

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[DELHI BENCH: 'A' NEW DELHI]**

**BEFORE Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 3153/DEL/2018 (A.Y. 2012-13)**

M/s. Blue Bell Proptech Pvt. Ltd., C-10, C-Block, Vasant Vihar Market, New Delhi – 110 057. <b>PAN No. AAECB1410G</b>	Vs.	ACIT, Circle : 5 (1) New Delhi.
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**AND**

**I.T.A. No. 7197/DEL/2017 (A.Y. 2013-14)**

M/s. Blue Bell Proptech Pvt. Ltd., C-10, C-Block, Vasant Vihar Market, New Delhi – 110 057. <b>PAN No. AAECB1410G (APPELLANT)</b>	Vs.	ACIT, Circle : 5 (1) New Delhi. <b>(RESPONDENT)</b>
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**Assessee by: Shri Rajesh Jain, C. A.  
Department by : Shri Kanv Bali Sr. D. R.**

<b>Date of Hearing</b>	<b>02.03.2023</b>
<b>Date of Pronouncement</b>	<b>26.04.2023</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

These two appeals are filed by the assessee against the order dated 31.01.2018 of the Id. Commissioner of Income Tax (Appeals)-44[hereinafter referred to CIT (Appeals)] New Delhi, for assessment years 2012-13 and 2013-14.

**I.T.A. No. 3153/DEL/2018 (A.Y. 2012-13)**

2. The assessee in the appeal has raised the following substantive grounds of appeal:

*“1. On the facts and circumstances of the case, the Learned CIT(A) erred in upholding the contention of the Assessing Officer, regarding disallowance of interest of Rs.7,07,06,250/- claimed in Profit and Loss Account and Capitalizing in Inventory of work-in-progress.*

*2. On the facts and circumstances of the case, the Learned CIT(A) erred in not appreciating that Accounting Standards are relevant for the preparation of Financial Statement, not for allow ability of interest expenses incurred for the purpose of business and allowable Under Section 36(1)(iii) of the Act.*

*3. That the Learned CIT(A) did not consider the submission of the Appellant that Tax Accounting Standards are not applicable in the relevant Assessment Year under Appeal and Hon'ble Jurisdictional High Court held that ICDS notified by CBDT are ultra-vires the Act.*

*4. On the facts and circumstances of the case, the Order of the Learned Assessing Officer and ld. CIT(Appeals) are not based on correct facts and relevant law, hence both the Orders are illegal, deserve to be set aside.”*

**I.T.A. No. 7197/DEL/2017 (A.Y. 2013-14)**

3. The assessee in the appeal has raised the following substantive grounds of appeal:

*“1. That the Learned Assessing Officer, on the facts and circumstances of the case and as per Law erred in assessing the Loss of the appellant at Rs.8,07,40,807/- against returned Loss of Rs.9,38,85,073/-.*

*2. That the Learned Assessing Officer erred in making addition of Rs. 1,31,44,266/- on the plea that Accounting Standard-7 suggest that financial cost should be ear-marked with respect to respective projects and the appellant Company did not recognize revenue from the project and claimed interest expense which should be capitalized to inventories. Honorable Delhi High Court recently held that income should be computed in accordance with Income Tax Act.*

*3. That there was no justification for levying of interest u/s- 234B of the Act on the facts of the case and as per law.*

*4. That the assessment has not been made in accordance with law and the additions made by Assessing Officer are also unsustainable on the facts of the case and as per law. 5. That the appellant craves leave to add, amend or alter any of the grounds of the appeal.”*

**I.T.A. No. 3153/DEL/2018 (A.Y. 2012-13)**

4. Brief facts of the case are that the assessee company is engaged in the business of Real Estate Activity for executing Group Housing Project as a financing partner. For AY 2012-13, it has filed its return of income declaring a loss of Rs. 7,97,95,666/- in the computation of income. Assessment proceedings were initiated against the assessee and the assessment order was passed u/s 143(3) read with Section 144C of the Act dated 23.03.2016. The AO made an addition on account of arm's length adjustment of interest

u/s 92CA(3) of the Act amounting to Rs. 7,07,06,250/- and disallowance of interest amounting to Rs. 8,44,36,408/- claimed u/s 36(1)(iii) of the Act, capitalizing the same as work in progress under the head 'inventories' in the balance sheet of the assessee as on 31.03.2012. Since there was overlapping of section 92CA(3) and Section 36(1)(iii) of the Act the AO adopted the higher figure of Rs. 8,44,36,408/- for the purpose of disallowance of interest and computed the total income of Rs. 46,40,740/-.

5. As against the assessment order, the assessee preferred the appeal before the ld. CIT(A). The ld. CIT(A) had deleted the addition made u/s 92CA(3) of Rs. 1,07,06,408/- and sustained the disallowance of interest of Rs. 8,44,36,408/- (wrongly stated as Rs. 1,37,30,158/-).

6. Aggrieved by the order of the ld. CIT(A) the assessee has preferred the present appeal on the ground mentioned above.

7. The ground No. 1 is regarding disallowances of interest of Rs. 7,07,06,250/- claimed in Profit and Loss Account and capitalizing in inventory of work in progress. In the Ground No. 2, the assessee contended that the CIT(A) did not consider the submission of the assessee that tax accounting standards are not applicable in the relevant Assessment Year under appeal and the Hon'ble Jurisdictional High Court held that ICDS notified by CBDT are ultra vires the Act.

8. The Ld. Counsel for the assessee submitted that the main reason for disallowance of the interest by the authorities is on the ground that the

assessee has not put to use the business asset and has not recognized the Revenue from the project as income. It further submitted that the assessee company raised 75,00,00,000/- and used the entire amount for the purpose of business as the same has been advanced to JDA Partner Ram Prastha Promoters and Developers Pvt. Ltd. for execution of real asset projects and in the said process no capital has come in existence. Therefore, the finding of the A.O. that the assessee has not recognized revenue in the profit and loss account in the year under consideration cannot be a ground for disallowance of interest claimed as business expenses under the head "income from business". The ld. Counsel further submitted that the assessee cannot recognize revenue during the process of civil project since the customers are paying installments of booking of the flat in the projects, and as per the prudent accounting norms, the same can be accounted only as liability in the balance-sheet and the same cannot be shown as income. The ld. Counsel also submitted that the assessee is following percentage completion method and shall start recognizing proportionate revenue on 15% completion of the project. Since the year under consideration is the first year of the project, the law does not debar the assessee to claim the expenses incurred for the purpose of business after its commencement even if no income has been accrued to the assessee and submitted that that earning/accrual of the income in previous year is not a condition for allowability or expenditure under the Act. Therefore, it was submitted that the disallowance made by the A.O. which was sustained by the CIT(A) liable to be deleted.

9. On the other hand, the Ld. DR submitted that the assessee had not recognized any revenue from the project but is claiming interest expenses which were incurred for the purpose of earning the said revenue. Therefore, the assessee cannot contend the authorities have wrongly disallowed the interest claimed in the profit and loss account and capitalizing in inventory of work in progress.

10. We have heard the rival contentions on these issues in the Appeal, perused material on record.

11. In the present case, the AO made an addition of Rs.8,44,36,408/- to the income, after considering overlap of the transfer pricing adjustment u/s 92CA(3) of Rs.7,07,06,250/-. The Ld. CIT(A) deleted the addition u/s 92CA(3) of Rs. 7,07,06,250/- and sustained the disallowing of interest of Rs. 8,44,36,408/- (wrongly stated as 1,37,30,158/-).

12. The assessee paid a total interest of Rs.9,37,50,000/- to Decolexus Ltd. on Compulsorily Convertible Debentures of Rs. 75,00,00,000/-. Of this, the assessee capitalized interest of Rs. 93,13,592/- proportionately in work-in-progress on construction activities (as per Schedule of Project Implementation Expenses) and an amount of Rs. 8,44,36,408/- was claimed in Profit and loss Account.

13. It is the specific case of the assessee the Assessee had used the entire Rs.75 Crores for the purpose of business as the same has been advanced to

JDA partner Ramprastha Promoter and Developers Pvt. Ltd. for execution of real estate projects and in the said process no capital asset has come into existence. Since the customers are paying installments for booking of the flat in the project and as per the prudent accounting norms the same can be accounted only as liability in the balance sheet and cannot be shown as income and the Assessee and the assessee could not recognize the revenue during the process of civil project and the assessee is following percentage completion method and has to start recognizing the proportionate revenue on 15% completion of projects and the year under consideration is the first year of the commencement of the project.

14. It is the case of the Revenue that since the assessee has not completed 15% of the project, it cannot recognize the revenue from the project. Therefore, following the matching principle, any expenses incurred for the purpose of the project must be capitalized as work-in-progress.

15. It is found that the assessee has under the percentage completion method did not declare any revenue. Therefore, there is substance in the Ld. DR's argument that expenses claimed in the Profit and Loss Account must match the revenue.

16. The Ld. DRP, in its order for AY 2013-14 observed that the issue was not whether the interest expenditure was to be allowed u/s 36(1)(iii) or not, the issue was whether the expenditure is in accordance with the method of accounting followed by the assessee for revenue recognition. The ld. DRP

upheld the action of the AO disallowing interest expenses in the year but allowed the assessee to set off the interest expenses as and when the revenue is recognized for the purposes of taxation.

17. Under the matching concept, revenue and income earned during an accounting period, irrespective of actual cash in-flow, is required to be compared with expenses incurred during the same period, irrespective of actual out-flow of cash. In the instant case, it is an admitted position that the assessee has not offered revenue from the project to tax on the grounds that it is the first year of operations and less than 15% of the project is completed. Therefore, applying the matching principle, the interest incurred needs to be transferred to WIP and would be liable to be claimed in the year that revenue is earned. However, of the total interest of Rs.9,37,50,000/- paid to Decolexus Ltd., the assessee has transferred only a portion of the interest (Rs. 93,13,592/-) to WIP and claimed the remaining interest expense (Rs.8,44,36,408/-) in the Profit and loss Account.

18. In view of the above discussion, we deem it fit to remand the matter to the file of the A.O. and the assessee is directed to provide the details of interest that has been capitalized in work in progress (WIP) and the interest that has been deducted in the Profit and Loss Account. After receiving the assessee's submission, the A.O has to examine the nature of interest expense and verify why only Rs.93,13,592/- forms part of WIP while the remaining interest is claimed as an expense. If the expense is incurred for the project (on which no income has been offered for tax during the year),

then it would form a part of WIP and would be allowable in the year in which revenue from the project is declared to tax. If the expense is incurred for any other business activity, then it would be allowable in the year under consideration. The A.O is directed to verify the nature of the interest expense and accordingly pass an order in line with the observations/directions made above.

19. In the result, the appeal in **I.T.A. No. 3153/DEL/2018 (A.Y. 2012-13)** filed by the assessee is allowed for statistical purposes.

**I.T.A. No. 7197/DEL/2017 (A.Y. 2013-14)**

20. Both parties have agreed that the facts of AY 2013-14 are similar to those of AY 2012-13 and the Assessee has raised the identical grounds of Appeal in the present Appeal as well.

21. Since we have remanded the matter to the file of the AO for Assessment Year 2012-13 with a direction to verify whether the expenditure incurred and claimed in the nature of interest is for completion of the project (on which no income has been offered for tax during the year) or for buying a capital asset or for any other business activity and accordingly applying the law, the same direction *mutatis mutandis* applies to AY 2013-14.

22. In the result, the appeal in **I.T.A. No. 7197/DEL/2017 (A.Y. 2013-14)** filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on : **26/04/2023**.

**Sd/-**  
**(Dr. B.R.R. KUMAR )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**[YOGESH KUMAR U.S.]**  
**JUDICIAL MEMBER**

Dated: 26/04/2023

*\*MEHTA/AK Keot/R.N, SR. PS\**

Copy forwarded to:-

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI