

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'E': NEW DELHI)**

**BEFORE SHRI N.K SAINI, ACCOUNTANT MEMBER  
&  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No:- 1599 /Del/2015,  
(Assessment Year: 2010-11)**

The DCIT Circle 18(2), New Delhi.	Vs.	M/s Nile Tech Ltd., B-17, Maharani Bagh, New Delhi-110065
<b>PAN No:</b> AACCN3608E		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue by** : Sh. S. R. Senapati (Sr. DR)  
**Assessee by** : Sh. Anil Bhalla (CA)

**Date of Hearing** : 11.06.2018.  
**Date of Pronouncement** : 22/06/2018.

**ORDER**

**PER: KULDIP SINGH, JM**

The Appellant, Deputy Commissioner of Income-tax, Circle- 18(2), New Delhi. (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 12.12.2014 qua Assessment Year 2010-11 passed by Ld. CIT(A)-6, Delhi, on the grounds inter alia that:-

- "1. *Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the disallowance made by the AO on account of pre commencement expenses without considering the fact that during the year under consideration the assessee earned rental income under the head 'Income from House Property' and 'Income from other Sources' for which it duly claimed standard deduction and interest on borrowed capital and did not carry on any business activity against which business expenses could be allowed.*
2. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
3. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

**2.** Briefly stated the facts necessary to adjudicate the issues at hand are: the Assessing Officer (AO) made addition of Rs. 3,16,76,312/- on account of Pre Commencement Expenses on the ground that the assessee company was not in a position to commence its business before 11.11.2009 nor it commenced the same. The AO relied upon occupation certificates issued by Haryana State Industrial and Infrastructure Development Corporation Ltd. (HSIIDC) showing that the building was still under construction and the expenses incurred for the same are liable to be capitalized.

**3.** The assessee carried the matter before the Ld. CIT(A) by way of filing the appeal, who has deleted the disallowance of Rs. 3,16,76,312/- on account of pre commencement expenses by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way

of filing the present appeal.

**4.** We have heard the Ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and order passed by the revenue authorities below in the light of the facts and circumstances of the case.

**5.** The Ld. DR for the Revenue challenging the impugned order contended inter alia that when HSIIDC has issued the occupation certificate on 11.11.2009, expenses claimed by the assessee has rightly been disallowed by the AO; that the assessee has failed to prove that the completion of building took place with effect from 1.5.2009.

**6.** However, on the other hand, Ld. AR for the assessee to repel the arguments addressed by Ld. DR for the Revenue contended that the construction of building was completed on 30.4.2009 as per, "NO Objection Certificate", (NOC) dated 30.4.2009 issued by Commissioner of Municipal Corporation, Gurgaon, Haryana and confirmed by the Building Project Head for Airtel Centre; that occupation certificate dated 11.11.2009 was issued by HSIIDC subsequent to completion of the building as per sanctioned building plan; that the assessee has commenced its business w.e.f. A.Y. 2007-08 and consequently business income was already there which was subsequently assessed by AO as per statement of assessable income available at page **152 to 157 of the**

**Paper Book.**

**7.** In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower revenue authorities and argument addressed by the Ld. Authorized Representatives of the parties to the appeal, the sole question arises for determination in the case is:-

***"As to whether the assessee has completed his building construction w.e.f. 1.5.2009 and has earned its business income w.e.f.A.Y. 2007-08?"***

**8.** When we examine No Objection Certificate dated 30.4.2009 issued by Commissioner of Municipal Corporation Gurgaon, and copy of completion certificate of Airtel Centre, Gurgaon, both available at **page 56 and 57 of the Paper Book**, it goes to prove, that the said certificates were issued by the competent authorities on the basis of sight inspection and at that point of time building was ready for occupations fitted with Sprinklers, Risers, Yard Hydrants and Fire Extinguishers which were checked and found correct as per the N.B.C. 1983 part IV revised 2005.

**9.** Furthermore, when we examine aforesaid NOC for occupation and completion certificate in the light of the Statement of Assessable Income 'Annexure A' available at page 152 of the Paper Book, the assessable business income was already there, assessed by the AO w.e.f. 1.5.2009.

**10.** Merely because of the occupation certificate issued by HSIIDC dated 11.11.2009, it cannot be said that the business was commenced from 11.11.2009 because the said certificate was issued in due process without going into the facts of the case. Rather occupation certificate dated 11.11.2009 appears to be issued by HSIIDC on the basis of NOC issued by Commissioner of Municipal Corporation, Gurgaon and no sight inspection was made by the officer of the HSIIDC. So, when the business of the assessee was set up in terms of the Income Tax Act during the A.Y. 2007-08, pre commencement expenses cannot be disallowed on the basis of the occupation certificate dated 11.11.2009 only, particularly for which the assessee company has applied for vide letter dated 20.7.2009 on the basis of NOC dated 30.4.2009 issued by the Commissioner of Municipal Corporation, Gurgaon.

**11.** In view of what has been discussed above, the Ld. CIT(A) has rightly allowed all the Revenue's expenses incurred after setting up of the business claimed in the return of income u/s 28 to 44DB of the Act. So, we find no legality or perversity in the impugned order passed by the Ld. CIT(A), hence appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 22/6/2018

Sd/-

**(N.K SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Dated: 22 .06.2018

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	18/6/2018
Date on which the typed draft is placed before the dictating Member	20/6/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	21/6/2018
Date on which the fair order is placed before the Dictating Member for pronouncement	22/6/2018
Date on which the fair order comes back to the Sr. PS/PS	22/6/2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

