

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI J.S. REDDY, ACCOUNTANT MEMBER

	ITA No.1407/Del/2014	
	A.Y. : 2004-05	
DCIT, CIRCLE 4(1), CR BUILDING, NEW DELHI	VS.	M/S JUBILANT FOOD WORKS LTD., (FORMERLY KNOWN AS DOMINO'S PIZZA INDIA LTD) B214, PHASE-2, NOIDA (PAN: AABCD1821C)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by : Ms. Rashmita Jha, Sr. DR  
Assessee by : Sh. Vikas Srivastava, Adv.,  
Sh. Mayank Aggarwal, CA &  
Aditi Goyal, CA

**Date of Hearing : 03-05-2016**

**Date of Order : 05-05-2016**

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed the present appeal against the impugned order dated 31/12/2013 passed by the Ld. Commissioner of Income Tax (Appeals-VII), New Delhi on the following grounds:-

- “1. Whether on the facts and in the circumstances of the case and law, the Ld. CIT(A) erred in deleting the addition of Rs. 12,44,678/- being store relocation expenses by treating the same as revenue expenditure?
2. Whether on the facts and in the circumstances of the case and law, the Ld. CIT(A) erred in deleting the addition of Rs. 84,80,000/- being debentures restructuring by treating the same as revenue expenditure?
3. That the order of the Id. CIT(A) is erroneous and is not tenable on facts and in law.
4. That the grounds of appeal are without prejudice to each other.
5. That the appellant craves leave to add, amend or forego any ground(s) of the appeal either before or at the time of hearing of the appeal.”

2. The facts in brief are that the assessee is a Company incorporated in India under the Companies Act, 1956 and is a resident of India for tax purposes. The assessee is engaged in the business of manufacture and sale of pizzas and related fast food products of pizzas and their sales from its retail outlets throughout India under a franchisee model taken from a reputed international pizza chain called Domino's Pizza International Inc., USA and have countrywide presence. The assessee had voluntarily filed its income tax return declaring total loss of Rs. 65,263,411/- for AY 2004-05. The case of the assessee was selected for detailed scrutiny by issuing notice under section 143(2) of the Act and the assessment was completed under section 143(3) at a total loss of Rs. 56,157,020/- vide the assessment order dated 26.12.2006. Aggrieved with the assessment order, assessee filed the appeal before the CIT(A) and Ld. CIT(A) has granted the partial relief to the assessee and the additions amounting to Rs. 67,25,428/- and INR 4,39,888 on account of advertisement expenditure and sundry balances written off respectively were deleted by the Id. CIT(A). Thereafter, the case was reopened for assessment u/s. 147 vide notice dated 11.1.2011, issued under section 148 of the Act, asking the assessee furnish its return of income and the same was submitted by the assessee under protest on 14.2.2011. Thereafter,

copy of reasons recorded by the AO for the reopening of assessment under section 147 of the Act was provided to the assessee. The assessee vide submissions dated 3.6.2011 filed its objection against the reasons recorded, which were rejected vide order dated 3.6.2011. Thereafter, the AO passed the order under section 147 read with section 143(3) of the Act on 17.10.2011, making a total adjustment of Rs. 1,96,17,997/- and assessing the income of the assessee at a loss of Rs. 4,37,04,339 by making the following additions:-

- |    |                                   |                 |
|----|-----------------------------------|-----------------|
| a) | Disallowance under the head       |                 |
|    | Franchisee Fees                   | Rs. 98,93,319/- |
| b) | Disallowance under the head Store |                 |
|    | Relocation Expenses               | Rs. 12,44,678/- |
| c) | Disallowance under the head Debt  |                 |
|    | Restructuring Fees                | Rs. 84,80,000/- |

3. Being aggrieved with the aforesaid assessment order, assessee appealed before the Ld. CIT(A), who vide impugned order dated 31.12.2013 has deleted the additions in dispute and allowed the appeal of the Assessee.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. At the time of hearing Ld. DR relied upon the order of the AO and reiterated the contentions raised by the Revenue in the grounds and requested that the additions in dispute imposed by the AO may be sustained.

6. On the contrary, during the hearing, Ld. Counsel of the Assessee stated that Ld. CIT(A) has passed a well reasoned order, hence, the same may be upheld. Moreover, he submitted that as regards the issue raised in ground no. 1 relating to deletion the addition of Rs. 12,44,678/- being store relocation expenses by treating the same as revenue expenditure is concerned, the same was allowed by the Ld. CIT(A) by following the order of his predecessor in the assessment year 2003-04, in which the Revenue came in appeal before the Tribunal and the Tribunal vide order dated 24.10.2012 passed in ITA No. 183 to 186/Del/2011 (Aysr. 2003-04 to 2005-06) has set aside the issue to the file of the AO. Later, AO vide his order dated 25.3.2014 passed u/s. 254/143(3) of the I.T. Act, 1961 has allowed the expenses of Rs. 20,33,590/- made for relocation of store in the assessment year 2003-04. Hence, he requested that since the AO has accepted the expenses

as above, the addition in dispute of Rs. 12,44,678/- being store relocation expenses involved in the assessment year 2004-05 may be allowed and this ground may be dismissed accordingly.

