

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

**Before Shri Kul Bharat, Judicial Member
&
Shri Pradip Kumar Kedia, Accountant Member**

**ITA No. 846/Del/2024
Asstt. Year: 2008-09**

Smt. Heminder Kumari 105, Jor Bagh New Delhi 110003 (APPELLANT)	Vs	The DCIT Central Circle-8 Delhi (RESPONDENT)
PAN No. AAJPK 0331 K		

**Appellant by : Sh. C.S Aggarwal, Sr. Adv.
Sh. R.P Mall, Adv.
Sh. Uma Shankar, Adv.
Revenue by : Sh. Vivek Kumar Upadhyay, CIT-DR**

Date of Hearing: 18.03.2024	Date of Pronouncement: 10.04.2024
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ORDER

Per Pradip Kumar Kedia, AM:-

This appeal has been filed by the appellant against the order of Ld. CIT(A) 24, New Delhi dated 16.02.2024.

2. The appellant has raised the following grounds of appeal:-

1. *That the learned CIT(A) has erred both on facts and in law in upholding the initiation of proceedings u/s 147 of the Income Tax Act. The learned CIT(A) has failed to appreciate that, there had been no escapement of any income chargeable to tax and further that the pre-conditions required to be satisfied for initiation of valid proceedings were completely absent and hence proceedings initiated were without jurisdiction.*

2. *That the learned CIT(A) has failed to appreciate that the income computed by the AO of Rs. 1,07,18,148/- against the income of Rs. 20,564/- was manifestly in excess of jurisdiction and was based on misconceived facts. In fact, he has failed to appreciate the said sum represented assumed and notional interest which had not been accrued to the appellant and was thus a notional alleged income.*

3. *That the learned CIT(A) has failed to appreciate the allegation that the appellant had received an interest and was chargeable to tax at Rs. 1,06,97,584/- was not only misconceived but was based on complete disregard of the documentary evidence furnished by the appellant that no such interest had accrued*

to the appellant.

4. That the learned CIT(A) has also erred in failing to appreciate that the issue in dispute was fully settled by the Hon'ble Tribunal in the case of M/s Vatika Limited and Others and such an order was binding on him.

3. The ground no. 1 is dismissed as not pressed.

4. The ground no. 2, 3 & 4 are on the issue of addition made by the AO of Rs. 1,07,18,148/- as interest income received on loan extended by the appellant to M/s. Vatika Ltd.

5. The brief facts of the case are that appellant had extended loan of Rs. 2,00,00,000/- to M/s. Vatika Landbase P. Ltd., vide a loan agreement entered on 19.09.2005. The said loan agreement was amended by "Amendatory Loan cum Purchase Agreement" on 31.03.2006 giving right to the appellant to opt for purchase of land. The amendatory loan cum purchase agreement was further extended vide an extension agreement on 30.12.2006. Subsequently, vide agreement dated 03.04.2009, the appellant opted to purchase the land parcel and agreed to sell the land parcel to M/s. Vatika Ltd. for a consideration of Rs. 5,75,00,000/-. The appellant declared capital gains of Rs. 3,75,00,000/- arising out of this transaction for AY 2010-11.

6. The AO held that, the appellant had extended the loan on interest vide loan agreement dated 19.09.2005, which was only a loan agreement simpliciter. The AO held that appellant was therefore required to declare interest income on the loan extended. The AO worked out the interest chargeable as below:

Loan amount 19.09.2055	Gross amount on 03.04.2009	Total interest till 09..04.2009	Interest for FY 2005-06	Interest for FY 2006-07	Interest for FY 2007-08	Interest for FY 2089-09	Interest for FY 2009-10
2,00,00,000	5,75,00,000	3,75,00,000	53,78,020	1,06,68,355	1,06,97,584	1,06,68,355	87,684

The AO calculated the interest income for the Assessment Year 2008-09 under consideration at Rs. 1,06,97,355/- and made the addition.

7. The CIT(A) appraising, the facts and circumstances of the case upheld the action of the AO as follows:-

4.1.15 Therefore, the facts of this case are summarized as under:

1. The appellant extended a loan of Rs. 2,00,00,000/- to M/s. Vatika Landbase Pvt. Ltd. on 19.09.2005. As per the agreement the appellant was entitled to interest @24% p.a. to be compounded quarterly. However, as per records and as per the assessment order, the appellant neither received any interest income during the year nor disclosed any interest income for AY 2006-07.

2. Subsequently, vide agreement dated 30.12.2006, the loan period was extended to 30.06.2007.

3. As per records, there is no agreement for any further extension of this loan beyond 30.06.2007 but as per the assessment order the loan period was extended to 31.12.2007.

4. In the meantime, vide agreement dated 31.03.2006 executed between M/s. Vatika Landbase Pvt. Ltd. (borrower) and the appellant and M/s. Wonder Developers Pvt. Ltd. (guarantor), a right for the appellant was created through which the appellant could opt for purchase of residential plot in Vatika City in lieu of the repayment of the loan and interest thereon.

5. There is no material on record to prove that the appellant exercised the right to opt for purchase of residential plot in Vatika City in lieu of the repayment of the loan and interest thereon.

6. Therefore, as per the material on record, the right to opt for purchase of residential plot in Vatika City in lieu of the repayment of the loan and interest thereon was not exercised during the year and therefore the loan continued for the entire duration of FY 2007-08 pertaining to AY 2008-09.

7. As per agreement dated 03.04.2009 the developer purchased the plot on 01.04.2009 and the developer undertook to pay the investor the entire amount of Rs. 5,75,00,000/- by 31.12.2009.

8. The appellant extended the loan to M/s Vatika Landbase Pvt. Ltd. and the plot was sold to M/s. Vatika Limited.

9. It is also noteworthy to mention that all the agreements executed between the borrower and the lender are neither registered nor notarized. Therefore, there is no independent evidence to prove the correctness of these agreements. Thus, there is no independent evidence to prove that the agreement dated 31.03.2006 granting the right to opt for purchase of residential plot in Vatika City in lieu of the repayment of the loan and interest thereon was actually executed on 31.03.2006.

4.1.16 On the analysis of the material on record and as per the discussion above, it is an undisputed fact that for the year under consideration the appellant extended a loan of Rs. 2,00,00,000/- to M/s. Vatika Landbase Pvt. Ltd. on 19.09.2005 and as per the agreement the appellant was entitled to interest @24% p.a. to be compounded quarterly. However, the appellant did not receive any interest income during the year and did not disclose any interest income for AY 2006-07. Although, vide alleged agreement dated 31.03.2006 executed between M/s. Vatika Landbase Pvt. Ltd. and the appellant and M/s. Wonder Developers Pvt. Ltd., a right for the appellant was created through which the appellant could opt for purchase of residential plot in Vatika City in lieu of the repayment of the loan and interest thereon. 1. However, as per the documents on record, there is no evidence to prove that when such a right was exercised by the appellant during the year or even subsequently. 2. There is no material to prove that the appellant was ever allotted a specific plot which was later sold by the appellant to the developer for a consideration of Rs. 5,75,00,000/-. The initial transaction made by the appellant with M/s. Vatika Landbase Pvt. Ltd. was a loan transaction and the appellant had a right to receive interest as per the terms of original agreement. Subsequent agreement dated 31.03.2006 did

provide a right to the appellant to opt for a plot in Vatika City developed by the borrower group but there is no evidence to prove that when and how the appellant exercised such a right and converted its loan to a consideration paid to acquire a right to purchase of plot. Further, through the agreement/s the loan period was extended to cover the financial year pertaining to the assessment year in question. Therefore, during the year under consideration the loan transaction continued and the appellant had an enforceable right to receive interest on the sum extended as loan. Although the appellant had a right to opt for purchase of residential plot in the Vatika City in lieu of the repayment of loan and interest but there is no record to prove that such a right was exercised by the appellant and the right to receive interest on loan was surrendered.

4.1.17 The appellant argued that the appellant has declared income under the head capital gains on sale of plot of 3410 sq.yds during AY 2010-11 to M/s Vatika Limited. This action of the appellant of declaring capital gains would not alter the fact that during the assessment year in question, the interest income accrued to the appellant was not disclosed for tax purposes. In my considered opinion the appellant extended a loan on which interest accrued every quarter till such time the loan was converted as a consideration for the right to purchase of plot. The interest accrued on the loan extended by the appellant till the date on which the appellant exercised her right to opt for purchase of residential plot in the Vatika City in lieu of the repayment of loan and interest. Subsequent to this date the interest will not accrue or arise in the hands of the appellant. The capital gain were required to be computed on the basis of these facts and the date of acquisition of the right to purchase the plot would be the date when the appellant exercised her right to opt for purchase of residential plot in the Vatika City in lieu of the repayment of loan and interest. The appellant was required to disclose the interest income for the initial years and the short-term capital gains, when the right of purchase of plot was sold.

