

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B(SMC)' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member**

**I.T.A. No. 759 /KOL/ 2014  
Assessment Year: 2003-2004**

***M/s. National Gems School,.....Appellant***  
***629, Diamond Harbour Road,***  
***Kolkata-700 034***  
***[PAN : AAEFN 9134 A]***

***-Vs.-***

***Income Tax Officer,.....Respondent***  
***Ward-28(3), Kolkata,***  
***Aayakar Bhawan Dakshin,***  
***2, Gariahat Road (South),***  
***Kolkata-700 068***

**Appearances by:**

*Shri Lalit Mohan Tyagi, C.A., for the assessee*  
*Smt. Sucheta Chattopadhyay, JCIT, Sr. D.R., for the Department*

Date of concluding the hearing : April 11, 2016

Date of pronouncing the order : April 22, 2016

**O R D E R**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax(Appeals)-XIV, Kolkata dated 28.01.2014, whereby he confirmed the additions of Rs.36,274/- and Rs.4,25,440/- made by the Assessing Officer on account of understatement of business income and disallowance of building repair expenses respectively.

2. The assessee in the present case is a partnership firm, which filed its return of income for the year under consideration declaring total income of Rs.14,080/-. From the perusal of record, it was found by the Assessing Officer that the assessee in the computation of income had shown taxable business profit at Rs.14,080/-, whereas the profit as declared in the Income & Expenditure Account filed with the return of

income was shown at Rs.51,344/-. According to the Assessing Officer, there was thus escapement of income of the assessee from assessment to the extent of Rs.37,264/- and in order to bring the same to tax, he reopened the assessment by issuing notice under section 148 after recording the reasons. In response to the said notice, the assessee filed return of income, wherein a fresh claim for deduction on account of car rent amounting to Rs.93,150/- was made by the assessee. In the absence of any revised return filed by the assessee making the said claim, the Assessing Officer did not entertain the same made by the assessee in the return filed in response to notice under section 148 and rejecting the same, he assessed the business income of the assessee at Rs.51,344/- as shown in the Profit & Loss Account. The Assessing Officer also proceeded to examine the claim of the assessee for deduction on account of building repairs amounting to Rs.4,25,440/-. In this regard, he found that the foundations of the pillars of the building were reconstructed by the assessee to strengthen the whole house property. According to the Assessing Officer, the said construction work done by the assessee enhanced the longevity of the building and the expenditure incurred for the same, therefore, was capital expenditure. He noted that the said expenditure also was incurred for remaking of floors, walls and pillars, which again was not in the nature of current repairs but was in the nature of capital expenditure. Accordingly, the building repair expenditure of Rs.4,25,440/- was disallowed by the Assessing Officer treating the same as capital in nature and the total income of the assessee was finally assessed by him at Rs.5,68,950/- after allowing partners remuneration of Rs.96,124/- in the assessment completed under section 143(3) read with section 147 vide an order dated 28.11.2008.

3. Against the order passed by the Assessing Officer under section 143(3) read with section 147, an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id.

CIT(Appeals) upheld the order of the Assessing Officer in disallowing the claim of the assessee for deduction on account of car rent paid for the first time in the return filed in response to notice under section 148 by observing that the said claim could have been made by the assessee only in the form of revised return and not certainly in the return filed in response to notice under section 148. He also confirmed the addition made by the Assessing Officer on account of building repair expenses treating the same as capital expenditure by observing that the expenditure in question incurred by the assessee resulted in enduring benefit to the assessee. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As regards the disallowance made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of assessee's claim for deduction on account of motor rent, I find myself in agreement with the Id. CIT(Appeals) that such fresh claim could have been made by the assessee by filing the revised return and not in the return filed in response to notice under section 148/147, the provisions of which are only for the benefit of the Revenue. I, therefore, find no merit in the appeal of the assessee on this issue and dismiss the same.

5. As regards the issue relating to the nature of building repair expenditure incurred by the assessee, it is observed that the same as per the Assessing Officer himself was incurred by the assessee for reconstruction of the existing pillars to strengthen the building as well as for remaking of floors and walls. It was thus a case of replacement or renewal of parts of the existing building and there was no new asset that had come into existence as a result of the expenditure in question incurred by the assessee. Even if the said expenditure incurred by the assessee had resulted in enduring benefit, it was not in the capital field,

inasmuch as, the entire building was not reconstructed and what was reconstructed was only the parts of the building, such as floors, walls and pillars. Having regard to all these facts of the case, I am of the view that the expenditure in question incurred by the assessee on building repair is not in the nature of capital and the same is liable to be allowed as business expenditure being revenue in nature. Accordingly, I set aside the impugned order of the Id. CIT(Appeals) on this issue and direct the Assessing Officer to delete the disallowance made on account of building repair expenditure.

**6. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on April 22, 2016.

**Sd/-**

**(P.M. Jagtap)  
Accountant Member**

**Kolkata, the 22<sup>nd</sup> day of April, 2016**

*Copies to :* (1) **M/s. National Gems School,  
629, Diamond Harbour Road,  
Kolkata-700 034**

(2) **Income Tax Officer,  
Ward-28(3), Kolkata,  
Aayakar Bhawan Dakshin,  
2, Gariahat Road (South),  
Kolkata-700 068**

(3) **Commissioner of Income Tax(Appeals)-XIV, Kolkata**

(4) **Commissioner of Income Tax, Kolkata**

(5) **The Departmental Representative**

(6) **Guard File**

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*