

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

**Before Sh. Saktijit Dey, Judicial Member**

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

**ITA No. 5949/Del/2017 : Asstt. Year : 2012-13**

Logix Infra Developers (P) Ltd., 85, Ground Floor, World Trade Centre, Barakhamba Lane, New Delhi-110001	Vs	ACIT, Circle-15(2), New Delhi-110002
(APPELLANT)		(RESPONDENT)
<b>PAN No. AABCL9746J</b>		

**Assessee by : Sh. V. K. Aggarwal, CA &  
Ms. Shweta Bansal, CA  
Revenue by : Sh. T. Kipgen, CIT DR**

<b>Date of Hearing: 06.07.2022</b>	<b>Date of Pronouncement: 25.08.2022</b>
------------------------------------	--

**ORDER**

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

The present appeal has been filed by the assessee against the order of Id. CIT(A)-5, New Delhi dated 04.07.2017.

2. The assessee has raised revised grounds of appeal which are as under:

*"2. The Id. CIT(A) has grossly erred on facts as well as in law in confirming the disallowance of expenses amounting to Rs.15,50,59,250/- which do not pertain to the project but are in the nature of selling cost and general administration cost."*

3. The assessee is engaged in the business of real estate. During the year, the assessee was allotted by land by NOIDA. The land acquired by the assessee is the stock-in-trade of the business. The construction work has started during the year. The assessee incurred and claimed the following expenditure

which have been disallowed by the Assessing Officer on the grounds that the assessee has not routed these expenses through P&L account and claimed directly in the computation.

<b>Particulars</b>	<b>Amount</b>
Advertisement Expenses	9,75,19,715/-
Brokerage & Commission	1,17,11,109/-
Noida Authority-Interest	94,76,736/-
Noida Authority-late registration charges	3,63,51,690/-
<b>Total</b>	<b>15,50,59,250/-</b>

4. The AO held that since the assessee has not started showing the revenue from operations, they will not be allowed to debit the expenditure.

5. The Id. CIT(A) confirmed the action of the AO holding that the construction has not been started, the approvals were pending, the land has not been fully paid for and it becomes apparent that the project is an infantile stage. Therefore, the Id. CIT(A) held that the business could not be said to have been "setup" or "commenced".

6. Heard the arguments of both the parties and perused the material available on record.

**Noida Authority-Interest and Late registration charges:**

7. We find that the assessee has claimed the penal interest payable @ 14% annually on the default of payment of installment. The entry reads as under:

S.No.	Date	Name of Party	Amount	Purpose of Expenditure
1.	3/31/2012	NOIDA Authority (Penal Intt.) payable being penalty @14% annually on interest to NOIDA is recognized with regards to 1 <sup>st</sup> installment of default interest. Calculation = 166274471 × 14% × 149 days/366 days	94,76,736	Late Payment of 1 <sup>st</sup> Installment

8. The assessee was allowed 16 half yearly installments to pay the amount of Rs.302.31 Cr. to NOIDA and in case of default interest @ 14% compounded half yearly leviable for the default period on the defaulted amount. The balance sheet also reflects cost of land of Rs.387.25 Cr. which has been capitalized. Since, the interest is attributable to the cost of land, the interest expenditure is not allowable as per Section 36(1)(iii) of the Income Tax Act, 1961. Similarly, the registration charges and the fee/penalty/damages/price for late registration amounts to an integral part of cost of acquisition of land has also to be allotted to the "cost of project" and to be treated as part of capital work-in-progress. Hence, we hereby affirm the order of the Id. CIT(A) on these two issues.

**Advertisement Expenses, Brokerage & Commission:**

9. The assessee has already started business operations, construction is in progress and an amount of approximately Rs.390 crores has already been capitalized. Hence, it cannot be said that the assessee has not commenced business operations. The expenses being advertising, brokerage and commission for booking of the flats which are in the nature of revenue expenses cannot be treated as capital expenditure. Reliance is being placed on the judgment of Hon'ble High Court of Bombay in the case of CIT Vs Piem Hotel Pvt. Ltd., (209 ITR 0616) wherein it was held that once business is set up, expenditure incurred relating to such business have to be treated as revenue expenditure and allowed as deduction. As soon as an activity which is essential to carrying on the business is started the business must be said to have commenced.

10. The project cost in relation to a project comprises of cost of land and cost of development rights, borrowing cost,

construction and development cost. In relation to land, the entire cost of land and development rights, stamp duty registration charges and other incidental expenses have to be capitalized. With relation to the borrowing cost, the interest directly related to the project is to be capitalized. Further, all the direct costs relating to the construction and development of the specific project have to be capitalized. The construction cost includes conversion cost, municipal sanction fee, expenses incurred, site labour cost, cost of material, cost of hiring plant & machinery, cost of designs and claims of the third party. The general administrative cost, advertisement, brokerage, selling cost, depreciation of the vehicles and office expenditure are part of the revenue expenditure and need not be capitalized.

11. There is difference between commencement of the business and setting off of the business. All the expenses incurred pre-commencement are to be treated as pre-operative expenses and the expenses incurred which do not form the part of the "work in progress" (WIP) like office expenses, salaries, advertising, brokerage and commission which are incurred for running of the business operations and to bring revenues to the company are to be treated as revenue expenditure.

12. Hence, we hereby affirm the order of the Id. CIT(A) on account of the disallowance on Noida Authority-Interest and Late Registration Charges(LRC) and hold that the disallowance affirmed by the Id. CIT(A) on account of Advertisement Expenses and Brokerage & Commission are liable to be obliterated.

13. In the result, the appeal of the assessee is partly allowed.  
Order Pronounced in the Open Court on 25/08/2022.

Sd/-  
**(Saktijit Dey)**  
**Judicial Member**

Sd/-  
**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 25/08/2022**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**