

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI
BEFORE SHRI R. S. SYAL, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-515/DEL/2014
(ASSESSMENT YEAR-2009-10)**

DCIT, Circle 2(1), Room No. 398D, C.R. Building, New Delhi (APPELLANT)	vs	M/s. Bharati Wal-Mart Pvt. Ltd. No. 1, Aravali Crescent, Nelson Mandela Road, Vasant Kunj, Phase – III, New Delhi - 110 070 AADCB2110L (RESPONDENT)
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Appellant by	Sh. K. K. Jaiswal, DR
Respondent by	Shri Ravi Sharma, Adv and Kanchan Kausal, Adv.

Date of Hearing	07.01.2016
Date of Pronouncement	07.01.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 29/11/2013 passed by CIT (A)-V, New Delhi. This appeal is filed by the Revenue for the Assessment Year 2009-10.

2. The grounds of appeal are as follows:-

- “1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.

87731145/- being 10% of operating expenses disallowed when despite ample opportunities the assessee had failed to furnish details called for by the AO to ascertain the allowability of expenses u/s. 37(1) of the Act, 1961.

2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. The assessee company was engaged in the business of wholesale cash and carry business in India. Assessee debited “operating expenses” of Rs. 87,73,11,453/- in comparison to Rs. 31,09,79,676/- in the immediate preceding assessment year in the P & L account. The Assessing Officer observed that the company started commercial operations during the previous year which was initial gestation period where the company was expected to incur expenses on account of building infrastructure. These expenses incurred on building infrastructure are of capital in nature and not Revenue in nature. The year under consideration was the second year and in general operational expenses were expected to be less than the expenses incurred in previous year. While examining books of account during the assessment proceedings, the Assessing Officer noticed that the assessee company did not maintain proper records of these operational expenses and genuineness of these expenses could not be fully examined. The Assessing Officer observed that the assessee company debited an amount of Rs. 49,37,93,957/- on account of business support services. During the course of discussion, the assessee company was specifically asked

to furnish the details of these expenses claimed. The assessee company failed to adduce the documentary evidences or to furnish any explanation in this regard. There may be some items included in this head which may be of capital in nature. The Assessing Officer observed that the expenses claimed by the assessee company amounting to Rs. 87,73,11,453/- on account of operational activities is excessive and was substantiated 10% of those expenses i.e. Rs.8,77,31,145/-, therefore the same was disallowed and added to the income of the assessee by the Assessing Officer.

4. Being aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee by giving a finding that the details of the operating expenses were given in Schedule 15 of the financial statements and further details of the operating expenses (nature, amount etc.) was submitted during the course of the assessment proceedings which were on record. Thus the CIT(A) held that the assessee maintained its financial statements and related records in accordance with the requirement of law. The CIT(A) further held that the expenditure were normal operating expenses and there is no basis for treating a certain percentage of the said expenses as capital expenditure in absence of any specific finding or justification. The reasoning of the Assessing Officer that operating expense cannot increase in second year of operation is without any rationale and without taking into account the increase

in business of the assessee. Therefore, the CIT(A) held that there is no basis for treating 10% of operating expenses that is an amount of Rs. 87,731,145/- as capital expenditure and disallowing the same on an adhoc basis by the Assessing Officer.

5. The DR relied upon the Assessment order. The DR submitted that the reasoning of the Assessing Officer that operating expense cannot increase in second year of operation is proper.

6. The AR submitted that the details of the operating expenses were given in Schedule 15 of the financial statements and further details of the operating expenses (nature, amount etc.) was submitted during the course of the assessment proceedings which were on record. The said records were duly considered by the CIT(A) and CIT(A) has rightly allowed the appeal of the assessee.

7. We have perused all the records and heard both the parties. It is pertinent to note that the expenditure were normal operating expenses and there is no basis for treating a certain percentage of the said expenses as capital expenditure as there is no specific finding or justification given by the Assessing Officer to that effect. Merely estimating the same is not proper on part of the Assessing Officer. The assessee maintained its financial statements and it was properly taken cognizance by the CIT(A) and overlooked by the

Assessing Officer. Therefore, the CIT(A) has rightly allowed the appeal of the assessee.

8. In result, Appeal of the Revenue is dismissed.

The order is pronounced in the open court on 7th of January 2016.

**Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER**

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

Dated: 07 /01/2016

*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	07.01.2016	PS
2.	Draft placed before author	07.01.2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM

4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	07.01.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	07.01.2016	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.		