4.1.18 As per para 4.1 of Amendatory loan cum purchase agreement dated 31.03.2006, "At any time before 31s December' 2006 the Lender an absolute, unqualified, absolute and unilateral right, to opt for purchase of residential plots in the said Vatika City, in lieu of the repayment of the loan and interest thereon, on the following terms and in that event, lender shall be allotted residential plots in Vatika City in preference to the retail investors.". This agreement was later extended to 30.06.2007 vide agreement dated 31.12.2006. Therefore, as per record the appellant had a right to opt for purchase of residential plot till 30.06.2007 only. As per records, this right also ceased to exist after 30.06.2007. There is no agreement on record through which the period of exercising this option was extended beyond 30.06.2007 or there is no evidence on record that at any stage this option was exercised. Thus, it cannot be established that the appellant actually possessed a right to purchase of plot, when such a right was sold for a consideration of Rs. 5,75,00,000.

4.1.19 As discussed above, the transaction in question is a composite set of several transactions. First, the extension of loan by the appellant lender and creation of right to receive an interest, Second, the acquisition of right to opt for purchase of plot in lieu of loan and interest, third, the exercise of the right to purchase of plot with simultaneous cessation of right to receive the interest of loan and fourth was to sale the right to purchase of plot to the borrower. Therefore, the appellant continued with the right to receive the interest against the loan till such time she surrendered the right to receive the interest by opting for right to acquire the plot. The appellant during the year had an enforceable right to receive interest and therefore the interest income accrued to the appellant. it is noteworthy to mention that this is not 'notional interest' and it is the interest accrued on the loan during the year. The subsequent action by the appellant to opt for purchase of plot and its subsequent sale and subsequent declaration of capital gain would not change a fact that the interest income was taxable in this year.

4.1.20 Based on the facts discussed above, I am of the considered opinion that the appellant had an enforceable right to receive interest on the sum extended and the same was not disclosed in her return of income. The interest actually accrued to the appellant during the year and this is not a case of notional interest income. There is no evidence to prove that during the year under consideration the

option or the right to opt for purchase of residential plot was exercised by the appellant and the right to receive the interest was terminated. In my opinion, the right to receive the interest continued till the time the appellant chose to opt for right to purchase of residential plot. Subsequent to that the interest was not admissible to the appellant and at that stage the loan amount was to be treated as cost of acquisition of the right to purchase of plot. Therefore, for AY 2008-09, there is no evidence to prove that the loan transaction was discontinued by the appellant and the borrower and hence interest continued to accrue during AY 2008-09. Thus, during the year under consideration, the interest accrued to the appellant on the loan extended to the borrower and the same has been rightly taxed by the Assessing Officer in the order passed u/s 147 of Income Tax Act. Accordingly, I am of the considered opinion that the action of the Assessing Officer of making the addition of Rs. 1,06,97,584/- as interest income is correct and the addition is therefore upheld. No relief is granted to the appellant and the addition of Rs. 1,06,97,584/- as interest income is confirmed. The Ground Nos. 1 to 1.4, 2, 3 to 3.3 of appeal are dismissed.

8. It is this addition of Rs 1,06,97,584/- confirmed by the CIT(A) against which the appellant is aggrieved and is before the Tribunal.

9. The learned AR argued vehemently that the entire exercise of the AO and the CIT(A) was arbitrary and the calculation of interest by the AO is without any basis. The AO and the CIT(A) has erroneously concluded that the payment of Rs. 2,00,00,000/- by the appellant to M/s. Vatika Ltd., was a loan agreement and completely ignored that the said loan agreement was amended by an amendatory loan cum purchase agreement dated 31.03.2006, which gave the right to opt to purchase land from M/s. Vatika Landbase P. Ltd. This amended agreement declared the intention of the appellant to purchase the land from M/s Vatika Landbase P Ltd. The Ld AR argued that the entire fund was extended in order to have the right to purchase the land of M/s Vatika Landbase P Ltd and this right to purchase the land was finally transferred to M/s Vatika Ltd for a consideration of Rs 5,75,00,000/-. This intention is further reinforced by the fact that the Appellant never encashed the post dated cheques given by M/s Vatika Landbase P Ltd to the Appellant as interest component for the Loan extended. The Ld AR argued that the AO worked out interest earned for the AY 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 but added only interest for the period for AY 2008-09. The AO himself did not make any additions on account of interest in any of the other AYs. The Ld AR further added that the Appellant has paid the entire tax on the difference between the cost price of Rs 2,00,00,000/- and the sale consideration of Rs 5,75,00,000/- as Long Term Capital Gain Tax. The ld. AR also submitted that the issue at dispute has been settled by the Coordinate

Bench of Tribunal vide its order dated 20.04.2023, wherein the Tribunal in its order has held that the said transaction was that of sale and purchase of land and not of advancement of any interest bearing loan.

10. The ld. DR vehemently argued that the appellant had entered into loan agreement with M/s Vatika Landbase P Ltd, which provided for earning of interest income to the Appellant and the same was not declared in the return of income. The interest for various years was calculated on the basis of terms agreed upon in the agreement. The ld. DR strongly relied on the decision of ld. CIT(A) and stated that the ld. CIT(A) has gone into details and has rightly held that the said agreement was a interest bearing loan agreement. The ld. DR argued that there was no evidence to prove that during the year under consideration the appellant had opted for purchase of residential plot or a land parcel was allotted to the appellant by M/s Vatika Landbase P Ltd.

11. We have given due consideration to the arguments of the ld. DR and the ld. AR, perused the case records, submissions and paper book. The short issue to be decided in this case is whether the transaction of fund being extended by the appellant, was towards loan or was towards the purchase of plot from M/s Vatika Landbase P Ltd. We find that the Coordinate Bench of the Tribunal has already held this issue in favour of the appellant in its decision in the case of M/s. Vatika Ltd. in ITA Nos. 3705 to 3712/Del/2017, order dated 20.03.2023. The relevant portion of the decision is as under:-

40. The ld. DR argued extensively on various dates detailing the entire events of all the groups involved along with the M/s Vatika Ltd. He has taken us through the seized material pertaining to U.K. Paints India Pvt. Ltd. and the agreements thereof, the agreements with Sohan Singh Dhingra, Heminder Kumari, Span India Pvt. Ltd. and also SEH Realtors Pvt. Ltd. He has argued based on the fund flow showing that the fund used in repurchase of the property from the lender in the name of M/s Lincoln Developers Pvt. Ltd. is the fund of M/s Vatika Ltd. The table has been shown at page no. 6/7 of the written submission of the ld. DR which is reproduced above. The ld. DR has also argued based on the initial agreements, advancing the money, subsequent agreements, loan-cum-purchase agreement, collateral securities, personal guarantees and the PDCs. The ld. DR has also emphasized on the compulsory buy-back from the lender at the option of the investor lender parties. The ld. DR's main argument was that in view of the securities, the advance given is fully secured and it can never be treated as a purchase transaction.

41. *The ld. DR argued that the unaccounted interest payment had no bearing in the recorded transaction. It was argued that if the transaction is held to be a loan transaction and unaccounted interest payment is upheld, to the extent of change in the work-in-progress due to buy-back of property, set off can be given from the interest. The ld. DR disputed the contention of the appellant regarding erroneous, invocation of Section 69 and submitted that such contention is not tenable as from the conduct of the appellant by accepting buy-back value less than principal and interest at buy-back proves that the appellant has paid unaccounted interest and therefore such expenditure has indeed been incurred and hence Section 69C can be invoked. At this juncture, it is pertinent to mention that this interest has been held to be chargeable in the A.Y. 2011-12 by the ld. CIT(A) instead of A.Y. 2006-07. The ld. CIT(A) held that all the interest was paid at the time of buy-back and all the liability of the appellant got discharged towards the lender.*

42. *The ld. AR argued that the transactions with U.K. Paints Pvt. Ltd., Dhingra Group, Span India Pvt. Ltd. and Heminder Kumari are business transactions and there was no evidence that the appellant made any actual payment, be it A.Y. 2006-07 or 2011-12, in the case of NH8 Project. It was argued that the appellant received advance against the sale both in respect of Jaipur Deal and NH8 deal and that against such advances, the plots of land have been allotted, the same have been reflected in the regular books of accounts and then sold and offered to tax as income on the basis of percentage completion method. It was argued that the revenue has accepted the income so offered by the appellant while framing assessment, thus, accepting that the transactions have been accepted as that of sale. The ld. AR argued that notwithstanding the fact whether these transactions were loan transactions or advance received against sale of plots, the interest cannot be charged in the A.Y. 2011-12 as no evidence was found either as a result of search or even otherwise to indicate that the appellant actually made the payments. It was argued that even the ld. DR during the arguments did not bring out any evidence to prove that any interest has been paid to the lender parties.*

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

44. *We find that the learned CIT(A) while summing up in para 4.3.3.18 has held that the conclusion drawn by the AO in respect of the appellant's transactions for the Jaipur deal are erroneous and thus interest income added by the AO for AY 2006-07 to A.Y. 2011-12 in respect of the Jaipur deal was deleted. With regard to Jaipur Deal, the ld. CIT(A) held that the parties executed documents of agreement to sale in respect of certain properties owned by Vatika at Jaipur. As per these agreements, a specific right was granted to the buyers that the plots, which were subject matter of the sale agreement, may be sold back by them to Vatika at a pre-determined sale consideration and additional payments of Rs.1,87,77,000/- was made by these parties for preferential plots allotted. The terms of the existing agreement between the parties prove that the transactions were for purchase of plots and not a financial transaction in the nature of loan. It was held that the agreements for sale have been entered by these parties with Vatika the "seller", on various dates in the month of May and June, 2005. Sanskar Buildtech P. Ltd. and Nakshatra Buildcon P. Ltd., who are the owners of the property, were the "confirming parties" to these agreements. It was a fact on record that the parties made full and complete payments of the cost of the plots including preferential location charges. We agree with the observation of the ld.*

CIT(A) that for construing the intention of the parties from the contents of a contractual document between them, the entirety of the contract must be construed and an effort must be made to harmonize the individual parts into the whole. The ld. CIT(A) has rightly inferred through the harmonious reading of the agreements that the intention was to purchase the plots and not to advance loans as terms of the very first agreement and the accounting treatment given in the books of the parties also proves the same. We affirm the finding of the CIT(A) that none of the evidences referred to by the A.O. either individually or collectively, can be said to indicate that the specific transaction between the buyer and the appellant was actually a loan transaction.

45. *With regard to NH8 Deal, the five customers namely, UK Paints Pvt. Ltd., SS Dhingra (HUF), Span India Pvt. Ltd., M/s SEH Realtors Pvt. Ltd and Smt. Heminder Kumari have lent monies for purchase of space in NH-8 Gurgaon known as "Vatika India Next", which aggregate to Rs. 25 crores and learned CIT(A) had held that out of the five customers, amount advanced by four customers i.e. other than M/s SEH Realtors Pvt. Ltd., was on account of loan till the date of allotment of the plot and the amount advanced by M/s SEH Realtors Pvt. Ltd. was on account of purchase of space, as such, proportionate interest in respect of sum received as advance of Rs. 10 crores from M/s SEH Realtors Pvt. Ltd. was deleted. Whereas, the proportionate interest in respect of sum of Rs. 15 crores received from 4 customers/lenders has been sustained on the ground that transaction with such 4 customers/lenders was loan simplicitor till the date of allotment of plot. While concurring with the decision of the ld. CIT(A) pertaining to M/s SEH Realtors Pvt. Ltd. on the issue of deletion made on account of alleged interest paid, we are unable to agree with the decision of the ld. CIT(A) holding that transaction with such 4 customers/lenders was loan simplicitor for the following reasons. In respect of NH-8 deal qua aforesaid four customers, the ld. CIT(A) has held that initial agreements were loan agreements, as in such agreements there was no indication of any purchase of land. By entering into the amendatory loan cum purchase agreement, the original agreement is amended to extend the periodicity of loan with an additional amendatory clause giving an option to the lender to opt for purchase of plots. It was held that this clause only provide an option to purchase at future date, and same by itself does not convert the loan agreement to purchase agreement. It was held that subsequent extension agreements only change the date of tenure of loan and the amounts of PDCs, and all other conditions of the amendatory agreement continues in the extension agreement. It was held by the learned CIT(A) that it is only in the AY 2011-12 i.e. upon the exercise of the option to purchase the space, and allotment of plot thereafter, the loan agreement got converted into purchase agreement and till the exercise of the option, nature of agreement continued as a loan transaction till the AY 2010-11. Such findings of ld. CIT(A) are not correct on facts as he has failed to appreciate that loan agreement was subsequently modified as "Amendatory Loan cum Purchase Agreement", under which the vendees had opted to convert the loan as purchase consideration for the purchase of plot of land which tenure was extended from time to time and plot of aforesaid land was indeed allotted to the lenders in AY 2011-12.*

46. *All the lender parties were allotted the same area of plot as was quantified in the Amendatory Loan cum Purchase Agreement without any further charges. That in fact, it is only such amendatory agreement which had been acted upon when the vendees had also taken both constructive and physical delivery of plots*

allotted to them. Thus, the lenders have exercised their option to acquire the plots of land instead of accepting the amount of interest originally agreed to be taken from the appellant. This fact itself shows that the original loan agreements, at this juncture, were effectively converted into an agreement to sell/purchase of plots, and hence accrual of any interest does not arise at all. It is a fact that as per the terms of the Amendatory Loan cum Purchase Agreement, on exercise of the option to purchase the residential plot, the loan agreements and Amendatory Loan cum Purchase Agreement shall be deemed to be an agreement to sell and purchase of the residential plots. Under the loan agreements, Amendatory Loan cum Purchase Agreement and Extension Agreements, PDCs were given to the lender/customer in respect of principal amount and interest amount. However, since the lenders/customers never treated the agreement as loan agreement but always wanted to purchase the plot, as such, PDC's were never encashed. Had it been a case of loan instead of advance then obviously the allottees of the land, instead of taking the delivery of plots would have encashed the PDCs. The PDCs were given only as a security pending allotment so that the amounts are secured.

47. It is an undisputed fact that ultimately the plots were allotted to these parties as per Amendatory Loan cum Purchase Agreement/extension agreements. The situation could have been different, had they not exercised the option to purchase the plots or the plots were not allotted to such lenders. Once the plots were ultimately allotted to such parties, the nature of the agreements changed from loan agreement to agreement to sell/purchase of the plots. It is also a fact on record that no evidence of payment of any such interest has been found, which itself proves that no such liability by way of interest has accrued to the appellant. In fact, neither in the assessment proceedings nor in the first appellate proceedings, any material has been brought on record to support the assumption that the appellant has incurred a liability by way of interest. There is no evidence, even, to suggest that the lenders have actually received any interest. Under these circumstances, the contention of the revenue that the appellant has paid the entire accrued interest till the date of allotment of the plots to the lenders, as agreed, but outside its books in cash is nothing but a figment imagination and based on mere suspicion and surmises.

48. Academically, if the statement of the revenue, that the appellant has paid unaccounted interest to the lender parties is considered as correct, in the backdrop of the fact that the principal amount received is accounted by the appellant as well as by the loan parties, the payment of interest from the books would be advantageous to the appellant to reduce their taxable income and hence we are not in a considered situation to accept the presumption of the revenue.

49. Further, we find that the agreements themselves show that the interest was not actually paid upto 27.08.2010 but accumulated and hence the question of payment of interest annually and disallowance of such interest by the revenue doesn't arise. And since the space was allotted by the appellant to these parties even the purported accumulated interest cannot be taxable in the A.Y. 2011-12. With regard to the allegation of the revenue that buy-back value is less than the principal plus interest proves that appellant has paid the unaccounted interest and is taxable u/s 69C of the Act is erroneous in the absence of any material found either from the premises of the appellant or from the premises of investors that appellant has paid any unaccounted interest, as there can be none, since the

investors were allotted the plot of land as was stipulated in the Amendatory Loan cum Purchase Agreement and Extension Agreements.

50. In the result, we decline to interfere with the order of ld. CIT(A) pertaining to the interest chargeable in case of SEH Realtors Pvt. Ltd. and unaccounted interest payment on account of Jaipur Project. With regard to NH8 Project, since the plots have been duly allotted as per the modified agreements and in the absence of any material found and seized/impounded suggesting interest payment in cash/unaccounted, we hold that no interest can be taxed on notional basis.

12. In view of the above decision, we are inclined to hold that the facts and circumstances of the present case is squarely covered by the above decision of the Coordinate Bench. In this instant case also, the plots were allotted to the parties as per amendatory loan cum purchase extension agreement and the appellant had opted to purchase the plot. The post dated cheques on account of interest were never encashed. It is also fact on record that no evidence of receipt of any interest has been found in the Appellant's account. There is also no material brought on record to support that M/s Vatika Landbase P Ltd, had incurred a liability by way of interest and claimed any deduction of interest paid in its account. The Department itself has not taken any adverse view in the remaining AY 2006-07, 2007-08, 2009-10. In any case, the Appellant has paid the entire tax on Rs 5,75,00,000/- in the form of Long term Capital Gains Tax in the AY 2010-11. In view of the above, we hold that the decision of the CIT(A) to confirm the addition made on account of interest income was incorrect and therefore the addition made of Rs 1,06,97,584/- is deleted.

13. In the result, the appeal of the appellant is partly allowed.

Order Pronounced in the Open Court on 10/04/2024.

**Sd/-
(Kul Bharat)
Judicial Member**

**Sd/-
(Pradip Kumar Kedia)
Accountant Member**

Dated: /04/2024
Prabhat