Delhi.

vs.

Malibu Estate Pvt. Ltd.,  
38, DDA Commercial Complex,  
Kailash Colony Extension,  
New Delhi.

**ITA No. 4499/Del/2013  
Assessment Year:2009-10**

ACIT, Circle 6(1),  
New Delhi.

vs.

Malibu Estate Pvt. Ltd.,  
38, DDA Commercial Complex,  
Jamroodpur, Kailash Colony  
Extension, New Delhi.

**ITA No. 4829/Del/2015  
Assessment Year:2010-11**

DCIT, Central Circle 20,  
New Delhi.

vs.

Malibu Estate Pvt. Ltd.,  
38, DDA Commercial Complex,  
Kailash Colony Extension,  
New Delhi.

**ITA Nos. 5603, 5604 & 5605/Del/2015  
Assessment Year:2011-12, 2012-13 & 2013-14**

DCIT, Central Circle 8,  
New Delhi.

vs.

Malibu Estate Pvt. Ltd.,  
38, DDA Commercial Complex,  
Kailash Colony Extension,  
New Delhi.

**ITA No.3295 & 4534/Del/2013**  
**Assessment Year:2008-09 & 2009-10**

Malibu Estate Pvt. Ltd., vs. Addl. CIT, Range-6,  
 38, DDA Commercial Complex, New Delhi.  
 Kailash Colony Extension,  
 Jamrudpur New Delhi.

**ITA No. 3769/Del/2015**  
**Assessment Year:2010-11**

Malibu Estate Pvt. Ltd., vs. DCIT, Circle 6(1),  
 38, DDA Commercial Complex, New Delhi.  
 Kailash Colony Extension,  
 Jamrudpur New Delhi.

**ITA Nos. 5482, 5483 & 5484/Del/2015**  
**Assessment Year:2011-12, 2012-13 & 2013-14**

Malibu Estate Pvt. Ltd., vs. ACIT, Central Circle-8,  
 38, DDA Commercial Complex, New Delhi.  
 Kailash Colony Extension,  
 Jamrudpur New Delhi.

**PAN : AAACM1120E**  
 (Appellant)

(Respondent)

Revenue by : Ms. Paramita M. Biswas, CIT/DR  
 Assessee by : Sh. Anil Kumar Chopra, Adv.  
 Sh. Praveen Kumar, CA &  
 Sh. Ekansh Gupta, CA

Date of hearing: 12/08/2021

Date of order : 12/08/2021

**ORDER**

**PER BENCH:**

Aggrieved by the order dated 28.03.2013 & 13.06.2013 for the assessment years 2008-09 and 2009-10, passed by the learned Commissioner of Income Tax (Appeals)-IX, New Delhi, ("Ld. CIT(A)"), order dated 23.03.2015 passed by Id. CIT(A)-6, Delhi for assessment year 2010-11 and orders dated 31.07.2015 passed by Id. CIT(A)-24, New Delhi for the assessment years 2011-12 to 2013-14 in the cases of Malibu Estate Pvt. Ltd. ("the assessee"), both the Revenue and the assessee preferred these cross appeals.

2. Since the grounds in the appeals of the Revenue and the assessee are substantially similar, raising common questions of law and facts, all these appeals are disposed of by this consolidated order for the sake of brevity. For convenience, we record the attending facts relating to the assessment years 2008-09 and 2009-10.

**Assessment years 2008-09 & 2009-10:**

3. Brief facts, relating to these two assessment years, are that the assessee-company is a developer and was involved in developing a township in Gurgaon in the name of Malibu Town as per the terms of license sanctioned by the Director, Town and Country Planning, Haryana. For these two assessment years, the assessee filed their returns of income and during the course of assessments, Id. Assessing Officer noted that the assessee has recognized the Revenue on account of sale of the plots where the property was registered in the name of the buyers or the possession was given. On this count, Id. Assessing Officer was of the opinion that the assessee should have followed the percentage of completion (POC) method instead. Learned Assessing Officer, therefore,

after considering the objections of the assessee on this issue, recorded a finding that inasmuch as the assessee did not apply POC method, the accounts do not reflect the true state of affairs and therefore, a sum of Rs.67,57,24,544/- for the assessment year 2008-09 and Rs.11,35,50,808/- for the assessment year 2009-10 escaped taxation and it had to be added to the income of the assessee.

4. Secondly, learned Assessing Officer noted that during these years, the assessee invested a sum of Rs.37.25 crores and 75.77 crores in its subsidiary company Wang Investment Pvt. Ltd. towards share application money and no interest was charged on such money whereas the assessee had shown the interest expenses to the tune of Rs.4,82,14,000/- for the assessment year 2008-09 and Rs.3,01,97,000/- for the assessment year 2009-10 and therefore, the Assessing Officer thought it fit to add a sum of Rs.4,27,74,000/- for the assessment year 2008-09 and Rs.2,79,97,000/- for the assessment year 2009-10 to the income of the assessee.

5. Aggrieved by both the additions, the assessee preferred appeals before the Id. CIT(A). Learned CIT(A) by the impugned orders granted relief to the assessee in respect of the addition made by the learned Assessing Officer by applying POC method. Id. CIT(A), however, upheld the addition of disallowance of interest in respect of the investments made by the assessee in the subsidiaries, on which no interest was charged by the assessee.

6. Challenging the deletion of addition made by the Id. Assessing Officer on account of application of POC method, the Revenue preferred ITA No. 3299 & 4499/Del/2013; whereas aggrieved by upholding of the addition made by the Id. Assessing Officer on account of interest not

charged on the investments made by the assessee in the subsidiaries, the assessee preferred ITA No. 3295 & 4534/Del/2013 for these two assessment years respectively.

7. In so far as the application of POC method and consequent additions are concerned, at the outset, it is submitted by the assessee that prior to the assessment year 2006-07, the method of accounting by the assessee was accepted by the Revenue, but addition was made by the Assessing Officer in assessee's own cases for the assessment year 2006-07 and 2007-08. When the matter travelled to the Tribunal, the Tribunal by order dated 20.04.2012 for the assessment year 2006-07 (ITA No. 4085/Del/2009 and CO No. 381/Del/2009) and following the same by order dated 13.12.2013 for the assessment year 2007-08 (ITA No. 2778/Del/2011), upheld the contention of the assessee that the project completion method followed by the assessee will not result in deferment of tax and there is no justification for the Ld. Assessing Officer to adopt POC method for one year on selective basis.

8. Learned AR further submitted that the view taken by the Tribunal is upheld by the Hon'ble High Court in ITA No. 213 of 2015 by order dated 18.03.2015 and by accepting the same, subsequently, the department made no further additions.

9. So far as these facts are concerned, they remain un-challenged and un-impeached. Since there are no compelling reasons to deviate from this consistent view taken by the Tribunal and Hon'ble High Court, we are of the considered opinion that the findings of the Id. CIT(A) cannot be found fault with. On this premise, we find the grounds of Revenue's appeals as bereft of merits and consequently dismiss the same.

10. Now, coming to the grievance of the assessee that the addition based on the assumption that the investment made by the assessee in the subsidiaries should have carried interest and consequently, adding notional interest is bad, the main plank of arguments advanced on behalf of the assessee is that the assessee possesses sufficient own funds, though deposited in the same account where borrowed funds by way of over draft also stood deposited, therefore, the presumption lies that the investment made by the assessee in the subsidiaries, are out of such own funds, which do not carry any interest and, therefore, no deemed interest could be added to the income of the assessee.

11. Assessee brought to our attention that at the end of assessment year 2008-09, as on 31.03.2008, the share capital of the assessee was Rs.2.72 crores, reserves and surpluses was Rs.41.93 crores whereas the interest free deposits/advances made by the customers were to the tune of Rs.59.53 crores, coming to the total of Rs.104.18 crores. Similarly, for the assessment year 2009-10, as on 31.03.2009, the share capital of assessee was Rs.2.72 crores, reserves and surpluses were to the tune of Rs.61.67 crores apart from interest free deposits/advances made by the customers to the tune of Rs.54.29 crores, total of which comes to Rs.118.68 crores. As against this 104.18 crores for the assessment year 2008-09 and 118.68 crores for the assessment year 2009-10, the assessee made initial investment of Rs.37.25 crores for the assessment year 2008-09 and Rs.75.77 crores for the assessment year 2009-10. There is no denial of the fact that the assessee withdrew a part of the advances in the assessment year 2008-09 and at the end of the year, such investments stood at Rs.28.20 crores. Be that as it may, it remains an

established fact that for the assessment years 2008-09 and 2009-10, as against the interest free funds in the hands of the assessee to the tune of Rs.104.18 crores and 118.68 coress respectively, the assessee made investments only to the tune of Rs.37.25 crores and 75.77 crores respectively. It goes without saying that for these two assessment years, the own funds of the assessee are in far excess of the investments made.

12. Now, coming to the decisions cited by the assessee, in CIT vs. Tin Box Co. 260 ITR 637 (Del) and CIT vs. Bharti Televenture Ltd., 331 ITR 502 (Del), followed in CIT vs. U.K. Paints Ltd. by order dated 19.07.2011 in ITA Nos. 1062/2009, 1826/2010 and batch, in these decision, the Hon'ble High Court held that when the assessee had substantial capital and interest free funds available with it, which far exceed the interest free advances to the sister concern, there is no scope to make any addition, though the assessee was maintaining a bank account with mixed common funds, in which all deposits and withdrawals were made. Similar view was taken in Reliance Utilities & Power Limited 313 ITR 340 (P&H).

13. We, therefore, by respectfully following the above decisions of Hon'ble jurisdictional High Court, conclude that inasmuch as the assessee is having its own funds far exceeding the investments made in subsidiaries in the relevant assessment years, adding of deemed interest does not arise and we, accordingly, direct the Id. Assessing Officer to delete such additions.

Other Assessment years:

14. It is submitted that in these years also, the grounds of appeal of assessee and the Revenue are substantially the same, as involved in the assessment years 2008-09 and 2009-10. In view of the decisions of

Hon'ble High Court in assessee's own case for the assessment year 2007-08 in ITA No. 213/2015, by order dated 18.03.2015, the grounds of appeal of the Revenue stand covered and by following the same we dismiss the grounds of Revenue's appeals on this issue.

15. In so far as grounds Nos. 4 & 5 of Revenue's appeal for the assessment year 2010-11 is concerned, it remains an admitted fact that for assessment year, the assessee did not earn any exempt income and the Id. CIT(A) categorically recorded that a reading of profit & loss account and balance sheet clearly establishes that no dividend income was received and claimed as exemption in that assessment year. Id. CIT(A) followed the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Holcim (India) P. Ltd., (2014) TOL 1586 DEL IT) and deleted the same. Inasmuch as the Id. CIT(A) followed the binding precedent rendered by Hon'ble jurisdictional High Court, the same cannot be found fault with. Thus, these grounds of Revenue in appeal for A.Y. 2010-11, challenging the deletion of disallowance u/s. 14A of the Income-tax Act, 1961, are also dismissed.

16. In respect of assessee's appeals for these years, no fresh investment was made by the assessee in subsidiaries and only the investments made in assessment years 2008-09 and 2009-10 continued to be held by the assessee. Learned Assessing Officer, however, looking at the continuing investments and not charging any interest thereon, proceeded to add the deemed interest for these years also. Inasmuch as we find for the assessment years 2008-09 and 2009-10 that the amount invested in the assessment years 2008-09 and 2009-10 is presumed to be from out of the own funds of the assessee, it does not invite any addition

of deemed interest either in the assessment years 2008-09 and 2009-10 or for any subsequent year. We, therefore, direct the deletion of addition of deemed interest for these years also.

17. In view of our finding that the addition of deemed interest has to be deleted, any adjudication of the alternative claim of the assessee for netting of interest income on bank FDRs, which were compelled by business necessities and accrued interest against the interest paid, becomes only academic and does not require any adjudication.

18. In the result, appeals of the Revenue are dismissed and the appeals of the assessee are allowed.

Order pronounced in the open court on this the 12<sup>th</sup> day of August, 2021 during the hearing of the case.

Sd/-

**( O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 12<sup>th</sup> August, 2021

'aks'

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**