

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-4354/DEL/2012
(ASSESSMENT YEAR-2009-10)**

DCIT Circle 10(1), New Delhi (APPELLANT)	vs	D.R.S. Warehousing (North) Pvt. Ltd. 308, Neelkanth Plaza Pitampura New Delhi AAFCM1297B (RESPONDENT)
--	----	--

Appellant by	Sh. Amrit Lal, Sr. DR
Respondent by	Sh. Satyam Sethi, Adv

Date of Hearing	07.12.2015
Date of Pronouncement	16.12.2015

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order of Ld. CIT (A), XIII, New Delhi passed on 14/05/2012.

2. The grounds of appeal is as follows:-

“1. Whether on the circumstances of the case Ld. CIT(A) was rightly holding that the rental income derived by the

assessee by way of advantage from land and building is a business income as against the rental income treated by the A.O.

2. *Whether on the circumstances of the case Ld. CIT(A) was right in holding that the payment of interest for the work in progress is revenue expenditure as against the capital expenditure treated by the A.O.*
3. *Whether on the circumstances of the case Ld. CIT(A) right that the under writing charges paid by the assessee to the Axis Bank for the arrangement of loans utilized for construction of a capital asset is a revenue expenditure where has capital expenditure.*
4. *Whether on the circumstances of the case Ld. CIT(A) right in holding that the interest free advances of Rs. 9 crore given by the company to its group company for the construction of a capital asset is a revenue expenditure whereas the A.O has treated the same as capital expenditure.*
5. *Whether on the circumstances of the case Ld. CIT(A) was right in holding that the purchase price and registration charges paid toward acquisition towards a capital asset is a capital expenditure but the commission paid for acquisition of capital asset is a revenue expenditure.*
6. *Whether on the circumstances of the case Ld. CIT(A) erred in admitting additional evidence on points 2 and 4 above without calling for a remand report from the Assessing Officer ?*

3. The assessee company has taken over the business of M/s Banke Bihari Logistics Pvt. Ltd and is now operating under the name and style of M/s DRS Warehousing Pvt. Ltd. The business of the assessee company is to construct warehouses at different places

in the country and for warehousing purposes and earning income from warehousing. During the year, Assessee Company has received warehousing charges of Rs. 4,41,91,942/- declared as business receipts of the assessee company. However, the Assessing Officer has treated such warehousing charges as rental income of the assessee and taxed the said income under the head income from house property after allowing deduction u/s 24(a) of the IT Act. During the year, the assessee company has claimed interest payment and bank charges of Rs. 3,57,78,200/- on account of construction of warehouses. Such interest payment was restricted to 50% of the above amount on the ground that balance interest pertains to the amount utilized for constructing warehouses which are still under construction by the A.O. The assessee has claimed underwriting/processing charges of Rs. 2,65,00,199/- which were paid to Axis Bank for processing and underwriting the loans. The said amount was capitalized and disallowed by A.O. The Assessing Officer also disallowed interest payment u/s 36 (1) (iii) of the IT Act of Rs.1,32,39,376/- on the ground that assessee has diverted interest bearing funds for non business purposes. The assessee also claimed brokerage and commission of Rs.7,76,000/- for hiring of warehouses. The Assessing Officer treated such payments as expenditure incurred for acquiring of land etc. and disallowed it. Aggrieved by the same the Assessee filed appeal before the CIT(A).

4. The CIT(A) held that the receipts received by the assessee from exploitation of commercial assets in the form of warehouse treated as business income and deleted the finding of the Assessing Officer that warehousing receipts are "Income from House property". After certain perusal of the additional documents produced by the assessee before the CIT(A) which was not verified by the Assessing Officer, the CIT(A) restricted the disallowances of interest pertaining for construction period to Rs. 97,78,899/- (Rs.1974064 + Rs.6386795 + Rs.1418040) and the balance amount of disallowance of interest of Rs.81,10,201/- was deleted.

5. The CIT(A) further held that the amount of processing charges/commitment charges which is to be capitalized comes to Rs.64,31,598 which is 24.27% of the total commitment / processing charges paid. As a result addition to the extent of 64,31,598 was upheld by Ld. CIT(A) and balance addition of Rs.2,00,68,601 deleted. The CIT(A) held that no interest requires to be disallowed u/s. 36(1)(ii). The Ld. CIT(A) observed that the addition made by Assessing Officer was based on incorrect facts and assessee gets relief of Rs. 1,32,39,376/-.

6. The CIT(A) further held that payment for brokerage to different parties is a revenue expenditure and allowed relief of Rs. 7,76,000/- to the assessee.

7. The Ld. DR relied upon the order of the Assessing Officer and the same is reasoned order.

8. As relates to Ground No. 1, the Ld. AR submitted that the deciding factor is not the ownership of land or leases but the nature of the activity of the assessee and the nature of the operations in relation to them. The assessee company was into the business of the letting of the properties and therefore, the assessee rightly disclosed the income under the head Income from Business. The Ld. AR relied upon the judgment of the Hon'ble Supreme Court in case of Chennai Properties & Investments Ltd. v. Commissioner of Income-tax, Central – III, Tamil Nadu [373 ITR 673 (SC)] wherein the same factual position was highlighted.

9. The Ld. AR further submitted that as relates to Ground No. 2, 3 & 4, the CIT (A) has taken into account additional evidence without giving opportunity to the Assessing Officer and submitted before us that the same may be remanded back for adjudication before the Assessing Officer. The Ld. DR agreed for the same.

10. As relates to Ground No. 5, the Ld. AR submitted that the CIT(A) has properly taken into consideration all the aspects related to the commission paid for acquisition of capital asset. The CIT(A)'s order has properly dealt with adjudication of the evidence

produced before the Assessing Officer. The said evidence was annexed to paper book produced by the assessee at Page 198-202.

11. We have perused all the records and heard both the parties. As relates to ground No. 1, the assessee company was incorporated to provide material handling, storage, transportation, distribution, movers, packing and warehousing facilities which form part of its business. Thus the Assessing Officer is incorrect in proceeding that any income which comes out from property has to be taxed under the head of 'income from house property'. The CIT(A) has rightly held that income from exploitation of warehouses was income from business. The Hon'ble Supreme Court in case of Chennai Properties & Investments Ltd. (Supra) hold that circumstances of the case in respect of letting of the properties has to be determined first and in assessee's case, leasing of warehouse is business of the assessee. In result, Ground No. 1 of the Revenue is dismissed.

12. In respect of Ground No. 2, 3, & 4, the Ld. AR and DR agreed to remand back the issues discussed in Ground No. 2, 3 & 4 before the Assessing Officer for adjudication as per law. We hereby direct the Assessing Officer to decide the same a fresh. Needless to say, the assessee may be given opportunity to be heard.

13. As relates to Ground No. 5, commission paid for acquisition of capital asset (land) acquired by the assessee as the commission was paid for arranging clients for hiring of warehouses and submission to that effect was made before the Assessing Officer. Since the commission was paid for arranging clients to lease out warehouses, therefore, CIT(A) has correctly deleted the disallowance made by the Assessing Officer. In result, Ground No. 5 of the Revenue is dismissed.

14. As relates to Ground No. 6, the same is related to Ground No. 2, 3 & 4. Hence does not survive. In result, Ground No. 6 of the Revenue is dismissed.

15. In result, the appeal is partly allowed for statistical purpose.

The order is pronounced in the open court on 16th of December 2015.

**Sd/-
(S. V. MEHROTRA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 16/12/2015

R. Naheed

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	07.12.2015	PS
2.	Draft placed before author	08.12.2015	PS
3.	Draft proposed & placed before the second member	.12.2015	JM/AM
4.	Draft discussed/approved by Second Member.	.12.2015	JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.12.2015	PS/PS
6.	Kept for pronouncement on	.12.2015	PS
7.	File sent to the Bench Clerk	1712.2015	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		