

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 6748/Del/2015
(Assessment Year: 2012-13)**

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| Tarika Agrotech India Ltd., LG-1 & 3, R-23 Nehru Enclave New Delhi-110019. | Vs. | ITO, Ward 25(1), New Delhi. |
| PAN No: AAACT6013B | | |
| APPELLANT | | RESPONDENT |

Assessee by : Sh. B.L Gupta, ITP/AR
Revenue by : Sh. K. Hauthang, Sr. DR,

ORDER

PER: ANADEE NATH MISSHRA, AM

This appeal by the Assessee is filed against the order of Ld. CIT(A)-9, New Delhi, dated 23.10.2015 for Assessment Year 2012-13. In the Assessment Order dated 16.01.2015 U/s 143(3) of Income Tax Act, 1961 (for short, "The I.T. Act"); the Assessing officer disallowed the claim of business expenses amounting to total of Rs. 22,47,363/- and also further disallowed assessee's claim of

depreciation amounting to Rs. 9,68,237/-. The Assessee filed appeal before the Ld. CIT(A), who, vide order dated 23.10.2015, confirmed the above disallowances, upholding the view of the Assessing Officer that the Assessee has not carried out business activities. The Ld. CIT(A) also rejected the assessee's alternate claim that the expenses were allowable U/s 57(iii) of I.T. Act. Aggrieved, the Assessee filed this present appeal before the Income Tax Appellate Tribunal (ITAT) with the following grounds of appeal:-

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was incorrect and unjustified in

- i. Confirming the addition of Rs. 22,47,363/- incorrectly made by the AO.*
- ii. Disallowing the claim of expenses of Rs. 22,47,363/-*
- iii. Confirming the disallowance of depreciation of Rs. 9,68,237/- by holding that there was no business carried on by the Assessee.*
- iv. Holding that the expenses and depreciation cannot be allowed in this year only because there was no business activity during this year even when the business activity during this year even when the business had not closed of the company wind up which continued to be in existence as also in the earlier."*

(2) At the time of hearing before us, the Appellant filed following written submissions:

- i. The assessee had earned generator hire charges of Rs 1,02,000/-. The assessing officer held that such charges should be treated as income from other sources. Besides the AO disallowed the deprecation as claimed as per the deprecation*

chart. Expenses as per the Profit and Loss account were also disallowed. In the first appeal the CIT(A) had confirmed the order of the AO in respect of these disallowances. We are in appeal now before the Hon'ble ITAT.

- ii. Exactly similar point was involved in for the Assessment Year 2013-14 before the CIT(A) where also the assessee has declared the same amount of income from generator hire charges. The CIT(A) held that it was a business income. CIT(A) also held that expenses as per the Profit and Loss account claimed by the assessee were also allowable. Depreciation claimed was also allowed. There is no further appeal by the Revenue again this CIT(A) Order.*
- iii. In the Assessment Order for the year 2014-15 the assessing officer allowed the depreciation as claimed as per the depreciation chart. The assessing officer also allowed the expenses as claimed in Profit and Loss account. Reference to the ITAT Order for the Assessment Year 2001-02 and 2002-03 have been made in the Order of the CIT(A) for the Assessment Year 2013-14. In these appeals the Hon'ble Tribunal held that income from vehicle charges was assessable for deduction on account of expenses as claimed in profit and loss account. Deprecation was also allowed. In the circumstances it is submitted that appeal of the assessee may kindly be allowed."*

The Appellant also filed a **Paper Book** of 27 pages containing following particulars:

- a) Copy of CIT(A) Order for the Assessment Year 2013-14*
- b) Copy of The AO Order for the Assessment Year 2014-15*
- c) Copy of the Return for Assessment Year 2014-15*
- d) Copy of the ITAT Order for the Assessment Year 2001-02 and 2002-03.*

(2.1) At the time of hearing before us, the Ld. Counsel for Assessee submitted that the Ld. CIT(A) had decided the identical issues regarding allowability of

business expenses and regarding allowability of depreciation in favour of the assessee for Assessment Year 2013-14; which was accepted by Revenue and no appeal was filed by Revenue. The Ld. Counsel for Assessee further submitted that in Assessment Year 2014-15, the Assessing Officer himself allowed the business expenses as well as depreciation on the aforesaid issues. It was further submitted by the Ld. Counsel for Assessee that the disputed issues in the present appeal before us, in ITAT, are squarely covered in favour of the assessee by virtue of order of ITAT, Delhi Benches, Delhi in assessee's own case for Assessment Years 2001-02 & 2002-03 vide consolidated order dated 29.08.2008 of ITAT in ITA Nos. 1808 & 1809/Del/2006. The Ld. Counsel for Assessee further submitted that the Ld. CIT(A) had referred to the aforesaid ITAT order dated 29.08.2008 in deciding the assessee's appeal for Assessment Year 2013-14. However, the Ld. CIT(A) has not followed the aforesaid ITAT order dated 29.08.2008 in deciding the assessee's appeal for this year i.e. for Assessment Year 2013-14. In view of these submissions, the Ld. Counsel for Assessee contended that the Assessee's appeal should be allowed, being squarely covered in favour of the assessee by aforesaid order dated 29.08.2008 of ITAT in assessee's own case. The Ld. Departmental Representative ("DR", for short) on whose request the hearing was adjourned to 03/10/2018 to enable him to peruse

the written submissions and Paper Book filed by the Appellant; relied on the orders of the lower authorities namely aforesaid Assessment Order dated 16.01.2015 and aforesaid Order dated 23.10.2015 of Ld. CIT(A). However, the Ld. DR failed to distinguish the facts of this year with facts of Assessment Year 2014-15 in which Revenue had allowed assessee's claim for business expenses and depreciation and no addition was made by the Assessing Officer on these issues. The Ld. DR also failed to distinguish facts of this year with the facts of Assessment Year 2013-14 in which the Ld. CIT(A) deleted the additions made by the Assessing Officer on account of disallowance of business expenses and depreciation in Assessment Year 2013-14; and Revenue had accepted the order of Ld. CIT(A) and did not file any appeal in A.Y. 2013-14. The Ld. DR further failed to distinguish the facts of this year with the facts of Assessment Years 2001-02 and A.Y. 2002-03, in which; ITAT dismissed Revenue's appeal and allowed the Assessee's claim for deduction on account of business expenses and depreciation. We find that the issues regarding allowability of business expenses and depreciation were decided in favour of the Appellant by the order of ITAT in assessee's own case for A.Ys. 2001-02 & 2002-03, vide consolidated order dated 29.08.2008 in ITA Nos. 1808/Del/2006 & 1809/Del/2006. As the Ld. DR failed to distinguish the facts of this year with the facts of A.Y. 2001-02 & 2002-03 and

further, as the Ld. DR failed to distinguish the facts of this year with facts of Assessment Year 2014-15 in which no such additions were made and furthermore, as the Ld. DR failed to distinguish the facts of this year with facts of A.Y. 2013-14, in which order of Ld. CIT(A) deleting the disallowances of business expenses and depreciation was accepted by Revenue; we delete the aforesaid addition of Rs. 22,47,363/- (on account of disallowance of business expenses) and the aforesaid addition of Rs. 9,68,237/- (on account of disallowance of depreciation); respectfully following the order of ITAT wherein claim for business expenses and depreciation was accepted in assessee's own case for Assessment Years 2001-02 & 2002-03 by consolidated order dated 29.08.2008 in Appellant's own case in ITA Nos. 1808 & 1809/Del/2006.

(3) In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 09/10/2018-

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 09.10.2018
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

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| Date of dictation | 3-8/10/2018 |
| Date on which the typed draft is placed before the dictating Member | 8.10.2018 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 8.10.18 |
| Date on which the fair order comes back to the Sr. PS/PS | 9.10.18 |
| Date on which the final order is uploaded on the website of ITAT | 9.10.18 |
| 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 | |