

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM**

आयकर अपील सं/ I.T.A. No. 5961/Mum/2017

(निर्धारण वर्ष / Assessment Year:2012-13)

DCIT-9(3)(2) 418, 4 th Floor, Aayakar Bhavan, Mumbai-400020.	बनाम/ Vs.	M/s. Gutsiness Hospitality Pvt. Ltd. Plot No. 114/T-03, SKM Babrics, Andheri Premises, R. K. Paramhans Marg, Andheri (E), Mumbai-400069. PAN NO. AAICA3306L
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आयकर अपील सं/ I.T.A. No. 5255/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

ACIT, Range-9(1)(1) Room No. 260A, 2 nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Amicable Hospitality Pvt. Ltd. Plot No. 115/IT-03, Raj Chambers, R. K. Paramhans Marg, Andheri (E), Mumbai- 400063. PAN NO. AAQCS6307P
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आयकर अपील सं/ I.T.A. No. 544/Mum/2020

(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT-9(2)(2) Room No. 665A, 6 th Floor, Aayakar Bhavan, Churchgate, Mumbai- 400020.	बनाम/ Vs.	M/s. Congenial Hospitality Pvt. Ltd. Plot No. 115/IT 03/Raj Chambers, R. K. Paramhans Marg, Andheri (E), Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAQCS6307P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Yogesh Joijode	
Revenue by:	Shri Ujjawal Chavhan (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 26/09/2022
घोषणा की तारीख /Date of Pronouncement: 10/10/2022



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आदेश / ORDER

PER ABY T. VARKEY, (JM):

These are appeals filed by the revenue against the action of the Ld. Commissioner of Income Tax (Appeals)-16, Mumbai dated 02.06.2017 (ITA. No.5961/Mum/2017)., and dated 06.06.2018 (ITA. No.5255/Mum/2018) and dated 31.10.2019 (ITA. No.544/Mum/2020).

2. At the outset, both the parties agree that the issue involved in these three (3) captioned appeals are similar/identical (only difference is in respect of sum of addition/disallowance). Therefore, the ITA. No.5961/Mum/2017 i.e. DCIT Vs. M/s. Gutsiness Hospitality Pvt. Ltd. is taken as the lead case and the result of the same will be followed for other two appeals.

ITA. No.5961/Mum/2017 i.e. DCIT Vs. M/s. Gutsiness Hospitality Pvt. Ltd. (AY. 2012-13)

3. The grounds of appeal raised by the revenue are as under: -

“1. Whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in allowing the interest and loan processing fees as revenue expenditure without appreciating the fact that assessee has not carried out any business activity during the year and only investment is in one residential flat whose possession is not received by the assessee as the same is still a work under progress.



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2. Whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in overlooking the fact that it is a residential flat and income of which is taxable under the head 'Income from house property' and once the possession is received, the expenditure is to be allowed in 5 equal installments as per I. T. Act.”

4. Brief facts is that the assessee had filed return of income on 30.08.2022 declaring loss of Rs.2,30,65,856/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter “the Act”). Later, the case of the assessee was selected for scrutiny. And the AO noticed that the assessee is engaged in the business of builder and developer and that in the relevant year, (AY. 2012-13), the assessee has not shown any income. However, it has claimed expenses to the tune of Rs.2,30,65,856/- and computed net loss at Rs.2,30,65,856/-. The AO thereafter, disallowed expenses on account of loan processing charges and interest on loans to the tune of Rs.2,28,94,745/- (Rs.1,60,00,995/- + Rs.68,93,750/-) by observing as under: -

“4. Disallowance of Loan Processing Charges & Interest on loans

For the year under consideration, the assessee has purchased a flat in Palace Royale for a consideration of Rs.31,60,51,868/- including stamp duty and registration cost. It is seen from the notes to accounts that the assessee has not taken possession of the said flat, which means work is in progress and further, it is seen from Note-12 that the assessee invested in property representing a flat in 'Palace Royale',



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the possession of the same is yet to be taken as at the close of year even though registered in name of the companies. Further, in the return of income, the assessee has shown the said property as finished goods. In the Profit & Loss Account, the assessee has claimed loan processing cost and interest on loan in relation to the loan obtained for acquisition of the said flat as business loss. Since, the possession is not received and building work is still in progress, the said flat is stock in process. Hence all the expenditure directly related the acquisition/work in progress needs to be capitalized for valuation of work-in-progress/ stock in process. Hence, following the concept of valuation of stock in process, the stock has to be valued at cost or net realizable value whichever is less, so the loan processing fee and interest on loan are added to the cost of stock in process and accordingly, the stock in process is valued at Rs.33,89,46,613/- as against Rs.31,60,51,868/- originally claimed by the assessee. Accordingly, an amount of Rs.2,28,94,745/- is disallowed out of expenses claimed by the assessee in Profit & Loss Account on account of interest on loan (Rs.1,60,00,995/-) and loan processing charges (Rs.68,93,750/-).”

5. Aggrieved, by the aforesaid action of AO, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition by holding as under: -

“6. I have carefully perused the assessment order of the AO and the submissions made by the AR in support of his arguments. After taking into consideration, the A.O’s findings and the appellant's oral and



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written submissions made during the course of hearing as well as facts of the case, decision on various grounds are adjudicated as under:

6.1 The AO has pointed that the assessee has purchased a flat in Palace Royale and registered in the name of appellant. The said flat had been shown under the head inventories. However the possession of the same was not received by the appellant as the building work was still in progress and accordingly the said flat was reflected as stock in progress. The AO has further mentioned that all expenditure directly related to the acquisition of the flat needs to be capitalized for valuation of stock in process. Therefore according to the AO the interest on loan of Rs. 190,00,995/- and loan processing Rs.68,93,750/- should be capitalized to the value of flat and the same was disallowed in P&L account.

6.2 The Appellant has contended that as per their object clauses they can buy and sell or acquire or give on lease any land and building, so the activity of buying the flat as inventories is within the articles of association. Further the Appellant contended that interest and loan processing fees are expenditure relating to the funds borrowed for inventories and treatment is in accordance with Accounting Standard (AS)-2: "Valuation Inventories" issued by ICAI. AS-2 specifically states that interest and other borrowing cost are not relating to bringing the inventories to their present location and condition. Accordingly, the appellant has contended that their books of account are prepared in compliance with AS-2. Further appellant contended that they were not builder or developer and they were not constructing or developing any projects. So the interest and other related cost should not form part of the value of the flat. Further the appellant has



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contended for the purpose of claiming the interest and related cost as an expense possession of the flat was not relevant as the said flat had been carried as inventories Since the flat is shown as inventories in the books of account of the company therefore the treatment of debiting interest and loan processing fees to the profit and loss account is correct. In such circumstances expenditure are revenue expenditure and are allowable as per the as per provisions of Section 36(1) (iii) of the Income Tax Act 1961.”

6. Aggrieved, the revenue is before us.
7. We have heard both the parties and perused the record. The only question is with regard to the allowability of the claim of expenditure (loan processing as well as interest expenditure of borrowing) in respect of a stock/inventory (flat at Palace Royale). The AO disallowed the claim of expenditure and the Ld. CIT(A) reversed the decision. So the revenue has appealed the decision.
8. On this issue the most crucial fact noticed by AO is that the inventory a flat of Palace Royal is in-complete and the assessee has not been given possession of the same [even when the assessment proceedings were going on in the year 2015 this fact (i.e. flat was incomplete and not taken possession)] could not be controverted by the Ld. AR and that is not the case of the Ld. CIT(A) that inventory/flat in question was complete. In such a scenario, the AO was right is not allowing the expenditure claimed by assessee as



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expenditure because the stock/inventory/flat in this case has to be valued at its purchase cost and all the expenditure incurred till it is a finished product has to be added to it and shown as “purchase cost” . Therefore, in this case loan processing cost and interest expenditure till the flat is complete and taken possession has to be added to the cost of purchase of the flat. Therefore, the assessee’s claim of expenditure was rightly denied by AO. It may be borne in mind that once the stock/inventory is taken possession of by the assessee (finished product), then the expenses incurred for preserving the same till it is sold is allowable expenditure. Therefore, the Ld. CIT(A) erred in allowing the claim of expenditure (loan processing fees and interest expenditure). Therefore, we allow the appeal of the revenue.

9. In the light of the discussion all the appeals of the revenue are allowed on the same reasoning mutatis mutandis to the facts of the appeal.

10. In the result, all the three appeals filed by the revenue are allowed.

Order pronounced in the open court on 10/10/2022

Sd/-
(OM PRAKASH KANT)
लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 10/10/2022
Vijay Pal Singh/Sr. P.S.

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai