

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCH

‘SMC’, NEW DELHI

BEFORE

SHRI BHAVNSH SAINI, JUDICIAL MEMBER

ITA No. 54/Del./2018

Assessment Year : 2014-15

Daksh Power Infra Pvt. Ltd. A-24, Sector -51, Noida Uttar Pradesh, Pin-201301 PAN : AADCD6542Q	Vs	ACIT, Circle-1, Noida
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. S.L.Anuragi, Sr. DR

Date of Hearing :11.07.2018	Date of Pronouncement : 13 .07.2018
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ORDER

Per Bhavnes Saini, Judicial Member :

This appeal by the assessee has been directed against the order of Ld. CIT(A)-1, Noida dated 25th September, 2017 for assessment year 2014-15, challenging the addition of Rs. 17,50,030/-.

2. Briefly facts of the case are that the assessee has filed return declaring taxable income of Rs. Nil (current year loss of Rs. 26,55,623/-) on 19th September, 2014.

The case was selected for scrutiny. The assessee company was engaged in the power

project and other infrastructure development. During the year under consideration, assessee has shown nil income from operation in the profit and loss account. Further as per Note -12 of other income assessee has shown income from dividends Rs. 10,19,500/-, income from interest Rs. 71,426/- and after setting off net loss from long term capital gain of Rs. 7,96,674/-, net other income of Rs. 2,94,251/- has been credited in the profit & loss account and after adjustment of admissible and inadmissible expenses net current year loss of Rs. 7,25,820/- has been declared in the computation of income. The Books of accounts are audited. On perusal of the profit & loss account, balance sheet and related schedule, it is noticed that there was no opening stock, purchase or sale during the year under consideration. The assessee has shown only other income of Rs. 2,94,251/- in the profit and loss account. In spite of not doing any business assessee has claimed expenses of Rs. 2,97,000/-, Rs. (-) 7,640/-, Rs. 9,45,098/- and Rs. 5,15,572/- towards employee benefit expenses, financial cost, depreciation and amortization expenses and other administrative expenses respectively, totaling to Rs. 17,50,030/-. The AO noted that the expenditure should have nexus with the business. Since there were no business transaction in the year under consideration, therefore, entire expenses were disallowed and addition of Rs. 17,50,030/- was made to the return of income.

3. The assessee challenged the addition before Id. CIT(A) and it was submitted that during the previous year, the promoters of the company were in the process of

proper opportunity with a view of suitable location and investors which is the part of business operation. The Ld. CIT(A) however dismissed the appeal of assessee.

4. Ld. Counsel for the assessee reiterated the submissions made before authorities below and submitted that computation done by the AO in the assessment order is wrong in making addition of Rs. 9,45,098/- which was added back in the computation of total income filed at page 2 of the paper book. Page 15 is profit and loss account which is also supported by PB 20. In the PB 20 assessee had income from dividend of Rs. 10,19,500/- which is exempt u/s 10(38) and duly disclosed in the computation of income (PB 2). Further assessee has interest income of Rs. 71,426/- only during this year. Thus, the income under any circumstances can not be more than the gross income of Rs. 71,426/-. The assessee company is engaged in the business of power and other infrastructural development projects. The company has set up its business and have recruited the staff which is clear from the nature of expenses claimed in the profit and loss account. Therefore, there is error in the computation done by the AO. Further AO has simply disallowed carry forward of capital loss without any reasons. The loss is of current year and the return filed is in time and hence the loss should have been carry forward to next year. The expenditure have been incurred wholly and exclusively for the purpose of business of the company. Once company is incorporated, books of accounts are required to be maintained regularly. Therefore, incurring of various expenditure by assessee are

necessary for business purpose, irrespective of the fact that there is no sale and purchase transaction. Ld. Counsel for the assessee further submitted that in preceding assessment year 2012-13 assessee made a similar claim of deduction of the expenditure which have been allowed by AO in scrutiny asstt u/s 143(3) dated 30th March, 2015. Copy of the assessment order is filed at PB 37 and copy of the profit and loss is filed on Page 42 of the paper book. It is settled position of law that it is not necessary that there should be purchase or sales for the claiming of expenditure. The assessee has to keep alive and retain its registered office and holds its meetings. The addition is wholly unjustified and the business loss should have been allowed.

5. On the other hand ld. DR relied upon orders of the authorities below.

6. I have considered the rival submission and perused the material on record. The contentions raised by Ld. Counsel for the assessee are supported by the documents and material available on record. The assessee made similar claim of deduction of expenditure in preceding assessment year 2012-13 which have been allowed by AO in assessment u/s 143(3) of the IT Act. It would prove that assessee was in operation of business from in earlier years, may be no sale and purchase have been done. Therefore, the assessee incurred expenses wholly and exclusively for the purpose of business. The AO without any justification should not have disallowed expenses claimed or loss claimed in return. The similar claim of expenditure is made

in assessment year under appeal. It may be noted here that though the assessee claimed deduction of expenditure on account of depreciation and amortization expenses in a sum of Rs. 9,45,098/- in profit and loss account but it was added back in the computation of income, therefore, the same should not have been added again to the returned income. Thus, there were no justification for the authorities below to make disallowance of the expenditure. Further, there were no basis to disallow loss to be carry forward to the next year. The claim of assessee is justified and assessee is entitled for the losses suffered since return of income is filed on time. Therefore, loss of the current year shall have to be carried forward as per law. The findings of the authorities below are factually incorrect. The claim of assessee should not have been disallowed. I have accordingly set aside the order of the authorities below and delete the entire addition, AO is also directed to grant all consequential benefit to the assessee.

7. In the result appeal of assessee is allowed.

(Order Pronounced in the Open Court.)

Sd/-

(Bhavnes Saini)

JUDICIAL MEMBER

Dated: 13 /07/2018

Binita

Copy forwarded to:

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

ASSISTANT REGISTRAR

Date of dictation	11.07.2018
Date on which the typed draft is placed before the dictating Member	12.07.2018
Date on which the typed draft is placed before the Other Member	.07.2018
Date on which the approved draft comes to the Sr. PS/PS	13.07.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	13.07.2018
Date on which the fair order comes back to the Sr. PS/PS	13.07.2018
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	

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