

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2336/Del/2016
Asstt. Year: 2012-13

Accession Buildwell Private Limited ECE House, 28, K.G. Marg, New Delhi -110 001 PAN	Vs.	DCIT Circle-1(2), New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Satyen Sethi, Advocate Shri A.T. Panda, Advocate
Department by :	Shri H.K. Choudhary, CIT- DR.
Date of Hearing	29.11.2022
Date of pronouncement	06.12.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 03.03.2016 of the Ld. Commissioner of Income Tax (Appeals) – I, New Delhi (**"CIT(A)"**) pertaining to assessment year (**"AY"**) 2012-13.

2. The assessee has taken the following grounds of appeal:-

Ground No.1:

The Ld. Commissioner of Income Tax (Appeals)-1, New Delhi (hereinafter referred to a 'CIT(A)') has erred in law and in the fact & circumstances of the case by passing the order dated 03.03.2016 u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act') as the order passed by the CIT(A) is against the provisions of the Act.

Ground No.2:

The Ld. CIT(A) has erred in law and on facts of the case in confirming the disallowance made by the Deputy Commissioner of Income Tax, Circle-1(2)(herein after referred to as "AO") amounting to Rs. 14,35,61,849 incurred on account of Debenture interest as pre-operative expenses on the ground that the business activity has not commenced during the year and therefore, the expenditure should not be allowed to the appellant as revenue expense rather the same has to be capitalized.

The appellant contends that the business has already been set up and commenced, therefore, the deduction of Debenture interest expense incurred during the relevant financial year shall be allowed to the appellant.

Ground No. 3:

The Ld. CIT(A) has erred in law and on facts of the case in confirming the addition amounting to Rs. 1,68,256 on account of interest u/s 244A of the Act.

The appellant contends that it has not received the interest as the same is not reflected in 26AS. Therefore the same amount should be not treated as interest u/s 244A of the Act.

Ground No. 4:

The appellant prays that he may be allowed to add, amend, alter or forego any of the above grounds of appeal as the circumstances may warrant.

Ground No. 5:

The above grounds are without prejudice to each other."

3. Briefly stated the assessee is stated to be engaged in the business of real estate. For AY 2012-13 it filed its return on 27.09.2012 declaring NIL income with a loss of Rs. 13,87,76,065/-. The case was selected for scrutiny. The Ld. Assessing Officer ("**AO**") found that the assessee has shown Rs. 196.20 crores as Project in Progress in its balance sheet as on 31.03.2012. It has charged interest on debentures of Rs. 69.31 crores during the year and transferred a sum of Rs. 54.57 crores into Project in Progress and debited Rs. 14.73 crores to the profit and loss account. In para 3.5 of his order the Ld. AO observed that the assessee failed to explain as to why part of the interest on debentures has been charged to P&L account. According to him the interest on debentures of Rs. 14.73 crores is borrowing cost of the ongoing project which he disallowed treating it as part of the project

expenses and took the same to the work in progress. The Ld. AO further found that the assessee has also claimed set off of interest income of Rs. 38,07,484/- earned from FDRs from interest on debenture of Rs. 14,73,69,333/- and claimed net interest expenses of Rs. 14,35,61,849/- in its P&L account under finance cost. Resultantly, he disallowed deduction of Rs. 14,35,61,849/- charged to P&L account and added back the same to the income of the assessee. The assessee did not get any relief from the Ld. CIT(A) which has brought the assessee before the Tribunal and ground No. 2 relates thereto.

4. The Ld. AR submitted that the issue is covered in favour of the assessee by the order of the Tribunal for AY 2010-11 and 2011-12. It is pointed out that debentures were issued first time during the previous year relevant to AY 2008-09. Since then it is a recurring issue. He further submitted that against the Tribunal's order in ITA No. 2001/Del/2012 dated 09.09.2013 for AY 2008-09 the Revenue filed appeal under section 260A of the Income Tax Act, 1961 **(the "Act")** before the Hon'ble Delhi High Court which by their judgment in ITA 153/2014 dated 27.04.2015 dismissed the appeal of the Revenue on this issue. The Ld. DR supported the orders of the Ld. AO/CIT(A).

5. We have considered the submissions of the Ld. Representative of the parties and perused the material on the records. Perusal of the order of the Tribunal in assessee's appeal in ITA No. 5841/Del/2013 for AY 2010-11 and in ITA No. 3973/Del/2014 for AY 2011-12 would show that interest on debentures of Rs. 3,43,52,440/- and Rs. 5,67,30,409/- charged to P&L account in AY 2010-11 and 2011-12 respectively were disallowed by the Ld. AO which were upheld by the Ld. CIT(A). When the matter was taken by the assessee before the Tribunal, the Tribunal decided the issue in favour of the assessee in AY 2010-11 by observing as under:-

"10. After considering the relevant findings given in the impugned order as well as order of the Tribunal in assessee's own case for the AY 2008-09, we find that the Assessing Officer has treated the expenditure of Rs.

3,43,52,440/- as pre-operative, whereas the assessee's case has been that the business has already been set up and land has been acquired for its project, as the assessee's core business is development of project as builder and developer. We find that this issue has been decided in favour of the assessee by the Tribunal, wherein this issue has been allowed as revenue expenditure. Thus following the earlier year precedence, this issue too is decided in favour of the assessee".

5.1 For AY 2011-12, the Tribunal observed in para 16 of its order that the ground raised in this year is same as in AY 2010-11 which arises out of similar set of facts and therefore, the finding given therein will apply here in this year also.

6. Accordingly, following the decision (supra) of the Tribunal in assessee's own case for the preceding two assessment years we decide ground No. 2 in favour of the assessee as the facts and circumstances remain the same in AY 2012-13 as well.

7. Ground No. 3 relates to addition of Rs. 1,68,256/- on account of interest under section 244A of the Act which has been confirmed by the Ld. CIT(A). The Ld. AO noticed that as per AIR information, the assessee has received IT refund of Rs. 27,56,690/- including interest under section 244A of the Act of Rs. 1,68,246/- during the year which interest was not found credited to P&L account. Rejecting the assessee's explanation that as Form 26AS no interest has been received by the assessee, the Ld. AO added interest of Rs. 1,68,246/- to the income of the assessee. On appeal, the Ld. CIT(A) observed that a refund of Rs. 27,56,690/- has been issued to the assessee and the same was adjusted against the demand of AY 2008-09. The said refund included interest of Rs. 1,68,246/- which was income of the assessee, which the assessee did not offer for tax. The interest income received by the assessee is taxable as income from other sources. Therefore, the Ld. CIT(A) confirmed the impugned addition against which the assessee is in appeal and Ground No. 3 relates thereto.

8. The Ld. AR submitted that the assessee has not received any interest, in as much as against the claim of refund of Rs. 31,34,080/- for AY 2010-11. The assessee received refund of Rs. 27,56,690/- without any interest thereon. Therefore, the impugned addition is without any basis.

9. The Ld. Representative of both the parties agreed that the contention of the assessee requires verification from the assessment record of the assessee by the Ld. AO. We, therefore set aside the order of the Ld. AO/CIT(A) on the issue and restore the matter back to the file of the Ld. AO for necessary verification and decision afresh after allowing reasonable opportunity of hearing to the assessee.

10. Ground No. 1 is of general nature which does not require adjudication.

11. Ground No. 4 and 5 also do not require any adjudication.

12. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 6th December, 2022.

sd/-

sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 06/12/2022

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	

Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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