IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.5978/Del/2017, A.Y. 2014-15
ITA No.2238/Del/2019, A.Y. 2015-16
ITA No.5919/Del/2019, A.Y. 2016-17

Addl. CIT, Special Range-03, New Delhi	Vs.	DLF Limited DLF Centre, Sansad Marg, New Delhi-110001 PAN No. AAACD3494N
(APPELLANT)		**(RESPONDENT)**

Assessee by	Sh. R.S.Singhvi, CA and Sh. Satyajeet Goel, CA
Revenue by	Sh. T. James Singson, CIT, DR

Date of hearing:	11.07.2023
Date of Pronouncement:	19.07.2023

ORDER

PER ANUBHAV SHARMA, JM:

These three appeals preferred by the Revenue are against the order dated 28.06.2017 of the CIT(A)-3, New Delhi, 31.12.2018 and 30.04.2019 of the CIT(A)-34, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 30.12.2016, 30.12.2017 and 30.12.2018 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the JCIT, Special Range-3, New Delhi the ACIT, Special Range-3, New Delhi respectively (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. Ld. AR pointed out that in all the appeals, the grounds are common and are decided in favour of the assessee in assessee's own case. A detailed chart of the issues and how there stand covered in favour of the assessee by Co-ordinate Bench order dated 27.05.2019 in ITA No. 2749/Del/2013 for A.Y. 2008-09 and order dated 11.03.2016 in ITA no. 2677/Del/2011 with ITA no. 3061/Del/2011 for A.Y. 2006-07, has been filed which could not be disputed by Ld. DR. Nor anything was cited by Ld. DR to differentiate on facts or any question of law.

4. The grounds raised in ITA no. 5978/Del/2017 for A.Y. 2014-15 substantially covers the grounds for the other two assessment years for assessment year 2015-16 and 2016-17. Therefore, the grounds raised in ITA No. 5978/Del/2017 are reproduced below for convenience of determination of all the appeals :-

> *"1.Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.32,74,33,022/- made by the AO on account of deduction claimed u/s 801AB. "*
>
> 2. *"Ltd. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.345,81,30,671/- made by the AO on account of revenue recognition as per POCM. "*
>
> 3. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 1,34,34,87,000/- made by the AO on account of capitalization of the interest."*
>
> 4. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.28,19,00,823/- made by the AO on account of brokerage and commission. "*

5. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.32,35,021/- made by the AO on account of net contingency deposits."*

6. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.5,00,38,903/- made by the AO on account of non-allocation of proportionate over head expenditure to other group entities. "*

7. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case by restricting the addition of Rs.2,94,76,81,659/- made by the AO to Rs.9,10,488/- u/s 14A read with Rule 8D. "*

8. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.31,43,37,175/- made by the AO on account of treating the business income as 'Income from the House Property. "*

9. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 5,27,028/- made by the AO on account of notional rent on the properties lying vacant during the year. "*

10. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.3,52,455/- made by the AO on account of depreciation."*

11. *"The Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.16,32,34,834/- made by the AO on account of personal in nature. "*

12. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.2,38,98,422/- made by the AO on account of carbon credits which is claimed by the company. "*

13. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.14,31,00,000/- made by the AC on account of short/non-*

allocation of proportionate overhead expenditure to windmills at Gujrat and Karnataka."

14. *"Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.11,58,92,757/- made by the AO on account of expenditure pertaining to the prior period."*

15. *"The appellant craves leave to modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

GROUND NO. 1

5. The issues arises out of addition made by Ld. AO on account of deduction claim u/s 80IAB. In the assessee's own case for A.Y. 2008-09 (supra) the issue has been considered by the Tribunal as it arose for the first time in A.Y. 2008-09. It can be appreciated in the findings of the Co-ordinate Bench in para no. 46 to 80 that a reasoned finding has been given including the fact that in the group concern cases on identical circumstances and similar reasoning given by the AO, the Tribunal has allowed the claim of deduction u/s 80IAB. Accordingly, the Bench is inclined to reject ground no. 1.

GROUND NO. 2

6. The issue arises out of the addition made by Ld. AO on account of Revenue recognition as per POCM. In assessee's own case for A.Y. 2006-07 (supra) issue has been considered against the Revenue with relevant finding in para no. 35 to 42. It can be observed that in A.Y. 2006-07, the issues are restored to the files of Ld. AO to make further inquiries in respect of Mangolia project and Summit project. However, the adoption of POCM was approved. Further in A.Y. 2008-09 the department's appeal had again raised the issue and taken into consideration the determination of issue in favour of

the assessee by the Tribunal in assessee's own case for A.Y. 2006-07. The Co-ordinate Bench had decided the issue against the Revenue. In the present A.Y. the para 9.2 of the order of the Ld. CIT(A) shows he has followed the findings in favour of the assessee by its predecessor by A.Y. 2009-10. In the light of aforesaid the adoption of POCM cannot be interfered and the ground is rejected.

GROUND NO. 3

7. The issue arises from the addition made by Ld. AO on account of capitalization of the interest. The issue is covered in favour of the assessee vide assessee in assessee's own case for A.Y. 2006-07 wherein in para no. 43 to 50 a Co-ordinate Bench has made the relevant findings . Ld. CIT(A) has deleted the addition primarily holding in para no. 10.2 of its order as follows :-

> *"It emerges from the facts of the present case that the Assessing Officer has not identified any specific diversion of funds which were not used for the purposes of business. The funds borrowed from the banks and self generated have either been utilized in construction business or advanced to the subsidiaries, associate companies and earned the interest income which has been offered for the tax during the year. It is held that there is no diversion of money for non-business purposes. The loans to the subsidiaries have been given for the business purposes and interest has been charged.*
>
> - *The proviso to section 36(l)(iii) is not applicable as:*
>
> 1. *The buildings under construction are not the capital assets*
> 2. *These are stock in trade*
> 3. *Any borrowing for the stock in trade can never be capitalized.*
>
> - *Accounting standard AS-(16) has no application. Accounting Standards cannot override the provisions of Income Tax Act.*
>
> *It is a matter of record that the borrowed funds have been utilized for the business of the real estate and the loans*

and advances to the subsidiaries. The company has earned the interest of Rs.895.62 crore from the loans and advances which has been offered as the income. In view of the above, it is clear that the company has effectively claimed the net interest of Rs.722.81 crore on the term loans which have been used for the purposes of business of the company and in this respect it is evident that the interest earned by the company is more than the net interest debited in the accounts on the term loans and thus there is no question of making any adhoc disallowance. This is further fortified by the fact that the balance sheet of the company in the schedule 16 as on 31.03.2014 shows the closing inventory of Rs.8,112.24 crore which indicates the use of the substantial amount of interest bearing funds. In view of the above, it is held that capitalization of interest of Rs:/I34734,87,000/- on notional basis by the Assessing Officer based on various permutations was not justified and accordingly the same is deleted. The Assessing officer is directed to modify the assessment order accordingly."

8. Co-ordinate Bench in para no. 49 of ITA No. 2677/Del/2011, A.Y. 2006-07 has observed as follows :

"49. We have carefully considered the rival contentions. It appears that the AO has made this addition mainly because of note mentioned by assesse in its accounting policies with respect to borrowing costs according to Accounting Standard 16 issues by ICAI. We have perused notes attached to financial statements and we are of opinion that these notes have arisen in the financial statement of the assesse because of the issue of applicability of Accounting Standard 16 issued by the ICAI. According to Accounting Standard 1 i.e. disclosure of accounting policies, each and every company is required to disclose the accounting policy with respect to various significant income, expenditure and assets and liabilities etc. applicable to it. Borrowing cost is also one of them. ICAI has issued Accounting Standard 16 Accounting for Borrowing Cost wherein it is provided that in case of interest expenditure incurred by the company, it is required to be capitalized if the borrowing is related to the qualifying assets.

