

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA Nos. 1531, 2837 & 2825/MUM/2024  
Assessment Years: 2012-13, 2013-14 & 2014-15**

DCIT, Circle-15(1)(2),  
Room No. 126-B, 1<sup>st</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

M/s HREL Real Estate Ltd.,  
HINCON House, LBS Marg,  
Vikhroli West,  
Mumbai-400083.  
**PAN NO. AABCH 6060 P**  
**Respondent**

**CO No. 106/MUM/2024  
(Arising out of ITA No. 1531/MUM/2024)  
Assessment Year: 2012-13**

M/s HREL Real Estate Ltd.,  
HINCON House, LBS Marg,  
Vikhroli West,  
Mumbai-400083.

**PAN NO. AABCH 6060 P**  
**Appellant**

DCIT, Circle-15(1)(2),  
Room No. 126-B, 1<sup>st</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Respondent**

Assessee by : Ms. Priyanka Jain  
Revenue by : Mr. Biswanath Das, CIT-DR

Date of Hearing : 11/12/2024  
Date of pronouncement : 20/12/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

The captioned appeals by the Revenue for assessment years 2012-12, 2013-14 and 2014-15 and cross-objection of the assessee for assessment year 2012-13 are directed against separate orders passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’]. In these appeals and cross-objection, common issue in dispute is involved, therefore, same were heard together and disposed off by way of this consolidated order for convenience.

2. First of all, we take up the appeal of the Revenue and cross-objection of the assessee for assessment year 2012-13. The relevant grounds raised by the Revenue and assessee are reproduced as under:

### **Revenue’s Grounds of Appeal**

*1. Whether, on the facts and circumstances of the case and in law, the order of the CIT(A) was correct in deleting the addition on account of various expenses without appreciating that the profit of a project can be determined only when entire cost of the project, direct or indirect including financing cost is added to the value of work in progress of the project.*

*2. Whether, on the facts and circumstances of the case and in law, the order of the CIT(A) is not bad in law ignoring the fact that the business activity of the assessee was not commenced, hence it is not eligible for claiming carry forward of the loss.*



3. The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored.

### **Cross-objection of the Assessee:**

a. On facts & in circumstances of the case & in law, the learned CIT(A) erred in upholding reopening of the assessment order passed u/s 250 of the Act, dated 01.02.2024 beyond 04 years from the end of the relevant Assessment Year despite there being no failure on the part of the assessee as envisaged in proviso to Section 147 of the Act nor there being any allegation to that effect in the reasons recorded for reopening the assessment; the order passed u/s 147, dated 28.12.2019, therefore merits being quashed.

b. Further, the re-opening proceedings, being on the basis of a mere change of opinion on the part of the learned AO are not legally tenable & are bad in law & therefore, for this reason too, the order passed u/s 147, dated 28.12.2019, is liable to be quashed.

3. The facts, as briefly stated, are that the assessee filed a return of income for the Assessment Year 2012-13 on 28.09.2012, declaring a total income of ₹69,22,320/- under the normal provisions of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Subsequently, a scrutiny assessment under Section 143(3) of the Act was completed on 14.03.2015, determining the total income at ₹8,60,29,632/- under the normal provisions of the Act and book profit at ₹8,63,83,886/-. Thereafter, the Assessing Officer (AO) reopened the assessment by issuing a notice under Section 148 of the Act on 27.02.2019. In response, the assessee, by letter dated 20.09.2019, intimated that the return of income filed earlier under Section 139 of the Act should be treated as the return in response to the notice under Section 148. Consequently,



statutory notices were issued, and reassessment proceedings were initiated. During the reassessment proceedings, the AO observed that while the assessee claimed to be engaged in the business of real estate development, the financial records revealed income primarily from project management consultancy, interest on bank deposits, inter-corporate dividends, and interest income. Additionally, the AO noted a project work-in-progress of ₹110.70 crores. Based on these observations, the AO concluded that the company had not yet commenced significant business activities, apart from the initial payment for land acquisition and advances made out of surplus funds to a sister concern engaged in similar financial activities. Accordingly, the AO disallowed the assessee's claim of business expenses amounting to ₹19,43,10,523/-, which included employee benefit expenses of ₹7,69,58,171/-; finance costs of ₹7,34,45,497/-; depreciation and amortization expenses of ₹20,36,398/-; and other expenses of ₹4,18,70,458/-. The AO referred to similar disallowances made in prior assessment years, including 2007-08, 2008-09, 2010-11, and 2011-12, wherein the business expenses were disallowed, and the interest income from bank deposits, inter-corporate deposits, dividends, and other interest income was taxed under the head "Income from Other Sources."



4. On further appeal, the Ld. CIT(A) following the finding of the Tribunal in assessment year 2011-12 deleted the addition observing as under:

**“5. Decision:**

5.1 Brief background facts of the case are that the issue as to whether the appellant had commenced its business or not was a subject of dispute since AY.2006-07 onwards and the matter has travelled to the CIT(A) and ITAT, whereby the assessments were set aside to the file of AO by Hon’ble ITAT in the earlier years concerned. In the set aside assessments, the AO has been largely disallowing the entire expenses on the ground that the appellant has not commenced its business.

5.2. However, from AY.2007-08 onwards, as seen from the order of the Hon’ble ITAT, CIT(A) as well as AO, there were other projects in the pipeline and the appellant was found to have entered into MOU etc and also had carried out further activities demonstrably in evidence of commencement of business. Further, the AO had, after due verification as directed by the Hon’ble ITAT, allowed business expenses in AY.2007-08 on the premise that business had commenced. Based on these facts on record, the issue has been decided in favour of the appellant by CIT(A) vide order in appeal no. CIT (A) 24, Mumbai/10592/2017-18 dated 12.10.2022 for AY.2009-10 following rule of consistency.

5.3. The appellant submits that the Hon’ble ITAT has reaffirmed this finding for AY.2011-12 also, vide order in ITA No.806/Mum/2016 and ITA No.693/Mum/2016 dated 14.06.2018, holding as under:

“3. The Assessing Officer in this case observed that the assessee had not shown any income from business operation based on which he required the assessee to justify its claim vide letters dated 25.06.2013 & 01.01.2014. In response to the same, the assessee company filed its submissions on 10.10.2013, 17.10.2013, 20.01.2014 and 17.02.2014 which were considered by Assessing Officer before framing the assessment. As per the details furnished by the assessee before the Assessing Officer, it was submitted that the assessee company had acquired requisite permission from Government and was in the process of consolidating the land holding in respect of which expenses were met including employees remuneration, administrative and other expenses, finance cost etc. However, Assessing Officer was not satisfied with the explanation furnished and he went on to hold that the



*assessee's whole project was in a nascent stage and hence, its business could not be said to have commenced during the year.*

*4. Upon the assessee's appeal, the ld. Commissioner of Income Tax (Appeals) noted that the issue of commencement of business was already settled by the ITAT in assessee's own case for assessment year 2007-08 in ITA No. 4224/Mum/2011 vide order dated 04.01.2013, it was held as under:*

*"5. After considering the submission and perusing the material on record, I found that this issue should go back to the file of the AO to examine the same afresh, I noted that no doubt, one project was going on, however, many projects were in pipeline, it is seen that the assessee had entered into various agreements of Urban Development and entered into an agreement with the land owner for redevelopment of a prime property in the suburbs of Mumbai to conduct table survey, census of the occupants etc. at Vikhroli. For this, various analyses were conducted by ICICI property services. The assessee made an application to Municipal Corporation of Greater Mumbai on 17-6-2006. It was further submitted that out of development expenses of Rs.76 crores, the expenses related to development of industrial park property were earned forward under work in progress in the balance sheet and which were not directly related to the said development activity were charged to profit and loss account. I further found that business was very much in existence and, therefore, it cannot be said that there was no business activity carried out by the assessee. If by any reason in various other proceedings, where working was in pipeline and working could not be started then also the expenses claimed on these activities are to be allowed in accordance with the business activities. Hence, I therefore, restore this issue to the file of the Assessing Officer to examine afresh after affording opportunity of being heard to the assessee."*

*5. The ld. Commissioner of Income Tax (Appeals) further noted that pursuant to the above direction of the ITAT, the Assessing Officer has accepted the assessee's claim of commencement of business and allowed the expenditure in relation thereto. Accordingly, the ld. Commissioner of Income Tax (Appeals) after some discussion has concluded as under:*

*"Therefore, in view of the specific finding of fact by the Hon'ble Tribunal in appellant's own case for A.Y.2007-08 and which was accepted by Ld. AO in order u/s 143(3) r.w.s 254 as also the decisions of Hon'ble Mumbai Bench of ITAT in the cases cited supra, I have no hesitation in holding that the appellant's business had commenced and, therefore, expenditure claimed by it on revenue account had to be allowed."*



6. Against the above order, the Revenue has filed the appeal before the ITAT.

7. We have heard both the counsel and perused the records. As rightly pointed out by the ld. Commissioner of Income Tax (Appeals), this is covered in favour of the assessee in assessee's own case vide this tribunal order dated 04.01.2013. It is not the case that the Hon'ble jurisdictional High Court has reversed the order of the ITAT. Hence, respectfully following the precedent as above, we do not find any infirmity in the order of the ld. Commissioner of Income Tax (Appeals). Accordingly, the Revenue's appeal stands dismissed."

5.5. Thus, the issue as to whether the assessee has commenced its business or not stands covered in its favour vide the order of the Hon'ble ITAT for AY.2011-12 as above. Therefore, Ground No.3 and 4 on the issue of disallowance of expenditure on the sole ground of commencement of business ought to be answered in favour of the appellant respectfully following the decision of the Hon'ble ITAT for AY.2011-12."

4.1 But on the issue of validity of the reassessment, the Ld. CIT(A) allowed the issue in favour of the Revenue observing as under:

"5.7. Ground No.1 and 2 are on the issue of reopening of assessment after 4 years. The appellant contends that the AO had failed to bring out any failure on the part of the appellant and that in the original assessment u/s.143(3), the AO did not consider it fit to make any such disallowances after due consideration of facts. Thus, it is claimed that the reopening after 4 years on same set of facts tantamount to change of opinion on the part of the AO.

5.8. The contentions of the appellant are not tenable for the reason that the issue as to whether business had actually commenced or not was not discussed in the original assessment order passed u/s.143(3) and hence it cannot be claimed that the AO had made an informed and conscious decision thereon. As evident from the past assessment history of the appellant, the dispute as to the commencement of business was alive and therefore the AO had all the reasons to arrive at the prima facie belief that the appellant had incorrectly claimed the expenditures without commencement of business leading to escapement of income for AY.2012-13. What is required under the law is some reasonable basis to arrive at such a belief which is found to have existed at the relevant point of time of reopening the assessment for AY.2011-12. The claiming of expenses by the appellant without there being adequate proof of commencement of business has been rightly perceived as a failure on its part by the AO. Therefore, reopening of assessment does not suffer from any infirmities of facts or interpretation of the provisions of Section 147 in this case. Ground No.1 and 2, therefore, do not succeed."



5. Aggrieved, both the Revenue and the assessee are in appeal /cross-objection by way of raising grounds as reproduced above.

6. We have heard rival submission of the parties on the issue in dispute raised by the Revenue in its appeal. The sole issue in dispute is whether the business of the assessee was commenced in the year under consideration or not. But, we find that the identical issue of whether the business of the assessee was commenced, is perpetuating in the case of assessee from assessment year 2007-08 onwards. In the assessment year 2007-08, the matter was restored back by the ITAT to file of the Assessing Officer and in the consequent assessment order, the Assessing Officer has accepted the fact of the commencement of the business. Looking to the facts, the Tribunal(supra) in assessment year 2011-12 held that business of the assessee was duly commenced and therefore, the business expenses claimed by the assessee cannot be disallowed. The Ld. CIT(A) following the finding of the ITAT deleted the addition made by the Assessing Officer. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed. As far as cross-objection of the assessee is concerned, we find that on merit, the issue has already been decided in favour of the assessee by the Ld. CIT(A) and we have also upheld the finding of the Ld. CIT(A), thus



the ground raised by the assessee in the cross-objection is rendered merely academic, hence, we are not adjudicating upon at this stage and same is left open.

7. Now, we take up the ground of appeal of the Revenue in assessment year 2013-14, which are reproduced as under:

*1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition on account of Employee Benefit Expenses Rs.437,59,000/-, Finance Cost Rs.11,91,00,000/-, Depreciation & Amortisation Expenses Rs.44,63,000/- and Other Expenses R\$:5,19,51,000/- totalling to Rs:21,92,73,000/- without appreciating that the profit of a project can be determined only when entire cost of the project, direct or indirect including financing cost is added to the value of work in progress of the project?.*

*2. Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.7,20,70,000/- made on account of disallowance of expenses u/s.14A of the Income Tax Act, 1961 holding that no disallowance u/s.14A is called for, when there is no exempt income received by the assessee during the year under consideration.*

*3. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in law in deleting the addition of Rs.7,20,70,000/- u/s.14A ignoring the CBDT Circular No. 5/2014 dated 11.02.2014 wherein it is clarified that even if there is no exempt income earned by the assessee in the year under consideration, disallowance under Rule 8D read with section 14A is required to be made.*

*4. The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

8. The ground No. 1 of the appeal of the Revenue is identical to the ground No. 1 adjudicated by us in assessment year 2012-13 and therefore, to have consistency, following our finding in assessment year 2012-13, the deletion of business expenses by the



Ld. CIT(A) is upheld. The ground No. 1 of the appeal of the Revenue is accordingly dismissed.

8.1 The ground No. 2 and 3 of the appeal of the Revenue relate to disallowance u/s 14A r.w.r. 8D of the Income-tax Rules, 1962. The Assessing Officer observed that assessee had shown exempted dividend income of Rs.26,63,115/-. The Assessing Officer rejected the contention of the assessee of incurring no expenses and after invoking Rule 8D made disallowance of Rs.964.85 lakhs, but, the Ld. CIT(A) restricted the disallowance to the extent of the exempted income following the decision of the jurisdictional High Court in the case of Pr. CIT v. HSBC Invest Direct India Ltd. (supra). The relevant finding of the Ld. CIT(A) is reproduced as under:

*“5.7. Perusal of the assessment order shows that the AO had in fact given a detailed finding in para 7.2 and 7.3 of the assessment order itself as to why the computation of such expenditure filed by the appellant was not found to be satisfactory. The AO has pointed out that the investment requires much more than mere salary expenses and had also pointed out that the diversion of interest-bearing funds to make such investments could not be denied by the appellant. Considering these finding by the AO, objections on the invoking of Rule 8D raised by the appellant do not find any merit.*

*5.8. However, since the disallowance under Section 14A cannot exceed the exempt income as held by the jurisdictional High Court in the case of PCIT Vs HSBC Invest Direct (India) Ltd, respectfully following the binding decision, the disallowance is directed to be restricted to Rs.26,63,115/-, being the amount of exempt income earned during the year. Appellant’s Grounds are partly allowed on this issue.”*

9. We have heard rival submissions of the parties and perused the relevant material on record. Before us, the Ld. counsel for the



assessee has also filed a copy of the Co-ordinate Bench decision in the case of Uniliver Industries (P.) Ltd. v. DCIT [2024] 158 taxmann.com 599 (Mumbai-Trib.) wherein the Tribunal following the decision of the Hon'ble Bombay High Court in the case of PCIT v. HSBC Invest Direct India Ltd. (supra) has held that disallowance u/s 14A of the Act r.w.r. 8D of the Rules cannot exceed the exempted income. Since the Ld. CIT(A) has followed finding of a precedent of the Hon'ble jurisdictional High Court, therefore we do not find any infirmity in the order of the Ld. CIT(A) and accordingly we uphold the same. The ground Nos. 2 and 3 of the appeal of the Revenue are accordingly dismissed. The ground Nos. 4 and 5 being general in nature same are dismissed as infructuous.

10. Now, we take up the appeal of the Revenue for assessment year 2014-15. The grounds raised are reproduced as under:

*1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition on account of Employee Benefit Expenses Rs. 4,84,01,000/-, Finance Cost Rs. 15,26,12,00,000/-, Depreciation & Amortisation Expenses Rs. 44,14,000/- and Other Expenses Rs. 5,48,39,000/- totalling to Rs. 26,36,03,000/- without appreciating that the profit of a project can be determined only when entire cost of the project, direct or indirect including financing cost is added to the value of work in progress of the project?*

*2. Whether on the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.9,57,33,351/- made on account of disallowance of expenses u/s.14A of the Income Tax Act, 1961 holding that no disallowance u/s. 14A is called for, when there is no exempt income received by the assessee during the year under consideration.*

*3. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in law in deleting the addition of Rs.9,57,33,351/- u/s.*



*14A ignoring the CBDT Circular No. 5/2014 dated 11.02.2014 wherein it is clarified that even if there is no exempt income earned by the assessee in the year under consideration, disallowance under Rule 8D read with section 14A is required to be made.*

*4. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*

10.1 Since the grounds raised in the year under consideration are identical to the grounds raised in assessment year 2013-14 except change of the amount, therefore, following our finding in assessment year 2013-14, the grounds of appeal of the Revenue are accordingly dismissed.

11. In the result, all the three appeals of the Revenue as well as cross-objection of the assessee are dismissed.

**Order pronounced in the open Court on 20/12/2024.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 20/12/2024  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**