6.1 He further submitted that as regards the issue raised in ground no. 2 relating to deletion the addition of Rs. 84,80,000/- being debentures restructuring by treating the same as revenue expenditure is concerned, the same was allowed by the Ld. CIT(A) by following the jurisdictional High order in the case of CIT vs. Gujarat Guardian Ltd. 222 CTR 526 (Del.) and requested that the same may be upheld. Moreover, he submitted that in the assessment year 2003-04 the Ld. CIT(A) has allowed this issue in favour of the assessee in which the Revenue came in appeal before the Tribunal and the Tribunal vide order dated 24.10.2012 passed in ITA No. 183 to 186/Del/2011 (Ays. 2003-04 to 2005-06) has allowed the said ground in favour of the assessee. Aggrieved with the Tribunal's order dated 24.10.2012, Revenue filed the Appeal before the Hon'ble High Court of Delhi in assessee's own case and the Hon'ble High Court of Delhi vide dated 1.8.2014 passed in ITA No. 311/2014 has allowed the ground in favour of the assessee and dismiss the appeal of the revenue. Therefore, he requested that this ground may also be allowed in favour of the assessee and against the Revenue and dismiss the Appeal filed by the Revenue.

7. We have heard the both parties and perused and considered the relevant records available with us especially the impugned order passed by the Ld. CIT(A), Tribunal's order and the Hon'ble High Court of Delhi order.

7.1 With regard to ground no. 1 relating to deletion the addition of Rs. 12,44,678/- being store relocation expenses by treating the same as revenue expenditure is concerned, the same was allowed by the Ld. CIT(A) by following the order of his predecessor in the assessment year 2003-04 by holding as under:-

*"I have carefully gone through the assessment order and the submissions made by the appellant alongwith various documents, invoices and agreements furnished by the appellant. After examining the various documents produced by the appellant, it is observed that the expenses were in the nature of rent of godown, security guard expenses, transportation charges for shifting of materials from one place to another, loading and unloading charges, dismantling charges and routine repair and maintenance charges and other expenses of similar nature. From the very nature of*

*these expenses, they are found to have been incurred by the appellant in the normal course of carrying on in its business activities and are revenue in nature. Further, such expenditure on account of store relocation expenses amounting to Rs. 12,44,678/- forms only 0.22% of the sales revenue of the appellant for the relevant assessment (i.e. Rs. 5,699.64 lakhs).*

*In view of the aforesaid, I see no reason to differ from the views of my predecessor in AY 2003-04. Accordingly, these grounds of appeals are allowed and the disallowance made by the AO is deleted."*

7.1.1. We find that in the asstt. Year 2003-04, the Ld. CIT(A) has allowed the similar ground and against which the Revenue came up in appeal before the Tribunal and the Tribunal vide order dated 24.10.2012 passed in ITA No. 183 to 186/Del/2011 (Ays. 2003-04 to 2005-06) has set aside the issue to the file of the AO by observing as under:-

*"We have heard both the sides, considered the material on recorded as well as the case laws cited by the rival*

*sides and find that there appears to be a clear violation of Rule 46A of I.T. Rules, 1962 and, therefore, impugned order cannot be legally sustained. As such while accepting this ground of appeal of the Revenue, we set aside the orders of the authorities below and restore the matter back on the file of the AO with assessee. We hold and direct accordingly.*

7.1.2 Pursuant to the above directions give vide order dated 24.10.2012, the AO vide his order dated 25.3.2014 passed u/s. 254/143(3) of the I.T. Act, 1961 has allowed the expenses of Rs. 20,33,590/- made for relocation of store in the assessment year 2003-04 by holding as under:-

*"In view of Hon'ble ITAT's directions the submission of the assessee company has been thoroughly examined. In view of the discussions held with the AR of the assessee company and also in view of the submissions made during the assessment proceedings, the assessee's claim of deduction u/s. 80G amounting to Rs. 80,000/- and expenses of Rs. 20,33,590/- made for relocation of store is allowed. Bills and vouchers furnished by the assessee*

*company in support of its claim have also been examined and the same are placed on record.”*

7.1.3 Keeping in view of the facts and circumstances as explained above, we are of the considered view that AO in the assessment year 2003-04 has already allowed the expenses of Rs. 20,33,590/- by treating the same as revenue in nature. However, we are of the view that Revenue should not have filed this ground of appeal before the Tribunal, because the same expenses has already been admitted by the AO in his order dated 25.3.2015 relevant for the assessment year 2003-04. Following the consistent view adopted by the Revenue in the assessment year 2003-04 in assessee's own case, we dismiss the ground no. 1 raised by the revenue. We are also of the considered view that the Ld. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, we uphold the same.