In this case the inventory is a qualifying assets as it is held for more than 12 months and therefore interest attributable to it is required to be capitalised in the books of accounts as per AS - 16. Therefore we do not agree with the arguments of AR that AS -16 does not apply to inventory. However, those are the provisions which are applicable for the maintenance of the accounts of the company and interest is allowable according to provisions of section 36(1) (iii) of the act. Further according to us, the provisions of Accounting Standards and provisions of the Act are two different set of regulations and while deciding this issue, it is well settled judicial precedent that is if there is a contradiction between the two, the provisions of the Act shall prevail. Provisions of section 36(l)(iii) provides that the amount of interest paid in respect of capital borrowed for the purposes of the business or profession deduction is required to be allowed. Proviso inserted w.e.f. 01.04.2004 is the only restriction if condition laid down u/s 36(1) (iii) are satisfied by the assesse. The proviso says that any amount of the interest paid in respect of capital borrowed for acquisition of an asset whether capitalized in books of accounts or not for any period beginning from the date on which the capital asset was borrowed for acquisition of the asset till the date on which such asset was put to use shall not be allowed as deduction. The deduction is to be disallowed even if the interest is capitalized in the books of accounts or not. Hon'ble Supreme Court in the case of Core Healthcare [298 ITR 194] has held that provisions of section 36(1)(iii) is a code in itself. In the present case, the interest paid by the assesse is not for the purpose of acquisition of any capital asset but for its inventory. We do not find any restriction in provisions contained u/s 36(1)(iii) which provides that the interest can be disallowed if incurred for the purpose of inventory as provided under Accounting Standard 16. Apparently, in this case, there is no allegation that interest is not paid on capital borrowed for the purpose of the business. Hon'ble Mumbai High Court in the case of C1T vs. Lokhandwala Constructions Industries Ltd. [131 taxman 810] has held as under :-

***"4.** From the facts found by the Tribunal on record, it is clear that assessee undertook two-fold activities. It bought and sold flats. Secondly, the assessee was also engaged in the business of construction of buildings. The profits from both the activities*

were assessed under section 28 of the Income-tax Act. In this case, we are concerned with the second activity (hereinafter referred to, for the sake of brevity, as "Kandivali Project"). According to the Commissioner, loan was raised for securing land/development rights from the Mandal. That, the loan was utilised for purchasing the development rights, which, according to the Commissioner, constituted a capital asset. According to the Commissioner, since the loan was raised on securing capital asset, the interest incurred thereon constituted part of capital expenditure. This finding of the Commissioner was erroneous. In the case of India Cements Ltd. v. CIT [1966] 60 ITR 52 , if was held by the Supreme Court that in cases where the act of borrowing was incidental to carrying on of business, the loan obtained was not an asset. That, for the purposes of deciding the claim of deduction under section 10(2){iii) of the Income-tax Act, 1922 [section 36(1){iii) of the present Income-tax Act], it was irrelevant to consider the purpose for which the loan was obtained. In the present case, the assessee was a builder. In the present case, the assessee had undertaken the Project of construction of flats under the Kandivali Project. Therefore, the loan was for obtaining stock-in-trade. That, the Kandivali Project constituted the stock-in-trade of the assessee. That, the Project did not constitute a fixed asset of the assessee. In this case, we are concerned with deduction under section 36(1){iii). Since the assessee had received loan for obtaining stock-in-trade (Kandivali Project), the assessee was entitled to deduction under section 36(1)(mj of the Act. That, while adjudicating the claim for deduction under section 36(1){iii) of the Act, the nature of the expense - whether the expense was on capital account or revenue account - was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That, the utilization of the capital was irrelevant for the purposes of adjudicating the claim for deduction under section 36(1)(iii) of the Act -Calico Dyeing & Printing Works v. CIT [19581 34 ITR 265 (Bom.f In that judgment, it has been laid down that where an assessee claims deduction of interest paid on capital borrowed, all that the assessee had to show was that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether the capital was borrowed in order

to acquire a revenue asset or a capital asset. The said judgment of the Bombay High Court applies to the facts of this case."
Further, in the following decisions of various coordinate Benches, the deduction of interest has been allowed u/s 36(1)(iii) even where the assesse has followed the projection completion method :-
(i) *ACIT vs. Tata Housing Development Company Ltd. - 45 SOT 9 (Bom.);*
(ii) *DCIT vs. Thakar Developers - 115 TTJ 841 (Pune);*
(iii) DCIT vs. K. Raheja Pvt. Ltd. - (2006) TIOL 220 ITAT-MUM.;
(iv) K. Raheja Development Corporation vs. DCIT in ITA No.240/Bang./97 dated 22.09.1997 - In this case, reference application filed by the Department has also been . rejected by the Hon'ble Karnataka High Court vide its order dated 08.11.2000 in Civil Petition No.832/2000 (IT).

Before us, Id. DR could not cite any decision against the claim of the assesse, therefore, respectfully following the decision of Hon'ble Bombay High Court and as well as various coordinate Benches, cited above, we do not concur with the view of CIT (A) on disallowance of interest of RS.24.75 crores u/s 36(1) (iii) of the Act. The alternative argument of the assesse regarding adoption of any artificial formula for the purpose of computing interest disallowance. Ld. CIT (A) has presumed proportion of utilisation of funds in absence of the nexus holding that assesse has used mixed funds. Honourable Bombay High court in case of CIT V Reliance Utilities & Power limited 313 ITR 340 has held that
"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments."
Therefore we are of the view that presumption is to be assumed in favour of the assesse and not against assesse. Hence, we reject the formulae adopted by CIT (A) of working out proportionate disallowance by adopting artificial formulae. Therefore respectfully following decisions of Honourable Bombay High court in CIT vs. Lokhandwala Constructions Industries Ltd. [131 taxman 810] and CIT V Reliance Utilities & Power limited [313 ITR 340] We reverse the order of the CIT

(A) confirming the disallowance of expenditure of Rs.27.40 crores and direct the AO to allow this interest expenditure u/s 36(1) (iii) of the Act."

9. The aforesaid have been followed in assessee's own case for A.Y. 2008-09 (supra) accordingly, following the same, the ground raised by Revenue is not sustainable, same is rejected.

GROUND NO. 4

10. The issue arises out of the deletion of the addition made by Ld. AO on account of brokerage and commission. The issue stands covered in favour of the assessee in assessee's own case for A.Y. 2006-07 (supra). It is also pointed out that the Assessing officer himself has not made disallowance on this issue in A.Y. 2016-17. The Ld. CIT(A) in the impugned order in para no. 11.2 following the Tribunal's orders A.Y. 2006-07 has deleted the disallowance observing that no further appeal has been filed in the High Court. In assessee's own case for A.Y. 2008-09 (supra) the issue has been again determined in favour of the assessee following assessee's own case judgement of the Tribunal for A.Y. 2006-07. The Bench is of considered opinion there is no error in findings of Ld. CIT(A) following findings of the Tribunal in assessee's own case for A.Y. 2006-07 which have attained finality. Accordingly, the ground is decided against the Revenue.

GROUND NO. 5

11. The issue arises out of the addition made by the Ld. AO on account of net contingency deposits. The issue has been considered in the case of assessee for A.Y. 2006-07 (supra) by the Tribunal deciding in favour of the assessee. The Ld. CIT(A) has taken into account the fact that this issue has been decided in favour of the assessee for A.Y. 2006-07 by the Tribunal and no further appeal to the High Court has been filed. Further he observed that

the issue has been examined by his predecessor in A.Y. 2009-10 and the addition made by Ld. AO was deleted. Ld. AR has pointed out that Assessing Officer himself has not made addition on this issue in A.Y. 2016-17. Thus following the Tribunal's findings for A.Y. 2006-07 there is no substance in the ground as raised, the same is decided against Revenue.

GROUND NO. 6

12. The issue arises out of the addition made by Ld. AO on account of non-allocation of proportionate over head expenditure to other group entities and the issue was first raised in decided in favour of assessee in assessee's own case for A.Y. 2006-07(supra). Ld. CIT(A) has deleted the addition on the basis of findings arrived in assessee's own case by the predecessor for A.Y. 2009-10. The issue has been decided in favour of the assessee for A.Y. 2012-13 and 2013-14(supra) by relevant finding in para 10.3 as follows :-

> *"10.3 On careful perusal of the facts, we find that the basis adopted by the assessing officer while making disallowance of expenses in the hands of the assessee on account of allocation of overheads to group concerns is static and borrowed from earlier years assessment orders. Further, as this issue has already been decided by Coordinate bench in A.Y. 2006-07 to 2011-12 wherein the disallowance was deleted. On parity of facts, this ground is also decided as per table given in para 19 of this order."*

Thus following the Tribunal's findings for A.Y. 2006-07, there is no substance in the ground of the Revenue, same is decided against the Revenue.

GROUND NO. 7

13. The issue arises out of the addition made by Ld. AO u/s 14A r.w.r. 8D wherein the Ld. CIT(A) has restricted the addition to Rs. 9,10,488/- only.

The issue has been considered in case of assessee in assessment year 2010-11 vide ITA no. 4187/Del/2015 order dated 29.09.2020 and it has been further followed in A.Y. 2011-12 vide ITA no. 4159/Del/2015. The Ld. CIT(A) has considered the fact that assessee had made his own disallowance for which Assessing Officer has not recorded his satisfaction about disallowance so made by the appellant and relying judgment of Hon'ble Delhi High Court in **Maxopp Investment Ltd**. vs. C1T **247 CTR 162** (**Del**.) benefitted the assessee. As the same being settled proposition of law requires no interference. The ground is rejected.

GROUND NO. 8

14. The issue arises out of the addition made by Ld. AO on account of treating the business income as income from house property. Ld. CIT(A) has followed the reasoning given by predecessor for A.Y. 2009-10 wherein considering the assessee's own case for A.Y. 1996-97 the issue was decided in favour of the assessee. The Tribunal in assessee's own case for A.Y. 2006-07(supra) has considered the issue and decided the same in favour of the assessee. The same requires no different treatment. The ground is rejected.

GROUND NO. 9

15. The issue arises from the addition made by Ld. AO on account of notional rent on the properties lying vacant during the year. Ld. CIT(A) has again followed the findings recorded by predecessor in the case of assessee for A.Y. 2009-10. In the assessee's own case co-ordinate Bench for A.Y. 2006-07 has considered the issue in following finding in assessee's own case for A.Y. 2005-06, and deleted the addition. It is pointed out the Ld. AR that no appeal has been preferred in Hon'ble High Court on this issue against the

findings for A.Y. 2006-07 and AO himself has not made addition on this issue in A.Y. 2016-17. Thus following the Tribunal's findings for A.Y. 2006-07, the ground has no substance, the same has rejected.

GROUND NO. 10

16. The issue arises out of addition made by Ld. AO on account of depreciation claimed on DLF Central Building. Ld. CIT(A) has followed the order of predecessor for A.Y. 2009-10 and deleted the addition. It was canvassed before Ld. CIT(A) that the issue is covered in favour of the assessee the orders of Ld. CIT(A) in the preceding assessment years 2006-07 to 2011-12. Ld. AR has pointed out that department has not preferred any appeal before the Tribunal challenging the relief given by Ld. CIT(A) and Ld. AO himself has not made addition on this issue in A.Y. 2016-17. As finality stands attached to the relief given by Ld. CIT(A) in AY 2006-07 to 2011-12, there is no substance in the ground, same is rejected.

GROUND NO. 11

17. The issue arises out of addition made by the Ld. AO on account of personal nature expenses attributed to the use of helicopter and aircraft expenses treating them as not incurred wholly & exclusively for business purpose. Ld. CIT(A) taking into account the nature of business activity of the assessee considered the observations of Ld. AO not sustainable and further holding that if any expenditure is identified as personal expenditure incurred on the directors and other employees it would fall within the meaning perquisite and is taxed accordingly. In assessee's own case for A.Y. 2010-11(supra) the issue has been considered and decided in favour of the assessee with following relevant finding para 24 reproduced as below:

"24. Ground number 16 and 17 of the appeal is with respect to the disallowance of expenses not incurred wholly and exclusively for business purposes amounting to Rs. 49,629,551/- and operational expenditure of Rs. 387,449,073/-. This issue has been raised by the learned assessing officer wherein he disallowed the expenditure of the above sum considering the same as a personal in nature and disallowed 66.6% of the expenditure amounting to Rs. 387,449,073/- on the maintenance of the aircraft and helicopter observing that assessee has not proved business expendiency of the expenditure and those expenditure appeal to be personal in nature. The learned CIT - A has dealt with this issue at para number 23 of his order at page number 177 - 196 noting that assessee is engaged in the business of development of real estate and it is one of the largest realistic developer in the field of colonization and township developments all over the country the procurement of the various material is source from the various countries across the globe. The company takes technical assistance/know-how from the repeated technical consultants globally. The company requires two flights directors, senior executives, ingenious and consultants both on its rolls and hired in India and abroad which various project: sites located all over the country. Due to the frequency of such transportation the company deemed it fit to acquire the aircraft and helicopter rather than only hire such services. Therefore the expenditure on maintenance and operation of the helicopter and aircraft and chartering of aircraft and other routine expenditure were expended for the purposes of the business. It was further held by him that assessee is a public limited companies are distinct assessable entity as per the definition of person u/s two (31) of the act therefore it cannot be stated that the expenditure identified as expended by the directors and other employees of the company is personal in nature because of the limited company is an in animated person and there cannot be anything personal about such an entity. He further followed the decision in case of Sayaji Iron and engineering Co Ltd 253 ITR 749 and deleted the addition/disallowance. The learned departmental representative could not show us any reason to state that the expenditure incurred by the assessee on such travel expenditure of aircraft and helicopter can be considered as a personal expenditure of a company. There were no contrary decision is pointed out before us. In view of this we

do not find any infirmity in the order of the learned CIT - A in deleting the above disallowance. Accordingly ground number 16 and 17 of the appeal of the learned assessing officer is dismissed."

This has been followed subsequently in assessee's own case for A.Y. 2010-11 and 2011-12 (supra). In the light of aforesaid, following aforesaid, the ground has no substance, the same is decided against the Revenue.

GROUND NO. 12

18 The issue arises out of the addition made by Ld. AO on account of carbon credits. Ld. CIT(A) following various judicial pronouncements in favour of the assessee and discrediting the findings of Ld. AO in not following the Tribunal Hyderabad Bench judgment for the reason that it was challenged before Ld. High Court has deleted the addition. The issue in the assessee's own case has been considered in A.Y. 2011-12 with following relevant finding in para no. 15 reproduced as below :

"15. Ground number 19 of the appeal is with respect to the addition on account of carbon credits amounting to Rs. 122,34,040/-. The assessee has submitted that this issue is squarely covered in favour of the assessee by the decision of the honourable on the per the High Court in Commissioner of income tax versus my home Power Ltd 365 ITR 82. Assessee has claimed the above sum as a capital receipt whereas the learned assessing officer has made the addition on the ground that the decision of the coordinate bench in case of my home Power Ltd dated 2 November 2012 has not been accepted by the revenue and is further challenged. Now we find that above decision has been confirmed by the honourable Andhra Pradesh High Court in [2014] 46 taxmann.com 314 (Andhra Pradesh)/[2014] 225 Taxman 8 (Andhra Pradesh)(MAG.)/[2014] 365 ITR 82 (Andhra Pradesh)/[2015] 276 CTR 92 (Andhra Pradesh wherein it has been held that:-
"3. We have considered the aforesaid submission and we are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an offshoot of

business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns." We agree with this factual analysis as the assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal."
The learned departmental representative could not controvert the above decision and therefore respectfully following the decision of the honourable Andhra Pradesh High Court we confirm the order of the learned CIT - A in deleting the addition of Rs. 122,34,040 on account of Carbon credit receipt holding the same to be a capital receipt. Accordingly ground number 19 of the appeal is dismissed."

In the light of aforesaid respectfully following the findings of ld. Co-ordinate Bench, there is no substance in the ground of Revenue, the same is dismissed.

GROUND NO. 13

19. The issue arises out of the addition on account of short/non-allocation of proportionate overhead expenditure to windmills at Gujrat and Karnataka. Ld. CIT(A) has made following relevant findings in para no. 21.1 and 21.2 reproduced as below :

"21.1 Having gone through the submissions of the assessee, the order of assessment passed by the Assessing Officer and the material evidences placed on the record, it emerges from the facts of the case that the Assessing Officer made the disallowance of the expenditure of Rs. 14,31,00,000/- on account of allocation to the windmills at Karnataka and Gujrat. The Assessing officer is of the view that the assessee has nto allocated the establishment, finance and general administrative cost to the windmill division and proceeded to make the

allocation of the expendioture on the basis of the percentage of the total income of the windmill division in proportion to the net profit of the DLF as a whole. The Assessing Officer accordingly made the adhoc allocation of the expenditure in regard to the establishment, finance and general administrative expenses. By doing so, the Assessing Officer allocated Rs. 3.95 crore to the windmill in Karnataka and Rs. 10.36 crore to windmill in Gujrat. It is pertinent to note that the operations and maintenance of the windmills has been outsourced by the company to M/s. Suzlon Infrastructure Services Ltd. and M/s. Evercan India Ltd. who submit the quarterly bills to the company for the operation and maintenance of the windmills. The company has only incurred expenditure in connection with insurance and rebate for the early payment to the parties. There is no linkage and justification for the allocation of any expenses to the windmill project, no expenditure claimed in the taxable income can be linked with the windmill project.

21.2 In view of the above, it is clear that no expenditure can be allocated to the windmill project. Both the divisions have maintained the separate books of accounts and all the expenditure in the nature of operational and general and administrative expenses have been debited to the respective divisions. There is no force in the argument of the Assessing Officer that the assessee has not allocated any expenses to the separate divisions. The separate books of accounts maintained by both the divisions leave no scope for making any addition on account of the administrative and other expenses. The addition of Rs. 14,31,00,000/- made by the Assessing Officer is therefore, deleted. The Assessing Officer is directed to modify the order of assessment accordingly."

20. The issue has been considered in the case of assessee for A.Y. 2012-13 and 2013-14 (supra) with following relevant finding in para no. 22.1 to 22.4 reproduced as below :

"22.1 ***Ground No. 13*** *is in respect of deletion of disallowance of expenditure to the tune of Rs. 14,64,00,000/- on account of short/non-allocation of proportionate overhead expenditure to windmill unit in Gujarat and Karnataka. The assessing officer made the disallowance on the ground that the windmill units*

located in Gujarat and Karnataka are claiming deduction u/s 80IA and assessee has failed to allocate overhead expenses to these units. Eventually, the assessing officer allocated the establishment, finance and general administration expenses in the ratio of turnover and disallowed the expenses so allocated in the hands of the assessee company. The impugned disallowance was deleted by CIT(A).

22.2 The Ld. DR supported the order of assessing officer and submitted that allocation of expenses to windmill units in Gujarat and Karnataka as done by the assessing officer is correct.

22.3 The Ld. Counsel for the assessee filed synopsis on this issue and argued that separate books of account are maintained in respect of eligible windmill unit in Gujarat and Karnataka and there is no case of any short allocation of expenses. It was further submitted that working of profit in these units is supported from certificate in Form 10CCB issued by Chartered Accountant. The Ld. Counsel also relied upon the decision of Addl. CIT v. Delhi Press Patra Prakashan [2006] 10 SOT 74 (Delhi) (URO).

22.4 We have considered the rival submissions and gone through the orders passed by sub-ordinate authorities. The issue before us is allocation of expenses to eligible units claiming deduction u/s 80IA and consequential disallowance in the hands of the assessee company. In short, the assessing officer has observed that common expenses pertaining to units claiming exemption u/s 80IA have been claimed by the assessee company and same are not allowable. The CIT(A) has deleted the disallowance by holding as under:

> *"21.1 Having gone through the submissions of the assessee, the order of assessment passed by the Assessing Officer and the material evidences placed the record, it emerges from the facts of the case that the Assessing Officer made the disallowance of the expenditure of Rs. 14,64,00,000/- on account of allocation to the windmills at Karnataka and Gujarat. The Assessing Officer is of the view that the assessee has not allocated the establishment, finance and general administrative cost to the windmill division and proceeded to make the allocation of the expenditure on the basis of the percentage of the total income of the wind mill division in proportion to the net profit of the*

DLF as a whole The Assessing Officer, accordingly made the adhoc allocation of the expenditure in regard to the establishment, finance and general administrative expenses. By doing so; the Assessing Officer allocated Rs.3.90 crore to the windmill in Karnataka and Rs.: 10.74 crore to windmill in Gujarat.

It is pertinent to note that the operations and maintenance of the windmills has been outsourced by the company to M/s Suzlon Infrastructure Services Ltd. and M/s. Evercan India Ltd. who submit the quarterly bills to the company for the operation and maintenance of the windmills. The company has only incurred expenditure in connection with insurance and rebate for the early payment to the parties. There is no linkage and justification for the allocation of any expenses to the windmill project, no expenditure claimed in the taxable income can be linked with the windmill project.

In view of the above, it is clear that no, expenditure can be allocated to the windmill project. Both the divisions have maintained the separate books of accounts and all the expenditure in the nature of operational and general and administrative expenses have been debited to the respective divisions. There is no force in the argument of the Assessing Officer that the assessee has not allocated any expenses to the separate divisions. The separate books of accounts maintained by both the divisions leave no "scope for making any addition on account of the administrative and other expenses. The addition of Rs. 14,64,00,000/ - made by the Assessing. Officer is therefore, deleted. The Assessing Officer is directed to modify the order of assessment accordingly."

The Ld. DR was unable to controvert the finding recorded by CIT(A). On closer perusal of assessment order, we find that assessing officer has not given any basis for making impugned disallowance and the only reasoning behind the allocation of expense is that windmill units have not claimed any expenses on account of finance, establishment or general admin cost. The Ld. AR has drawn our attention to form 10CCB which contained complete working of profit and claim of various expenses incurred

for running these units. It is self evident that separate set of books of account are maintained for respective windmill unit at Gujarat and Karnataka. In these circumstances, unless there is some material or conclusive finding on record that books of account of these units are not correct or expenses pertaining to these units have not been claimed, there could be no case of any notional allocation of expenses in the ratio of income. The assessment order is silent on this aspect and merely contains working of disallowance by allocation expenses in the ratio of income which in our view is not sustainable. At this juncture, it is pertinent to make reference to decision of Honble Allahabad High Court in the case of ***CIT v. Translam Ltd. [2014] 231 Taxman 901 (Allahabad)*** *wherein it was held that assessing officer is bound to point out defect in separate books of account of units before disputing the correctness of income/loss declared therein.*

In view of above, we find ourselves in agreement with the order of CIT(A) deleting the disallowance of expenses on account of notional re-allocation and the order of CIT(A) on this count is upheld. As a result, the Ground 13 is dismissed."

Respectfully following the aforesaid findings in favour of the assessee and his own case the ground is rejected.

GROUND NO. 14

21. The issue arises out of addition on account of disallowance of prior period expenses. Ld. CIT(A) has taken into consideration the fact that the liability to pay the expense has incurred and arisen during the year therefore, the same was allowable as expenses. In the assessee's own case for A.Y. 2006-07 (supra) the issue has been decided in favour of the assessee and Ld. AR has pointed out that department has not preferred any appeal on this issue before Hon'ble High Court and Assessing Officer himself has not made disallowance on this issue in A.Y. 2016-17. Thus following the Tribunal's findings for A.Y. 2006-07 there is no substance in the ground, the same is rejected.

22. Following the determination of aforesaid grounds against the Revenue in ITA no. 5978/Del/2017 for A.Y. 2014-15, the common grounds raised in ITA No.2238/Del/2019 for A.Y. 2015-16 and ITA No.5919/Del/2019 for A.Y. 2016-17, also stand disallowed and **consequently the three appeals of Revenue are dismissed.**

Order pronounced in the open court on 19th July, 2023.

Sd/-	**Sd/-**
(N.K.BILLAIYA)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 19/07/2023
Binita, Sr. PS
Copy forwarded to: -
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,
ITAT, Delhi