

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND  
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER

ITA No.4591/Del/2009  
Assessment Year: 1998-99

ACIT, Central Circle-4, New Delhi	Vs.	PGF Ltd., SCO 1042-43, Sector 22-B, Chandigarh PAN No. AABCP2805N
(APPELLANT)		(RESPONDENT)

Appellant by	S/Shri Rakesh Gupta, Somail Agarwal & Deepesh Garg, Advs.
Respondent by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of hearing:	09/01/2025
Date of Pronouncement:	21/03/2025

**ORDER**

**Per Mitha Lal Meena, A.M.:**

This appeal by Revenue is directed against the order dated 18.09.2009 passed by the Commissioner of Income-Tax (Appeal)-III, New Delhi [hereinafter referred to as "CIT(A)"] which arises out of the assessment order dated 28.12.2007 passed under Sections

254/143(3) of the Income Tax Act 1961 [hereinafter referred as 'the Act'], in respect to assessment year 1998-99.

2. The grounds of appeal taken by the assessee are as follows:

1. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 20,14,798/- made by the AO, which was claimed as expenditure u/s 57 of the Act.

2. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 97,98,293/- made by the AO against the claim of interest to the unit holders by the assessee.

3. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in directing the AO to allocate depreciation of Rs. 1,36,326/- from common assets to investment division.

4. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 44,91,325/- claimed as direct expense against Timber business.

5. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 1,45,65,466/- claimed as financial expense allocated to Timber business.

6. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in directing the AO to allocate depreciation of Rs. 80,464/- from common assets to Timber division.

7. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 79,06,353/- claimed as financial expense allocated to Commercial Land Activities.

8. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in directing the AO to allocate depreciation of Rs. 21,992/- from common assets to Commercial Land Assets.
  9. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in directing the AO to allow the assessee to debit the balance written off amounting to Rs. 42,59,641/- to Joint Venture Development Account as the same has become bad.
  10. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs. 32,75,457/- made by the AO on account of unclaimed credits related to joint venture activity.
  11. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 3,95,377/- claimed as traveling expenses incurred by the Director.
  12. The order of the CIT(A) is erroneous and not tenable in law and on facts.
  13. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.
3. Heard both the sides, perused the record, assessment order, impugned order, and Tribunal order. The Ld. DR vehemently relied on the assessment order in support of the grounds of appeal. In the 1<sup>st</sup> round of appeal, the ITAT, Chandigarh Bench vide order dated 3rd January 2007 restored the matter to the Assessing Officer vide order dated 3rd January 2007 by observing as under: -

"In the present case, the assessee has made fixed deposits with the bank and earned interest thereon. The earning of interest from banks is not the business activities of the assessee. The interest so earned is assessable under the head income from other sources. So, however, the assessee would be entitled to deduction u/s 57 of the Act in respect of any expenditure which is established to fall within the category of deduction so provided under the statute. Since the assessee did not have any opportunity to claim deduction u/s 57, we consider it appropriate to restore this issue to the file of the Assessing Officer with a direction to consider the claim of the assessee for deduction if so made in the light of evidence that may be produced by the assessee in this regard. We direct accordingly.

The grounds No. 3 and 4 of appeal of the revenue read as under: -  
The Id CIT(A) has further erred in directing the Assessing Officer to recompute the income/loss in timber business after allowing the expenses of Rs. 96,53,543/- (1653453+1000000+70000) which were disallowed by the Assessing Officer while computing the business income from timber at Rs. 26, 14,698/- after disallowing interest (including cost of raising funds) amounting to Rs. 1,53,03,636/- because these expenses are not established to be directly relatable to timber trade.

The Id CIT(A) has further erred in directing the Assessing Officer to recompute the income/ loss from sale of commercial land after allowing the expenses amounting to Rs. 35,00,000/- (30,00,000/- +5,00,000) towards interest and common expenses respectively) which were not allowed by the Assessing Officer while computing the income from sale of commercial land at Rs. 9,51,217/- and has not allowed common administrative expenses and cost of borrowing being not direct expenditure.

Since we have restored the issue to the file of the Assessing Officer in regard to computation of income from various receipts, the issue

relating to determination of business income from timberfrading and from sale of commercial land is also restored to the file of the Assessing Officer for the purpose of fresh determination after giving reasonable opportunity of being heard.

4. Briefly the facts are that the company is engaged in various business activities. During the year relevant, the company collects deposits from the public which are termed as Joint venture funds. The company has purchased land in its own name. As per the scheme, the company is supposed to carry on agricultural operations on the land so purchased and the yield from the same would be passed on to the investors. The company has formulated various plans seeking deposits from the investors. As per some of the schemes, the depositors are assured of particular rate of return in the form of yield on the amounts deposited by them in certain schemes of the company to the depositors. For the year under consideration, the appellant company has filed the return of income showing agricultural income of Rs. 1,82,84,541/- During the scrutiny of the accounts of the appellant, the A.O. made different additions which were deleted in the 1<sup>st</sup> round and the 2<sup>nd</sup> round as well by the Ld. CIT (A)'s after considering the submission of the assessee and remand report of the AO. The issues raised by the department are discussed and adjudicated ground wise in the following paras.

5. In ground no.1 the revenue objected to the CIT(A)'s decision in deleting the disallowance of Rs. 20,14,798/- made by the AO, which was claimed as expenditure u/s 57 of the Act.

5.1 The Ld. CIT (A) after considering the facts of the case and the submissions made by the Counsel of the appellant, observed that was a matter of record that the appellant was having income of Rs. 2,55,90,914/- and against that the appellant had claimed expenditure of Rs. 20,14,798/-. The bills and vouchers regarding the claim of the expenditure were produced before the A.O. for the verification. However, the A.O. treated the entire details as adhoc without rebutting the contention of the appellant. The Ld. CIT (A) had referred to sub-clause III of section 57 of the Act read as under: -

.....any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. "

5.2 The plain reading of the sub-clause makes it clear that any expenditure which is not capital in nature and is incurred/ expended wholly and exclusively for the purpose of making or earning of income is to be allowed as deduction. The documentary evidence filed by the appellant

makes it further clear that expenditure of Rs. 20, 14,798/- is incurred for earning of income of Rs. 2,55,90,914/ which the department failed to rebut. In view of that matter the decision of the Ld. CIT(A) in directing the AO to allow the claim keeping was in the line with the directions of the Hon'ble ITAT in the case of the appellant.

5.3 Accordingly, the Ld. CIT (A) we hold that the CIT (A) was justified in deleting the disallowance of Rs. Rs. 20, 14,798/- made u/s 57 of the Act. Thus, the 1<sup>st</sup> ground is rejected.

6. In ground no. 2, the revenue challenged the CIT(A) decision in deleting the disallowance of Rs. 97,98,293/- made by the AO against the claim of interest to the unit holders by the assessee.

6.1 From the record, we find that during the year, the company has received Rs. 1,32,03,373/- as late fee from the depositors 19% whereas the company has paid interest to the depositors 14.1%. The A.O. has not allocated any interest to the unit holders whereas the fact is that Rs. 97,98,293/- is clearly to be allocated to the unit holders as payment of interest w.e.f. the due date of deposit. It is observed that the A.O. has allocated interest of Rs. 40,36,582/- to the business activity as the interest on loan to unit holders and the remaining interest is added to the Joint Venture Development Account to be capitalized. The Counsel of the appellant

submitted the chart and documents regarding the Unit Holders Scheme before the CIT (A) demonstrating that the company has been paying interest @ 14.1% to the unit holders on the deposits received from them w.e.f. the due date when the deposit is due and the company is charging interest @ 19% on the period of default for which an amount of Rs. 1,32,03,373/- has been credited to Profit and Loss A/c. The assessee filed complete details regarding the unit holders before the A.O. However, the same was not rebutted. The Ld. CIT (A) has discussed all the details and observed from the details that an amount of Rs. 1,32,03,373/- is credited as a business receipt whereas the payment of interest on deposit received by the company has not been considered.

6.2 In our view, the CIT (A) was justified in deleting the addition of Rs. 97,98, 293/- is clearly to be allocated to the unit holders as payment of interest w.e.f. the due date of deposit. Which has not been not dealt with by the AO with reference to the submission of the assessee either in the assessment proceedings or in the remand report. Thus, the 2<sup>nd</sup> ground of the revenue is rejected.

7. In ground no.3 revenue challenged the CIT(A) decision in directing the AO to allocate depreciation of Rs. 1,36,326/- from common assets to investment division.

7.1 We find that the total depreciation on common assets amounts to Rs. 1,48,47,813/- (Chart submitted) and proportionately an amount of Rs. 1,36,326/- may be allocated to this division. From the chart with reference to accounts, the Ld. CIT (A) has rightly observed that the company has claimed total depreciation of Rs. 1,48,47,813/- on common assets where the claim made by the Counsel was well reasoned. Accordingly, the CIT (A) was justified in directing the A.O. in allocating a depreciation of Rs. 1,36,326/- from the common assets to this division. Thus, the 3<sup>rd</sup> ground is also rejected.

8. In Ground No. 4,5 and 6 department challenged the CIT(A) in deleting the disallowance of Rs. 44,91,325/- claimed as direct expense, 1,45,65,466/- and financial expense against Timber Division and directing the AO to allocate depreciation of Rs. 80,464/- from common assets to Timber division.

8.1 The Ld. CIT (A) restricted appellant claim of direct expenses of Rs. 55,99,624/- on account of timber activity to Rs. 44,91 ,325/- as directly allocated to the timber business because the A.O. has not allocated any direct expenditure to the timber business. The CIT (A) observed that all the bills for this expenditure were produced for verification before the A.O. even though without adversely commenting on the same, the AO did not allow

any deduction. It is apparently clear that the expenditure has been made wholly and exclusively for the timber business. Since, the A.O. has not given an finding for not allowing the genuine expenditure which is incurred for trading activity in timber. Thus, we find no error in the order of the Ld. CIT (A) in directing to allow the claim of direct expenses of Rs. 44,91,325/- against the claim of Rs. 55,99,624/-.

8.2 Similarly, the CIT (A) after considering the facts of the case observed that the A.O. has not considered the overwhelming evidence submitted by the appellant in regard to interest cost allocable to the timber business. Further the documents submitted during the assessment proceedings have not been rebutted. The A.O. has brushed aside the crucial details of the funds deployed for the timber activity and allocated no finance cost to the business activity in timber. Thus, the CIT (A) has been justified in observing from the details submitted that interest cost of Rs. 1,45,65,466/- is to be allocated to the timber business.

8.3 The counsel of the appellant further submitted from the chart that shows the depreciation of Rs. 80,464/- pertain to the Timber division out of the depreciation claimed on common assets amounts to Rs. 1,48,47,813/- and accordingly, the CIT (A) directed the AO to allocate proportionate depreciation of Rs. 80,464/- from the common assets to timber division.

Accordingly, we find no infirmity the decision of the CIT (A) to the facts on record in directing the AO to grant relief as regards to Timber division. Thus, ground No. 4,5, and 6 are rejected.

9. In ground no. 7 and 8 revenue challenged CIT(A)'s order in deleting the disallowance of Rs. 79,06,353/- claimed as financial expense allocated to Commercial Land Activities and directing the AO to allocate depreciation of Rs. 21,992/- from common assets to Commercial Land Assets.

9.1 The Ld. CIT(A) stated that the total financial expenses of Rs. 24,08,15,492/- debited to the Profit & Loss account contains an amount of Rs. 79,06,353/- which was incurred for the business of sale and purchase of commercial land and he has observed that the documents submitted before the A.O. showing the details of funds used for the sale and purchase of land but the A.O. has not given any finding in this regard. The CIT (A) has also sent the submissions of the Counsel to the A.O. for his comments. In the report, the A.O. vide letter dated 03.09.2009 submitted that the matter may be decided on the merits. From the Chart, it is seen that the details of funds used for the business of commercial land and that interest cost of Rs. 79,06,353/- is allocable to the business activity carried on commercial land.

9.2 In our view, the Ld. CIT (A) has been justified in directing the A.O. to

allow the claim of financial expenses of Rs. 79,06,353/- towards business activity in sale and purchase of commercial land.

9.3 As regards another linked issue of allowability of proportionate depreciation on commercial land activity that out of total depreciation on common assets amounts to Rs. 1,48,47,813/-, a proportionately depreciation of Rs. 21 ,992/- may be allocated to this commercial land division. From the details filed, depreciation of Rs. 21,992/- pertains to this commercial land division. In our view, the Ld. CIT (A) was justified in directing the A.O. to allocate depreciation of Rs. 21 ,992/-. Thus, ground no. 7 & 8 of the revenue are rejected.

10. In ground no. 9 and 10, the department challenged the decion of CIT (A) in directing the AO to allow the assessee to debit the balance written off amounting to Rs. 42,59,641/- to Joint Venture Development Account as the same has become bad and deletion of the addition of Rs. 32,75,457/-made by the AO on account of unclaimed credits related to joint venture activity.

10.1 Having carefully considered the facts and arguments of both the sides we observed that the disputed amount of Rs. 42,59,641/- pertains to Joint Venture account. The CIT (A) was justified in directing the A.O. to allow the appellant to debit this amount to Joint Venture Development Account as the same has become bad.

10.2 As regards invoking the provisions of section 41 (1) of the Act by the AO, the CIT (A) observed that this section specifies that the profit arising on account of cessation/remission of any liability or any benefit thus accruing to the assessee only under the head "Profits and Gains of Business or Profession" irrespective of the nature of business and its expenses or otherwise. This amount therefore stands chargeable to tax as business income. This has also been confirmed by the Hon'ble ITA T in paragraph No. 8 at Page No. 10 & 11. In accordance with the directions of Hon'ble ITA T, an amount of Rs. 32, 75,457/- is added to income under the head income from business and profession. However, it is checked from the details that the amount was debited to the Joint Venture Development Account. If the amount is no more payable, the same should be credited to the Joint Venture Development Account. Thus, in our view, there is no scope for invoking the provisions of section 41(1) of the Act. Thus, ground no. 9 and 10 are rejected.

11. Lastly the department objected to the decision of the CIT(A) in deleting the disallowance of Rs. 3,95,377/- claimed as travelling expenses incurred by the Director.

11.1 The Counsel of the appellant contended that a sum of Rs. 3,95,377/- has been disallowed being travelling expenses incurred by the Director Sh.

N.S. Bhangoo. The Ld. CIT (A) observed that this expenditure was purely a business expenditure and allowable u/s 37(1) of the Act and the department failed to rebut in remand report dated 03.09.2009 before CIT (A) and before us.

11.2 Having carefully considered the facts and the submissions of both the sides we find that the expenditure was incurred for the traveling of the Director. The relevant vouchers furnished before the AO, in this regard show that the expenditure was made in connection with traveling of the Director. Thus, the disputed expenditure was neither personal nor capital in nature. It was not the case of the Department that the AO doubted the genuineness of the expenses. The A.O. purely relied on the report of the Special Auditor. The perusal of the details filed shows that the expenses were incurred wholly and exclusively for the purpose of business. The Hon'ble Delhi High Court in the case of CIT Vs. MIS Dalmia Cement (Bharat) Ltd. reported in 254 ITR 377 as relied by the Ld. CIT(A), has observed that one cannot apply an empirical or subjective standard to the business expenditure. This has to be judged from the point of view of a businessman. In our view, considering the evidence on record, the addition made by the A.O. is, rightly deleted by the CIT(A).

12. In the backdrop of the aforesaid discussion, we find no infirmity or perversity in the impugned order to the facts on record and therefore, the decision of the Ld. CIT (A) is sustained.

Order pronounced on 21/03/2025 in accordance with the Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

**Sd/-**  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR. MITHA LAL MEENA)**  
**ACCOUNTANT MEMBER**

\*Mohan Lal\*  
Dated: 21.03.2025

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

**ASSISTANT REGISTRAR**  
**ITAT NEW DELHI**