7.2 With regard to ground no. 2 relating to deletion of addition of Rs. 84,80,000/- being debentures restructuring by treating the same as revenue expenditure is concerned, the same was allowed by the Ld. CIT(A) by following the jurisdictional High order in the case of CIT vs. Gujarat Guardian Ltd. 222 CTR 526 (Del.) by holding as under:-

*"I have considered the submissions of the appellant, the findings of the AO and the facts on record. Keeping in view the ratio of the above referred decisions and on going through the decision of the jurisdiction Delhi High Court in the case of CIT vs. Gujarat Guardian Ltd. (Supra), it is observed that the restructuring fees paid by the appellant to renegotiate the rate of interest on debentures represented the present value of differential rate of interest which should be allowed as revenue expenditure.*

*It is also seen that the above issue on similar facts was decided in favour of the appellant by the Hon'ble ITAT in its order for the AY 2003-04 to 2005-06. Accordingly, this ground of appeal is allowed in favour of the appellant and the disallowance made by the AO is deleted."*

7.2.1 We note that the Tribunal vide order dated 24.10.2012 passed in ITA No. 183 to 186/Del/2011 (Ays. 2003-04 to 2005-06) in assessee's own case has held as under:-

*"We have heard both the sides, considered the material on record as well as basis and reasoning as given by the CIT(A). It is not in dispute that due to non-availability of finances, assessee was not in a position to negotiate the debentures issue which got matured during the year under consideration. So, he has arranged the finance by paying Rs. 15 lakhs to M/s Infrastructure Leasing & Financial Services Ltd.*

*In the light of case laws cited by the Ld. CIT(A) and in the absence of any contrary decision or evidence produced or any higher courts orders having been placed to support the plea raised by the department, we do not find any reasonable ground to interfere in the order passed by the CIT(A), which is confirmed and the appeal of the Revenue is dismissed on this ground."*

7.2.2 We further note that aggrieved with the order dated 24.10.2012 of the Tribunal passed in ITA No. 183 to 186/Del/2011 (Ayrs. 2003-04 to 2005-06) in assessee's own case, the Revenue has preferred an appeal before the Hon'ble High Court of Delhi and

the Hon'ble High Court of Delhi vide dated 1.8.2014 passed in ITA No. 311/2014 has allowed the ground in favour of the assessee and dismissed the appeal of the revenue by observing as under:-

*"The Tribunal in the impugned order has recorded a finding that Rs. 15 lacs was paid to the debentures holders in view of the restructuring of the debenture terms. The respondent-assessee had issued non-convertible redeemable debentures of Rs. 25 Crores during the Financial year 2000-01 to meet working capital requirements. These debentures could not be redeemed and during the impugned assessment year, the respondent-assessee re-negotiated terms and conditions of the issue with the debenture holders, who agreed to redeem the debentures at a later date. One of the terms and conditions on the basis of which the debenture holders had agreed to extend the redemption date was that the respondent-assessee should make payment of Rs. 15 lacs. It is not the case of the appellant-Revenue that Rs. 15 lacs paid to the debenture holders became part of the principal amount, which was advanced to the*

*respondent-assessee and / or interest was payable thereon. It is apparent that the term or tenure for which the debenture had been issued were modified / altered on payment of Rs. 15 lacs. Thus, the debenture holders forgo their right to the principal amount and interest which was payable as per terms of initial issue and the payment of Rs. 15 lacs did not affect the face value of the debenture. The aforesaid payment would, therefore, be in the nature of debt servicing and would not be capital payment.*

*We do not find any merit in the present appeal preferred by the Revenue in view of the factual findings recorded by the Tribunal and the same is dismissed.”*

7.2.3 In the background of the aforesaid discussions and respectfully following the precedents of the Hon'ble Delhi High, as referred above, we are of view that the Ld. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, we uphold the same and dismiss the ground no. 2 raised by the Revenue.

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

Order pronounced in the Open Court on 05/05/2016.

Sd/-

Sd/-

**[J.S. REDDY]  
ACCOUNTANT MEMBER**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 05/05/2016*

**"SRBHATNAGAR"**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches