

\$~30 & 31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 122/2016**

PR COMMISSIONER OF INCOME TAX-10 Appellant
Through: Mr. Rahul Chaudhary, Advocate
versus

CONTINENTAL FOUNDATION JOINT VENTURE Respondent
Through: Mr. Ajay Vohra, Sr. Adv. with
Ms.Kavita Jha and Ms. Shivani Khandekar, Advs:

And

+ **ITA 349/2016**

PR. CIT-10 Appellant
Through: Mr. Rahul Chaudhary, Advocate
versus

CONTINENTAL FOUNDATION JOINT VENTURE Respondent
Through: Mr. Ajay Vohra, Sr. Adv. with
Ms.Kavita Jha and Ms. Shivani Khandekar, Advs.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE CHANDER SHEKHAR

ORDER

%

26.04.2017

1. These appeals by the Revenue are directed against the common order dated 24th June 2015 passed by the Income Tax Appellate Tribunal (ITAT) in ITA Nos. 1168 and 1737/Del/2006 for Assessment Years (AYs) 2002-03 and ITA Nos. 3736 and 4204/Del/2006 for AY 2003-04. By an order dated Notice in the present appeals was confined to the question of allowing deduction of bank guarantee commission from the interest earned on the FDRs.

ITA Nos. 122/2016 & 349/2016

Page 1 of 3

6

2. It is seen that the Commissioner of Income Tax (Appeals) ('CIT(A)') in the order dated 14th February, 2006, took note of the fact that the interest income earned by the Assessee was from various sources as under:-

- (i) Rs.9,28,70,416/- on FDR with Banks
 - ii) Rs. 27,12,100/- on I.T. refund
 - iii) Rs.4,62,207/- on A/c with Citi Bank in London
 - iv) Rs. 2,15,99,944/- On DRB (Dispute Review Board)
- Claims Total - Rs.9,95,24,945/-

3. A categorical finding was rendered by the CIT(A) that items at Sl. Nos. (i), (iii) and (iv) were closely and intimately linked with the business of the Assessee and, therefore, the interest income mentioned at Sl. Nos. (i), (iii) and (iv) should be assessed as business income.

4. The CIT(A) also rendered a categorical finding that the interest amount of Rs. 2,15,99,944/- received on the claims settled by the Dispute Review Board ('DRB') related to the housing project and therefore, interest should be held to be income derived from execution of housing project, which should be entitled to deduction under Section 80HHBA of the Act.

5. The matter travelled to the ITAT in appeal. In the impugned order the ITAT maintained the finding that 'bank guarantee commission' was directly linked with earning of interest on FDRs and the learned CIT(A) was justified in directing the AO to reduce the bank guarantee commission from the interest on FDRs. The ITAT remanded the matter to the AO only as regards the question of eligibility for deduction under Section 80HHBA on

account of interest.

7

6. As far as the treatment of the bank guarantee commission paid to the bank is concerned, its eligibility as business expenditure would remain unchanged whether the interest amount is treated as business income or income from other sources.

7. In that view of the matter, the Court sees no reason to frame any question on the issue of bank guarantee commission.

8. The appeals are dismissed.



S.MURALIDHAR, J



CHANDER SHEKHAR, J

APRIL 26, 2017
sd