

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. N. K. Saini, Hon'ble Vice President  
and**

**Smt. Beena A. Pillai, Judicial Member**

**ITA No. 3186/Del/2014 : Asstt. Year : 2005-06**

Greater Noida Industrial Development Authority, H: 169, Chitvan Estate, Sector-Gamma, Greater Noida City, District-Gautam Budh Nagar, Uttar Pradesh	Vs	Asstt. Commissioner of Income Tax, Circle-3, Noida
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAALG0129L</b>		

**Assessee by : Sh. Jasmeet Singh, Adv. &  
Smt. Raj Rani Lakra, CA  
Revenue by : Sh. Kumar Hrishikesh, CIT DR**

<b>Date of Hearing : 06.12.2018</b>	<b>Date of Pronouncement : 07.12.2018</b>
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**ORDER**

**Per N. K. Saini, Vide President:**

This is an appeal by the assessee against the order dated 21.03.2014 of ld. CIT(A), Noida.

2. Following grounds have been raised in this appeal:

*“1. That the Ld. CIT (A) without appreciating the merit of written submissions with respect to Ground No. 3, 5, 6, 7, 8, 13, 14, 15, 16 has simply reproduced the same in his order and has dismissed the same in view of the judgment of Honorable Allahabad High Court.*

*2. That Ld. CIT (A) has erred in confirming the addition made by Ld. A.O. by disallowing revenue expenditure*

*for repair and maintenance of building by treating it as capital expenditure.*

*3. That the Ld. CIT (A) without accepting or rejecting the written submissions by the Appellant with respect to the Ground No. 1, 2, 4, 9, 10, 11 & 12 has simply dismissed them on the ground that - 'Not pressed by the appellant and hence being dismissed'.*

*For the sake of brevity, the Grounds of Appeal are reproduced below –*

*1. That having regard to the facts & circumstances of the case. Ld. AO has erred in law and fact in passing the assessment order.*

*2. That on the facts and in the circumstances of the case and in Law, The Ld. AO has erred in framing assessment under section 147 of the Income Tax act, 1961 without following the mandatory procedure prescribed under section 147 to 151 of the Income Tax Act, 1961, as such the assessment may please be held as bad in law and may kindly be Set aside.*

*3. That having regard to the facts and circumstances of the case, The Ld. AO has erred in interpreting the provisions of the section 10(20) of the Income Tax Act, 1961.*

*4. That the Demand Notice of Rs. 214,908,440 raised by the Ld. AO under section 156 is bad in law.*

*5. That having regard to the facts and circumstances of the case, The Ld. AO has erred in law and on the fact in treating the status of Assessee as Artificial Juridical Person instead of the Local Authority.*

*6. That the Ld. AO has erred both on facts and in law while issuing notice under section 148 of the Income Tax Act, 1961.*

7. *The Ld. AO has erred while relying on the Judgment of Honourable Allahabad High Court in the case of Noida Authority.*

8. *The Ld. AO has failed to take the cognizance that Noida Authority has moved a Special Leave Petition against the order of the Honourable Allahabad High Court and the matter is sub-judice.*

9. *That on the facts and in the circumstances of the case and in Law, The Ld. AO has made an unreasonable delay of more than 7 months in providing the reasons to believe to the assessee.*

10. *That the Ld. AO has erred in passing the assessment order under section 147 of the Income Tax Act, 1961 without passing a speaking order against the objections raised by the assessee.*

11. *That the Ld. AO without appreciating the facts and details on record and without according proper opportunity of being heard to the Assessee passed an assessment order under section 147 of the Income Tax Act 1961.*

12. *That having regard to the facts and circumstances of the case, The Ld. AO has acted against the principles of Natural justice in completing the assessment within a short period of 29 days.*

13. *That having regard to the facts and circumstances of the case, The Ld. AO has erred in interpreting the provisions of Article 12 of the Constitution of India.*

14. *That having regard to the facts and circumstances of the case, The Ld. AO has erred in interpreting and application of the provisions of Article 243Q of the Constitution of India.*

15. *That having regard to the facts and circumstances of the case, The Ld. AO has demean the powers conferred by the Article 243Q of the Constitution of India to the Honorable Governor of the State.*

16. *That having regard to the facts and circumstances of the case, The Ld. AO has erred in interpreting and application of the provisions of Article 289 of the Constitution of India.*

17. *That the Ld. AO has erred in making an addition of Rs. 53,666,548 under section 40(a)(ia) of the Income Tax Act, 1961 without giving an adequate opportunity of being heard and without confronting the information submitted by the appellant.*

18. *That the Ld. AO has erred in making an addition of Rs. 10,709,355 by disallowing revenue expenditure for repair & maintenance of building by treating it as capital expenditure and allowing depreciation on it without giving an adequate opportunity of being heard.*

19. *That considering the facts and circumstances of the case, the Ld. AO has erred in law by making an addition of Rs.155,435,228 by treating the surplus in general reserve as Income of the Assessee without giving an adequate opportunity of being heard and without confronting the information submitted by the appellant.*

20. *That the Ld. AO has failed to appreciate the functions performed and discharged by the Assessee.*

21. *That "The Appellant craves leave to add, amend, alter, vary and/or withdraw or rescind all or any of the GROUND OF APPEAL on or before the final Hearing."*

3. The assessee also raised the following additional ground vide letter dated 15.03.2017:

*“a) That the ld. AO at no stage of the Assessment Proceeding issued a mandatory notice u/s 143(2) of the Income Tax Act, 1961. Consequently, he did not assume jurisdiction to make an assessment and therefore the order passed by him is invalid and void ab initio.”*

4. During the course of hearing, the ld. Counsel for the assessee did not press the additional ground and Ground Nos. 3(2), 4, 6, 9, 10, 11, 12, 17 & 19 and also submitted Ground Nos. 21 is general in nature. So these grounds do not require any comment on our part.

5. The ld. Counsel for the assessee also submitted that Ground Nos. 1, 3, 5, 7, 8, 13 to 16 & 20 are co-related which relate to the exemption u/s 10(20) of the Income Tax Act, 1961 (hereinafter referred to as the Act). The ld. Counsel for the assessee submitted that the issue raised in these grounds had been decided by the Honøble Apex Court against the assessee vide order dated 02.07.2018 in Civil Appeal No. 792-793 of 2014, therefore, this issue may be decided against the assessee in view of the above said judgment of Honøble Apex Court. The ld. CIT DR did not object if this issue is decided against the assessee. In view of the above, the aforesaid issue is decided against the assessee.

6. Now the only issue remains for adjudication raised vide Ground Nos. 2, 3(1) & 18 relates to the disallowance of the expenses for repair & maintenance made by the AO, treating the same as capital in nature.

7. Facts related to this issue in brief are that the AO during the course of assessment proceedings noticed that the assessee had claimed repair &

maintenance of building at Rs.1,07,09,355/-. According to him, it was a capital expenditure and not revenue expenditure. He, therefore, disallowed those expenses by treating the same as capital in nature. However, allowed depreciation amounting to Rs.10,70,936/- on the said capitalized expenditure.

8. Being aggrieved the assessee carried the matter to the Id. CIT(A) who confirmed the action of the AO by observing as under:

*“During the course of assessment proceedings the AO found that the assessee has claimed deduction for expenditure incurred on "Repairs and Maintenance of Building" amounting to Rs. 1,07,09,355/-. In this regard the AO treated the expenditure towards "Repairs and Maintenance of Building" as Capital Expenditure and the same was disallowed and was added to the income of the assessee while depreciation with respect to above expenditure amounting to Rs. 1,07,09,355/- was also allowed to the assessee. In this regard the appellant has argued that the expenditure of Rs. 1,07,09,355/- on "Repairs and Maintenance of Building" was of revenue expenditure and the same should have been allowed as deduction u/s. 30(a)(ii) of the I.T. Act. I have seen the provisions contained in section 30(a)(ii) which allows deduction with respect to current repairs provided the same are not in the nature of capital expenditure. In the present case, on perusal of material available on record I find that the assessee has provided no details, information or evidence to show that above expenditure was of revenue in nature. Even during the appellate proceedings the appellant has not come out with any explanation or details supported by facts/evidence to show that the above expenditure was not a capital expenditure, In view of above I find no infirmity in AO treating the said expenditure as capital expenditure and disallowing the same. Accordingly the action of the AO is confirmed.”*

9. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that the AO without considering the details and the explanation of the assessee treated the expenses on repairs & maintenance of building as capital in nature and did not assign any reason in support of his conclusion. It was further

submitted that the Id. CIT(A) confirmed the action of the AO in slip shod manner and did not consider the explanation given by the assessee in right perspective and that the Id. CIT(A) wrongly mentioned that the assessee had not provided any detail, information or evidence to show that the above expenditure was revenue in nature. It was pointed out that all the details called by the AO were furnished during the course of assessment proceedings. He requested to set aside the issue back to the file of the AO to be decided after considering the explanation and submissions made by the assessee.

10. In his rival submissions, the Id. CIT DR although supported the orders of the authorities below but did not object if the issue is set aside to the file of the AO to be decided after considering the submissions of the assessee.

11. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the AO while considering the expenditure under consideration as capital in nature observed as under:

*“1. During the course of assessment proceedings, it is found that the assessee has claimed repair and maintenance of building at Rs.10709355/-. The repair and maintenance of the building is a capital expenditure and not the revenue expenditure. Hence the same is added to the income of the assessee and depreciation of Rs.1070936/- is allowed to the assessee.”*

12. From the above observations of the AO, it is not clear as to why those expenses were considered as capital in nature. In other words, no reason has been given by the AO for considering the same as capital in nature. In the present case, the Id. CIT(A) confirmed the action of the AO for the reason that no details/information were furnished by the assessee. On the contrary, the AO in the assessment order has not mentioned that the details asked for, were not

furnished by the assessee. We, therefore, considering the totality of the facts deem it appropriate to remand this issue back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes.

(Order Pronounced in the Court on 07/12/2018)

Sd/-  
**(Beena A. Pillai)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 07/12/2018**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**