

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “डी”, नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘D’, NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री एन. के. बिल्लैया, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & SHRI N.K.BILLAIYA, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA No.5057/Del/2010

निर्धारण वर्ष / Assessment Year 2007-08

Jindal Reality Pvt.Ltd.
Flat No.1104, 11th Floor,
Hemkunt Chamber, 89th Nehru Place,
New Delhi.

PAN-AACCD2575L

.....अपीलार्थी/ Appellant

vs

The DCIT,
Circle-4(1), New Delhi-110002.

..... प्रत्यर्थी / Respondent

**अपीलार्थी की ओर से / Appellant by : Sh. Rohit Jain, Adv. &
Sh. Deepesh Jain, CA**

प्रत्यर्थी की ओर से / Respondent by : Sh. J.K.Mishra, CIT DR

आयकर अपील सं. / ITA No.1651/Del/2016

निर्धारण वर्ष / Assessment Year 2008-09

Jindal Reality Pvt.Ltd.
DSM-609-610, 6th Floor,
DLF Tower, Shivaji Marg,
Najafgarh Road, Moti Nagar,
New Delhi-110015.

PAN-AACCD2575L

.....अपीलार्थी/ Appellant

vs

The ITO,
Ward-4(1), New Delhi.

..... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.4340/Del/2014
निर्धारण वर्ष / Assessment Year 2009-10

The ITO,
Ward-4(1), New Delhi
vs

.....अपीलार्थी / Appellant

Jindal Reality Pvt.Ltd.
Flat No.1104, 11th Floor,
Hemkunt Chamber, 89th Nehru Place,
New Delhi-110019.
PAN-AACCD2575L

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Saras Kumar, Sr.DR

प्रत्यर्थी की ओर से / Respondent by : Sh. Rohit Jain, Adv. &
Sh. Deepesh Jain, CA

मुनवाई की तारीख/ Date of Hearing : 20.07.2020	घोषणा की तारीख / Date of Pronouncement: 18.08.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present three appeals filed by assessee and the Revenue are against separate orders of CIT(A)-VII, New Delhi dated 16.08.2010; CIT(A)-17, New Delhi dated 22.01.2016; and CIT(A)-VIII, New Delhi dated 23.05.2014 relating to assessment years 2007-08 to 2009-10 respectively against the orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The bunch of appeals relating to the same assessee on similar issues were heard together and are being disposed off by this consolidated order for the sake of convenience. In order to adjudicate the issue, we first take up the appeal relating to Assessment Year 2007-08.

3. The assessee has raised following grounds of appeal relating to Assessment Year 2007-08:-

1. *"That the Commissioner of Income Tax (Appeals)-VII, New Delhi has grossly erred on facts and in the circumstances of the case in holding that the interest expenditure of Rs. 59,43,36,188/- on loans taken for purchase of stock in trade comprising of land should be capitalized as work in progress and the same are not allowable as expenditure in the present year following Special Bench decision of Mumbai Tribunal in the case of Wall Street Construction Ltd. vs. JCIT(2006) 101 ITD 156(Mum.) (S6)/[2006] 102 TT J (Mumbai) (SB).*

2. *That the Commissioner of Income Tax (Appeals)-VII, New Delhi has grossly erred on facts and in the circumstances of the case In holding that administrative and statutory nature of expenditure on electricity & water charges, insurance, legal & professional charges, audit fees, misc. expenses, telephone expenses and preliminary expenses totaling at Rs. 10,62,688 should be capitalized as work in progress and the same are not allowable as expenditure in the present year following Special Bench decision of Mumbai Tribunal in the case of Wall Street Construction Ltd. vs. JCIT(2006) 101 ITD 156(Mum.)(SB)/[2006] 102 n J (Mumbai) (SB).*

3. *That the Commissioner of Income Tax (Appeals)-VII, New Delhi has grossly erred on facts and in the circumstances of the case in not appreciating the point that the facts in the case before the special bench in Wall Street Construction case (supra) are materially different from the facts in the case of the appellant company thus ruling out application of such case.*

4. *That the Commissioner of Income Tax (Appeals)- VII, New Delhi has grossly erred on facts and in the circumstances of the case and in law in relating the interest earnings of Rs. 81,75,460- (Rs.6,58,863/- for bank interest & Rs. 75,16,597/- for interest from loans & advances given to various persons & corporate bodies) as income earned from investment of surplus funds.*

5. *That the Commissioner of Income Tax (Appeals)-VII, New Delhi has grossly erred on facts and in the circumstances of the case and in law in refraining from allowing set off of interest income against interest expenditure on alternative basis especially when amounts advanced and those parked with the bank represented borrowed funds and not surplus funds of the appellant company.*

6. *That the Commissioner of Income Tax (Appeals)-VII, New Delhi has grossly erred on facts and in the circumstances of the case in deviating from the point of reasoning given by the AO and further therefore erred in*

not adjudicating key issue in relation to the point of commencement of business operations of the appellant company.”

4. The ground of appeal no. 1 raised by the assessee in Assessment Year 2007-08 is against the order of authorities below in holding that the interest expenditure of Rs.59,43,36,188/- on loans taken for purchase of stock in trade comprising of land should be capitalized as work in progress and the same are not allowable as expenditure in the present year.

5. The issue raised in the ground of appeal nos. 2 and 3 is against the disallowance of administrative and other expenditure totaling to Rs.10,62,688/- should be capitalized as work in progress.

6. The issue raised in the ground of appeal nos. 4 and 5 is against the setting off of interest income against interest expenditure as the funds were advanced out of borrowed funds on which interest was being paid.

7. The issue raised in ground of appeal no.6 is whether or not the business operations of the assessee had commenced or not.

8. Briefly, in the facts of the case, the assessee company was incorporated on 25.08.2005. The object of the assessee concern was to carry on the business of real estate. The assessee had claimed in Assessment Year 2006-07 that it has commenced its business, once it had made investment in purchase of land for setting up of projects at Sonapat and also advanced money for investment in purchase of Man Singh Road property. While completing the assessment for assessment year 2006-07, the Assessing Officer had observed that the assessee

had failed to adduce any evidence with regard to commencement of its business activities. Further the assessee had earned interest on loan and advances which were given to different entities and also bank interest on FDRs, the Assessing Officer held that since no business activity was carried on during the year, no business income or loss could be computed in the hands of the assessee. Hence, the interest income which was claimed to be business income and was set off against interest expenditure was assessed as income from other sources and no benefit of interest paid was allowed in the hands of the assessee. The interest expenditure was held to be pre-operative business expenses and also administrative expenses claimed by the assessee for carrying on the business, were also not allowed as business expenditure.

9. The Assessing Officer during the instant assessment year i.e. A.Y. 2007-08, applied the same principle as in Assessment Year 2006-07 and vide para 6 and 7 held that the business of the assessee had not commenced and further treated the interest income as income from other sources. He did not allow set off of interest expenditure against the interest income and all other expenses i.e. administrative and other expenses were also not allowed in the hands of the assessee being pre-operative expenses. The Ld. CIT(A) has upheld the order of the Assessing Officer, against which the assessee is in appeal before us.

10. The Ld. AR for the assessee pointed out that the issues raised in the present appeal are similar to the issues raised in Assessment Year 2006-07. He further pointed out that the Tribunal in ITA No.1408/Del/2011, relating to Assessment Year 2006-07 vide order dated 22.06.2020 has already adjudicated

the aforesaid issues and held that the assessee had commenced its business in Assessment Year 2006-07 and had also directed the assessability of interest income as business income and allowed set off of interest expenditure against the same. Further, the balance expenditure i.e. administrative and other expenses were also allowed as business expenditure in the hands of the assessee. The Ld. AR for the assessee further drew our attention to the written submissions and pointed out that during the year under consideration, part of the interest expenditure i.e. 40.78 crores which relates to the Sonapat township project, has already been included as part of cost of project. He also pointed out that only interest expenditure of Rs.18.64 cores was claimed as business deduction.

11. The Ld. DR for the Revenue drew our attention to para 4 at page 3 of the order of the Ld. CIT(A). He fairly pointed out that other issues raised in the present appeal are covered but there were certain new facts in respect of Man Singh Road property. He further pointed out that during the year under consideration, the said property was transferred for Rs.124.55 Crores to the sister concern, which was equivalent to the amount paid by the assessee as advance for acquiring the said property. He stressed that interest expenditure of Rs.18.64 Crores, which was directly relatable to the said transactions of Man Singh Property should also have been recovered from the sister concern; in any case, the claim of expense because of the aforesaid interest expenditure of Rs.18.64 Crores is illogical. He stressed that the AO may be allowed to examine the aforesaid matter.

12. The Ld. AR for the assessee pointed out that since the assessee wanted funds for the project at Sonapat, hence, there was necessity to liquidate the advance paid against acquisition of the Man Singh Road Property. He further pointed out that the aforesaid interest expenditure is duly allowable as business expenditure.

13. We have heard the rival contentions and perused the records. The assessee was engaged in carrying on real estate activities, under which along with other parties had made investment in the land at Sonapat, which was held as stock in trade by the assessee. The aforesaid activities were started in Assessment Year 2006-07 and the Tribunal (supra) had noted that steps were taken by the assessee for the commencement of the business and, after deliberating upon the issue in paras 12 to 14 and relying on the ratio laid down by the Hon'ble Bombay High Court in the case of Western India Vegetable Products Ltd. vs CIT 26 ITR 151 (Bom.); Hon'ble Gujarat High Court in the case of CIT vs Saurashtra Cement and Chemical Industries Ltd. 91 ITR 170 (Guj.) and Hon'ble Delhi High Court in the cases of Dhoomketu Builders & Development (P.) Ltd. vs ACIT 368 ITR 680 (Del.) and in CIT vs Arcane Developers (P) Ltd. 368 ITR 627 (Del.), has held as under:-

“19. Applying the above said proposition to the facts of the present case, we hold that in the case of the assessee where substantial activities were carried out by the assessee, since the date of incorporation which had culminated in raising loans, making investment in purchase of land, which was reflected as stock in trade and also advancing loans to associate concerns for purchasing different pieces of land, in order to fulfil the condition of Land Bank of 100 Acres or more, to develop the township in Haryana and where the

assessee is entered into development agreement at the close of the present year/beginning of the next year, then assessee can be said to have set up and commenced its business. Further, the assessee having also invested substantial amount in the purchase of another property in the year itself, thus, set up of its business as per its Memorandum of Understanding was done, since it was engaged in the business of real estate. It is held that there is no merit in the order of the authorities below in this regard and the same are reversed. Accordingly, we hold that the assessee having not only set up its business but had also commenced its business during the previous year itself. Hence, ground no.1 of the assessee is allowed.”

14. With regard to the balance of issue of allowability of interest expenditure and other expenditure, it was held as under:-

“20. Now coming to the second issue raised by the assessee, it is consequent to the first issue raised in the present appeal. Once the business had been set up and also commenced in instant year itself, then the interest expenses claimed by the assessee and any other expenditure claimed by the assessee is to be allowed as business expenditure. The assessee had also parked certain funds temporarily in the bank FDRs, on which it had earned interest which is to include also as business income in the hands of the assessee. Accordingly, ground no 2 and 3 raised by the assessee also stand decided in the favour of the assessee and same is dismissed.”

15. Vide para 22, the Tribunal also has held that the interest income is to be assessed as business income and to be set off of against interest expenditure and para 22 read as under:-

“22. The last issue raised vide ground no.5 is taxability of interest income, which we have already held as business income; even otherwise the said interest income needs to be set up of against interest expenditure as funds have been borrowed by the assessee and only surplus borrowed funds have been invested in bank FDRs. Accordingly, the ground no. 5 raised by the assessee is allowed.”

16. The present assessment was made in the hands of the assessee, following the same reasoning as in Assessment Year 2006-07 both by the

Assessing Officer and the CIT(A), since the issues have already been decided by the Tribunal in earlier year in assessee's own case, we hold that as the business of the assessee had already commenced in Assessment Year 2006-07, then the interest expenditure and all other expenses both administrative and other expenses are to be allowed as business expenditure. The interest income is to be taxed as business income and the interest expenditure is to be set off against the said business income. During the year under consideration, the assessee had capitalized interest expenditure of Rs.40.78 Corers, hence, there is no issue of its allowability.

17. Now, coming to the submissions of the Ld. DR for the Revenue, we find that the interest expenditure of Rs.18.64 Crores is business expenditure and the same needs to be allowed as expenditure in the hands of the assessee, hence, we hold so. The grounds of appeal raised by the assessee in this year are thus allowed.

18. The facts and issues raised in appeal of the assessee relating to Assessment Year 2008-09 are similar to the facts and issues in Assessment Year 2007-08 and our decision in Assessment Year 2007-08 shall apply *mutatis mutandis*. The interest expenditure in the respective year which has been capitalized by the assessee and not claimed as business expenditure, hence, the only portion claimed in the hands of the assessee is to be allowed as business expenditure. Accordingly, grounds of appeal raised by the assessee stands allowed.

19. The Revenue in Assessment Year 2009-10 has raised the following grounds of appeal:-

1. *"Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in treating the interest income of Rs. 9,95,52,864/- under the head" Income from business of profession" ?*
2. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in allowing to set off the interest expenditure of Rs. 7,07,12,753/- and Rs. 17,18,241/- being proportionate salary/wages expenditure against the interest income of Rs. 9,95,52,864/-?*
3. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in allowing the setting off the net interest income of Rs. 2,59,96,602/- against the interest expenditure of Rs. 69,87,82,237/- which the assessee had itself capitalized as WIP.*
4. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 87,810/- being preliminary expenses and Rs. 9,93,124/- being the depreciation overlooking the fact that the business of the assessee had not started during the previous year relevant of assessment year.*
5. *That the order the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
6. *That the ground of appeal are without prejudice to each other."*

20. The CIT(A) while deciding the appeal for Assessment Year 2009-10 had allowed the claim of the assessee on the ground that the business of the assessee had started. We find that the issue raised by the Revenue in the present appeal relating to Assessment Year 2009-10 needs to be decided in line with our decision in Assessment Years 2007-08 & 2008-09. Following the same parity of reasoning, we uphold the order of CIT(A) and dismissed the grounds of appeal raised by the Revenue.

21. In the result, both appeals of the assessee are allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 18th day of August, 2020.

Sd/-

(N.K.BILLAIYA)

लेखासदस्य/ ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : 18th August, 2020

Sd/-

(SUSHMA CHOWLA)

उपाध्यक्ष / VICE PRESIDENT

Shekhar, Sr. P. S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. **अपीलार्थी / The Appellant**
2. **प्रत्यर्थी / The Respondent**
3. **आयकर आयुक्त(अपील) / The CIT(A)**
4. **मुख्य आयकर आयुक्त / The Pr. CIT**
5. **विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,दिल्ली/ DR, ITAT, Delhi**
6. **गार्ड फाईल / Guard file.**

आदेशानुसार/ BY ORDER,

सत्यापित प्रति//True Copy//

सहायकरजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi