

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 5652/DEL/2015 (A.Y 2011-12)

DCIT Circle-7(1), Room No. 403, C. R. Building, I.P. Estate New Delhi (APPELLANT)	Vs	Delhi Automobiles Ltd. 14-C, Sagar Apartments, 6, Tilak Marg New Delhi AABCD7933P (RESPONDENT)
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Appellant by	Sh. S. M. Pandey, Sr. DR
Respondent by	Sh. Alope Periwal, CA

Date of Hearing	20.11.2018
Date of Pronouncement	22.11.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 22/7/2015 passed by CIT(A)-3, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

“1. Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) has erred in deleting addition on account of Management and other expenses of Rs.70,18,334/- made by the A.O.”

3. The return of income was e-filed on 30/3/2013 declaring loss of Rs. 53,40,530/-. The case was selected for scrutiny assessment. Notices u/s 143(2) was issued on 23/9/2013 and questionnaire u/s 142(1) was issued on 26/9/2013 which were duly served upon the assessee. In response, C.A of the

assessee Company attended the proceeding from time to time. The details were asked by the Assessing Officer and the assessee filed books of accounts which was duly checked. The assessee submitted income under miscellaneous income and expenditure in profit and loss account for the year ended 31st March, 2011. The Assessing Officer observed that no significant business activity was carried out by the assessee during the relevant period as well as in the earlier years. The Assessing Officer held that the assessee has not done any business activity during the year, therefore, the business expenses claimed during the year at Rs.70,18,334/-cannot be allowed as business expenditure, since no business activity was actually carried out by the assessee, during the period relevant to Assessment Year 2011-12. Thus, the Assessing Officer made addition of Rs.70,18,334/-. The Assessing Officer also disallowed claim of depreciation amounting to Rs.1,99,972/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT (A). The CIT (A) partly allowed the appeal of the assessee.

5. During the hearing, the Ld. AR submitted that similar issue for Assessment Year 2010-11 has been decided in favour of the assessee by the Tribunal in assessee's own case. Therefore, the issue is covered in favour of the assessee in this year as well.

6. The Ld. DR relied upon the orders of the Assessing Officer and CIT(A), but could not distinguish the factual aspect mentioned in the Tribunal's order for A.Y. 2010-11 and the present Assessment Year.

7. We have heard both the parties and perused the material available on record. The issue discussed in the present appeal is similar to the earlier Assessment Year which was decided by the Tribunal in ITA No. 1999/Del/2014 ACIT Vs. Delhi Auto Mobiles Ltd. order dated 9/6/2017 A.Y. 2010-11. The Tribunal held as under:-

“9. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, the AO disallowed all the expenses claimed by the assessee for the reasons that there was no business activity during the year under consideration. On the contrary, the claim of the assessee is that the business was not closed down permanently, the assessee was facing lull at business and to keep itself a float, the assessee company was required to incur various necessary and bare minimum expenses. In the present case, the copy of profit and loss account placed at page no. 13 of the assessee’s paper book revealed that the assessee had made sales of Rs.71,97,431.47 and also earned miscellaneous income of Rs.4,05,13,194.14 in the preceding year. During the year under consideration, the miscellaneous income earned by the assessee was of Rs.2,90,013/- but there was no income from sales, the reasons given by the assessee was that there was lull in business but the business itself was not closed.

10. On a similar issue their lordships of the Hon’ble Jurisdictional High Court at Delhi, in the case of CIT Vs Anita Jain (*supra*) observed in para 3 as under:

“3. Ms. Bansal, learned counsel for the revenue, has drawn our attention to the observation in CIT v. Lahore Electric Supply Co. Ltd. [1966] 60 ITR 1 (SC) to the effect that the "mere fact that the company had not gone into liquidation would not establish that it had the intention to do business". This submission loses sight of the observations made at page 5 which clearly indicate that the Court came to the conclusion that the assessee had closed business because it had not 'established an intention to resume it'. Such is not the circumstance obtaining in the present case. This case has been applied in CIT v. Vellore Electric Corpn. Ltd. [2000] 243 ITR 529 (Mad.) where it has been pithily noted that maintenance and establishment is the indication of intention to resume business. In Karsondas Ranchhoddass v. CIT [1972] 83 ITR 1 (Born.) it was noted that there were two periods of activity before and after the interregnum or period of inactivity which was indicative that the business was nevertheless continued. We are in complete agreement with the view taken

by the ITAT that the present case is an example of a lull in business and not cessation in business.”

11. *In the aforesaid case the disallowance made by the AO was deleted up to the level of the Tribunal and the Hon’ble Jurisdictional High Court held that the view taken by the Tribunal was justified and there was no substantial question of law involved. In the present case also the assessee company continued to maintain an establishment which was the indication of its intention to resume business and the expenses incurred by the assessee were directly related to the business of the assessee. Therefore, the ld. CIT(A) was fully justified in holding that the assessee had rightly claimed the establishment expenses to resume its business in near future. I, therefore, do not see any valid ground to interfere with the findings given by the ld. CIT(A) and accordingly do not see any merit in this appeal of the department.*

12. *In the result, the appeal of the department is dismissed.”*

Thus, the issue contested herein by the Revenue is squarely covered by the decision of the Tribunal in assessee’s own case for A.Y. 2010-11. The factual aspects are identical in the present assessment year as well. Therefore, appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on 22nd November, 2018.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 22/11/2018

R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	20 .11.2018
Date on which the typed draft is placed before the dictating Member	20 .11.2018
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	
Date on which the fair order comes back to the Sr. PS/PS	22 .11.2018
Date on which the final order is uploaded on the website of ITAT	22 .11.2018
Date on which the file goes to the Bench Clerk	22 .11.2018
Date on which the file goes to the Head Clerk	

