

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 4166/Del/2015
Asstt. Year. 2010-11

Pramod Goyal, Prop. U Like Fabrics, M-217, Shashtri Nagar New Delhi – 110 052 PAN AAOPG1186D	Vs.	ACIT, Circle 19(1), New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri G.K. Shukla, Advocate
Department by :	Ms. Nidhi Srivastava, CIT,DR
Date of Hearing	06/12/2018
Date of pronouncement	19 /12/2018

ORDER

PER O.P. KANT, A.M.

This appeal by the assessee is directed against order dated 27/02/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-12, New Delhi[in short the Ld. CIT(A)] for assessment year 2010-11 raising following grounds:

1. *“That the Ld. Commissioner (Appeals) erred on facts and in law in sustaining the disallowance and consequent addition of Rs. 1,78,380/- incurred by the appellant towards recurring conversion charges paid to the MCD consistently*

allowed to the appellant in the past assessments by treating it as capital expenditure.”

2. Briefly stated facts of the case are that the assessee, an individual was proprietor of two business concerns namely M/s U-Like Fabrics and M/s U-like Collections, which were engaged in manufacturing and trading of fabrics and trading of bedsheets, carpets etc. respectively. For the year under consideration the assessee filed return of income on 15/10/2010 declaring total income of Rs. 73,43,520/-. The case of the assessee was selected for scrutiny and assessment under section 143(3) of the Income Tax Act, 1961 (in short the Act) was completed on 20/03/2013 after making certain additions/disallowances. On further appeal, the Ld. CIT(A) allowed the appeal partly with enhancement on the issue of disallowance of expenses related to cars. Aggrieved with the finding of the Ld. CIT(A) on the issue of conversion charges as capital expenditure, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. The Ld. Counsel of the assessee submitted before us that the business of proprietary concerns were earlier used to be carried out from premises which were residential but on account of sealing drive undertaken by the Municipal Corporation of the Delhi (MCD), the assessee had to make annual payments to MCD as conversion charges for the usage from residential to commercial. The Ld. Counsel submitted that such payments do not create any new asset or expansion of profit-making apparatus. He submitted that these payments were made on year-to-year basis for enabling the assessee to continue its business operation. He submitted that similar expenses paid in assessment years 2008-09 and 2009-10 have been allowed by the Assessing Officer. He further submitted that in assessment year

2013-14 similar addition was made by the Assessing Officer. However, same has been deleted by the Ld. CIT(A) and no appeal has been filed by the Revenue against the said disallowance. In view of the facts, the Ld. Counsel submitted that following the rule of the consistency, the addition/disallowance in dispute should be deleted in the year under consideration also.

4. The Ld. DR on the other hand relied on the order of the lower authorities and submitted that the expenditure in dispute relating to conversion charges of usages from residential to commercial is of enduring benefit nature and, therefore, the Ld. CIT(A) is justified in holding the same as capital expenditure, not allowable under section 37(1) of the Act.

5. We have heard the rival submissions and perused the relevant material on record. The facts in respect of the amount of Rs. 1,78,380/- paid to MCD for conversion of usage from residential to commercial of the two properties concerned is not in dispute. The only dispute is whether the said expenditure is revenue expenditure or capital expenditure. The Ld. Counsel of the assessee has relied on the rule of the consistency and submitted that similar annual conversion charges paid by the assessee in earlier assessment years 2008-09 and 2009-10 has been allowed to the assessee by the Assessing Officer and in assessment year 2013-14 has been allowed by the Ld. CIT(A). We note that the Ld. CIT(A) in assessment year 2013-14 has allowed the expenses as revenue expenditure observing as under:

“8.2 I have considered the observations of the Assessing Officer and submissions of the Appellant. It is seen that payment of Rs. 1,62,252/- is on account of conversion charges or mixed use charges which is being paid by the

Appellant to MCD from year to year basis. Further, this payment has been made in view of the Master Plan of Delhi notified on 02.02.2007 which has contained the provisions for mixed use charges of the premises. It is also seen that expenditure incurred in the Appellant's case has not resulted in any addition to the capital asset of the, Appellant neither it has resulted in expansion of profit making apparatus of the Appellant. Further, Appellant has claimed that the property does not form part of the assets of Appellant and, therefore, there is no addition in the capital of the Appellant. As a result, it is held that the payment of Rs.1,62,252/- is revenue in nature and, therefore, is allowable to the Appellant as it is vital to the survival and running of Appellant's business and, as such, it is wholly and exclusively for the purposes of Appellant's business. Therefore, addition of Rs. 1,62,252/- on account of mixed use charges is deleted.”

6. The Ld. DR could not controvert the fact that in earlier assessment year, the Assessing Officer himself has allowed the said expenditure as revenue expenditure and in assessment year 2013-14, the Ld. CIT(A) has allowed the expenditure and no further appeal on the issue has been filed by the Revenue. We find that facts in the year under consideration are identical to the facts in assessment year 2013-14 . Thus following the rule of consistency, in identical set of the facts, the Assessing Officer was not required to make addition on the issue in dispute. Further, the Ld. CIT(A) in assessment year 2013-14 has allowed that expenses holding that it has neither resulted in extension of any profit-making apparatus of the assessee nor it has resulted in any addition to the capital asset of the assessee. We agree

with the above finding of the Ld. CIT(A) in assessment year 2013-14 . Moreover, the expenses on conversion of the usage from residential to commercial are being incurred on year-to-year basis and thus no enduring benefit is being obtained by the assessee.

7. In view of the above discussion and following the rule of the consistency, the disallowance in dispute sustained by the Ld. CIT(A) is deleted. The ground of the appeal of the assessee is accordingly allowed.

8. In the result, the appeal of the assessee is allowed.

This decision was pronounced in the Open Court on 19th December, 2018.

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

sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 19/12/2018

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi