

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6138/Del/2013
(Assessment Year: 2010-11)

DCIT, Circle-9(1), Room No. 163, CR Building, New Delhi	Vs.	Sun Nirman Infrastructure (P) Ltd, D-15, First Floor, Okhla, Phase-I, New Delhi PAN:AAKCS7159R
(Appellant)		(Respondent)

Revenue by :	Shri Kaushlendra Tiwari, Sr. DR
Assessee by:	None
Date of Hearing	19/09/2017
Date of pronouncement	11/12/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the Ld. CIT(A)-XII, New Delhi dated 16/08/2013 for assessment year 2000-11, wherein he has deleted the addition made by the Ld. assessing officer of Rs. 45 Lacs claimed as expenditure on sweat equity expenses. The solitary ground raised by the revenue is as under:-

“1. The Ld. CIT (A) has erred in law and on facts in deleting the addition made by the Ld. assessing officer amounting to Rs. 45 Lacs claimed as expenditure on sweat equity expenses.”

2. The brief facts of the case are that assessee is a company carrying on the business as civil contract. It filed its return of income of Rs. 35718944/- on 7/10/2010. During the assessment proceedings it was found that the assessee has increased share capital of Rs. 45 Lacs during the year under assessment. The Ld. assessing officer enquired that and it was submitted that assessee has issued equity shares of Rs. 45 lakhs to the directors of the company and debited in the same in the profit and loss account under the head director's remuneration. The assessee company was also asked whether any tax deduction at source has been made on such remuneration given in the form of sweat equity shares and as to whether such income has been shown as income in the hands of the directors. The company submitted that no tax has been deducted at source neither the same as been shown as income in the hands of the directors. Therefore, the Id. Assessing Officer noted that it does not have any relationship

- with the business of the assessee and further the expenditure claimed by the assessee is also not of revenue, nature but of capital nature. Therefore he disallowed the sum of Rs. 45 lacs.
3. The assessee preferred appeal before the Ld. CIT (A) who deleted the above disallowance. The Ld. CIT(A) held that cost of sweat equity shares is revenue expenditure under section 37 of the Income Tax Act, as per the unlisted companies (issue of sweat equity shares), Rule 2003. He further held that there was no requirement of deduction of tax at source on such perquisite and further the provisions of Section 40(a)(ia) also exclude salary expenses from its purview of disallowance on TDS default. In view of this he allowed the above sum of Rs. 45 lacs holding it to be a managerial remuneration in accordance with the company law, regulation and as revenue expenditure.
 4. The Ld. departmental representative vehemently supported the order of the Ld. Assessing Officer and submitted that the sweat equity expenditure is not allowable as revenue expenditure. He further submitted that expenses claimed by the assessee is of remuneration to directors and same is allowable in accordance with Section 37(1) of the Act and assessee has not established what services have been rendered by those directors to the company. The ld AO has stated that assessee has failed to show any relevance of such expenditure with the business of the assessee. He further submitted that unless above expenditure are in accordance with the scheme of employees stock option scheme same is not allowable. As such, he submitted that the above expenditure incurred by the assessee is capital in nature and therefore should have been disallowed.
 5. Despite notice, none appeared on behalf of the assessee and therefore issue is decided on the merits of the case based on the material available on record.
 6. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Admittedly, during the year, assessee has increased share capital of Rs. 45 lacs and same was debited to profit and loss account as director's remuneration. Admittedly, provisions of section 40(a)(ia) do not apply to provisions of section 192 of the Act. Therefore, even if for that year no tax was deducted on such payment of director's remuneration, no disallowance can be made. However, for allowance of the above expenditure, it should have been wholly and exclusively incurred for the purposes of business of the assessee. In the present case the assessee is a private limited company and it is not shown that how the above expenditure debited as Director's remuneration is allowable, what are the services rendered by the directors of the company, who are the key managerial persons and it is also not specified by the assessee whether on such remunerations, directors have paid the taxes or not, ld CIT(A) has also not stated any finding

on this. Further, the Id AO has made disallowance holding that these expenses does not have relevance to the business of the assessee. The Id CIT(A) has not given any finding that how above expenses have relevant with the business u/s 37(1) of the Act. Further, merely the provisions of Company's Act provide it as revenue expenditure, it does not become allowable u/s 37(1), without satisfying conditions provided therein.

7. In view of above facts the issue of allowability of expenses of director's remuneration of Rs. 45 lacs is set aside to the file of the Id CIT(A) to examine the claim of the assessee afresh in accordance with law.
8. In the result appeal of the assessee is allowed with above direction for statistical purposes. Order pronounced in the open court on 11/12/2017.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:11/12/2017
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi