

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

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

I.T.A. No. 2748/DEL/2013 (A.Y 2009-10)

DCIT Circle 10(1) New Delhi (APPELLANT)	Vs	Diethelm Travel (India) Pvt. Ltd. AB-1, 2 nd Floor, Community Centre, Safdarjung Enclave New Delhi AACCD6610J (RESPONDENT)
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Appellant by	Ms. Ashima Neb, Sr. DR
Respondent by	Sh. Hitesh Ambani, CA

Date of Hearing	10.01.2019
Date of Pronouncement	24.01.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 27/02/2013 passed by CIT(A)-XIII, New Delhi for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

“ i) Whether the CIT(A) under the facts and circumstances of the case and in law was justified in deleting the addition of Rs. 56,05,147/- on account of salary, wages, bonus and rent paid for the Managing Directors, made by the Assessing Officer.

ii) Whether the CIT(A) under the facts and circumstances of the case and in law was justified in deleting the disallowance of Rs. 8,05,465/- made by the AO on a/c of Travelling & Conveyance Expenses.

iii) Whether the CIT(A) under the facts and circumstances of the case and in law was justified in deleting the disallowance of Rs. 24,41 JJ36/- made by the AO on a/c of Consultancy Expenses.

iv) Whether the CIT(A) under the facts and circumstances of the case and in law was justified in deleting the disallowance of Rs. 11,08,596/- made by the AO on a/c of Legal & Professional Charges.

v) Whether the CIT(A) under the facts and circumstances of the case and in law was justified in deleting the disallowance of Rs. 29,63,625/- made by the AO on a/c of Interest & Finance Charges.

vi) Whether the CIT(A) under the facts and circumstances of the case and in law was justified in deleting the disallowance of Rs. 10,15,633/- made by the AO on a/c of Foreign Exchange Fluctuation Loss.

3. The assessee company is a subsidiary of Diethelm Travels (Thailand) Ltd. It was incorporated in India in the F.Y. 2007-08. The company is engaged in the business of arranging inbound and outbound packaged tours and other correlated incidental business activities including booking of tickets etc. The company started its commercial activity w.e.f. 16.08.2007. The A.Y. 2009-10 was a second year of its operation. In the assessment order passed for the year under consideration the Assessing Officer has disallowed following expenses on the ground that there was no justification for incurring more expenses than income:-

a)	Disallowance of Rent paid for accommodation of Managing Director	:	Rs. 19,80,000/-
b)	Disallowance out of salary expenses	:	Rs. 36,25,147/-
	Disallowance out of Travelling & Conveyance Expenses	:	Rs. 8,05,465/-
c)	Disallowance out of Travelling & Conveyance Expenses	:	Rs.8,05,465/-

- d) Disallowance of Consultancy Expenses : Rs.24,41,166/-
- e) Disallowance of Legal & Professional Charges : Rs.11,08,5967-
- f) Disallowance of Interest & Finance Charges : Rs.29,63,6257-
- g) Addition of Foreign Exchange Fluctuation Loss: Rs. 10,15,6337-

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

5. The Ld. DR submitted that the CIT(A) has taken the new evidence on record. Since the evidences were not before the Assessing Officer the Ld. DR requested to remand back this matter to the file of the Assessing Officer.

6. The Ld. AR relied upon the order of the CIT(A). The Ld. AR submitted that the evidence was produced before the Assessing Officer and there is no new evidence produced before the CIT(A).

7. We have heard both the parties and perused the material available on record. The Ld. DR submitted that new evidences were taken into account by the CIT(A), but from the perusal of the Assessment Order, it can be seen that the evidences were before the Assessing Officer as well. The CIT(A) held as under:

“6.2 Decision

I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that during the year appellant has incurred Rs.92,30,295/- under the head salary, bonus, wages and rent. From this expenditure Assessing Officer has separately disallowed the rent paid for providing rent free accommodation to Ms. Lilli Saxer, Managing Director of the

appellant company. Out of the salary of Rs. 72,50,295/- Assessing Officer has disallowed 50% of such expenses on the ground that expenses are excessive and there is a huge increase in salary expenses as compared to last year. It is submitted by the appellant that rent payment of Rs. 19,80,000/- was incurred on providing rent free accommodation to Ms. Lilli Saxer who hailed from Thailand and was provided rent free accommodation as per the terms of employment. This rent was paid for hiring accommodation at C-1/32, Safdarjung Development Area, New Delhi as per the rent agreement. It is also submitted by the appellant that that the rent free accommodation has been calculated as perquisite in the hands of Ms. Lilli Saxer and TDS has been deducted from salary as well as perquisites. Similarly, the appellant stated that salary expenses were paid to the employees hired by the appellant during F.Y. 2007-08 and during 2008-09. The increase in salary expenses was on account of incremental benefit given to the old employees and hiring of more manpower during the year. The appellant further submitted that in the F.Y. 2007-08 relevant to A.Y. 2008-09 the salary payment expenses were pertaining for seven months only whereas in the F.Y. 2008-09 relevant to assessment year under consideration the expenses are for 12 months, therefore, there is a increase in the salary expenses as compared to earlier years. The appellant further contends that appellant is not setting up new business. The business has already started in F.Y. 2007-08 and this is the second year of its business and has shown receipts of Rs.1,42,48,470/-. Therefore, the salary expenses incurred on running and expansion of the business cannot be capitalized as done by the Assessing Officer. The expenses incurred by the appellant on providing rent free accommodation to the managing director and salary, wages paid to the employees were for running the business smoothly and wholly and exclusively for the business purposes. The Assessing Officer was not justified in disallowing the rent paid for providing rent free accommodation to the Managing Director and disallowing half of the expenses from salary and wages without bringing any adverse material on the record. The expenses on salary, wages and rent free

accommodation were incurred for business purposes and payment of such salary and wages TDS has been deducted by the appellant and deposited to Govt. Account, therefore, such expenses are fully allowable. Hence, the disallowance of rent payment and half of the salary payment is deleted.”

“7.2 Decision

I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that during the year the appellant had incurred and expenditure of Rs. 16,10,930/- on account of travelling and conveyance. The Assessing Officer disallowed 50% of this expenditure on the ground that business of the appellant was not started functioning and it was in the process of setting up of its business. It is seen that this is the second year of the appellant’s business and appellant has declared receipts of Rs. 1,42,48,470/- during the year from the business carried out. Therefore, the observation of the Assessing Officer that appellant was in the process of setting up of its business is not correct. The appellant’s business has started in the F.Y. 2007-08 relevant to A.Y. 2008-09. The expenditure on traveling the conveyance was incurred for the purposes of expanding the business of the appellant. For this purposes employees of the appellant company undertook travel to abroad as well as locally to garner more and more business. The expenditure was incurred primarily for exploring the possibilities of expansion of appellant business. Therefore, the expenditure was incurred wholly and exclusively for the business purposes of the appellant. Hence the disallowance of 50% expenses from travelling and conveyance was not justified and same is deleted.”.....

“8.2 Decision

I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that the appellant company is a affiliated company to Diethelm Travel (Thailand) Ltd. In the memorandum of understanding it was mentioned that M/s Diethelm Travel Group will provide consulting services to the appellant company to develop the portfolio of clients. In exchange of these services M/s Diethelm Travel (Thailand) Ltd. or an

affiliated company belonging to Diethelm Travel Group will be paid a consulting fee by the appellant during the primary term of the joint venture. It was agreed that the consulting fee will be paid quarterly in equally installments after deduction of withholding tax. The appellant has paid 49,170 US\$ to its parent company during F.Y. 2008-09 and on that withholding tax has been deducted. Since the consulting fee is paid as per the terms of the agreement for conducting business in India and for developing client portfolio, therefore, same is an allowable expenditure. Hence, disallowance made by the Assessing Officer is deleted.”

“9.2 Decision

I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that appellant has incurred an expenditure of Rs.11,08,596/- on legal and professional services during the assessment year under consideration. It is submitted by the appellant that payments were made by the appellant for hiring the services of Khaitan Jayakar Sud and Vohra for various legal assistance taken by the appellant for registration and incorporation. The appellant has also taken services of M/s O.P. Bagla and Co. Chartered Accountants for conducting internal audit, tax compliances, review of financial MIS, preparation and filing of Income Tax Returns, tax audit, transfer pricing study and certification, income tax assessments, maintenance of statutory registers, filing of various papers with registrar of companies, filing of annual returns with registrar of companies etc. The appellant has filed copy of appointment letter of appointing M/s O. P. Bagla and Co. as their consultants. The appellant claims that legal and professional charges were paid for smooth running and functioning of the business of the appellant. Therefore, the disallowance made by the Assessing Officer was not justified and same is deleted.”....

“10.2 Decision

I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that during the year appellant has paid interest of Rs. 26,01,994/- and Finance Charges of Rs. 3,61,631/- for the loans

raised. The appellant has submitted that it has raised loan from following banks:-

S. No.	Particulars	Amount (Rs.)
1.	Calyon Bank Overdraft Facilities	79,94,327/-
2.	Citi Bank – C C	21,40,979/-
3.	Citi Bank – Working Capital Demand Loan (WC DL)	1,57,00,000/-
	TOTAL	2,58,35,306/-

These loans were raised to finance the working capital requirements and to meet the day to day expenses of the business. The appellant has filed copy of the resolution passed by Board of Directors of the appellant company for taking loan from CITI Bank for the business purposes. The total loan was taken to the tune of Rs.2 crore, however, during the F.Y. 2008-09 the limit to the extent of Rs.1,78,40,979/- was utilized by the appellant.

The appellant has also taken demand promissory note of Rs.1 Crore from Calyon Bank for repayment of the amount due under overdraft facility. The appellant has filed the supporting documents of the loan taken. This OD limit to the extent of Rs. 27,94,327/- was utilized for business purposes.

The processing charges of Rs. 3,61,631/- was paid to the Citi Bank for processing the loan. It is seen that loan was utilized for business purposes and meeting various working capital requirements. During the year the appellant has shown business receipts of Rs. 1,42,48,470/- and business of the appellant was a going concern during the year, therefore, the interest and processing charges incurred by the appellant were wholly and exclusively for the business purposes of the appellant. Therefore, the same is fully allowable. Hence, disallowance made by the Assessing Officer is deleted.”

11.2 **Decision**

I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that during the year appellant has suffered

foreign exchange fluctuation loss of Rs.10,15,633/-. This loss has arisen because the appellant received advance payments from the customers and parties for the various tours booked by the appellant. But the bills were raised on a particular tour date. Since the date of receiving of advance payment and date of billing were different, therefore, there exist a difference in the rate of Foreign Exchange which has resulted Loss/Profit. During the year appellant has suffered loss of Rs. 10,15,633/- which has been claimed as revenue loss. As per Accounting Standard-11, the exchange difference on foreign currency transaction has to be dealt in-accordance to Para-9, 10, and 11 of the AS-11. The same are reproduced hereunder:-

.....

The foreign exchange transaction of the appellant was done on revenue account. The loss has arisen on account of advance payment received against booking and settlement of the same on raising of bills, therefore, this loss was on revenue account. Hence, the same is allowable expenditure as per Para -9 of the AS-11.

In this regards reliance is placed on the judgment of Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India Pvt. Ltd. 312 ITR 254 (SC) wherein it is held that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by it, on conversion into another currency, such profit or loss would ordinarily be trading profit and loss if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business."

The fact of the appellant's case are identical with the above cited judicial pronouncements, therefore, ratio of the above judgment is squarely applicable in the case of appellant. Hence, the foreign exchange fluctuation loss is allowable as revenue expenditure. Therefore, disallowance made by the Assessing Officer is deleted."

The CIT(A) has given a detailed order for each of the Grounds contested by the Revenue in the present appeal and the evidences were also produced before the CIT(A) which was properly considered by the CIT(A). Therefore, there is no need to interfere with the order of the CIT(A). The appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on 24th JANUARY, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 24 /01/2019

*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	21.01.2019
Date on which the typed draft is placed before the dictating Member	21.01.2019
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	24 .01.2019
Date on which the final order is uploaded on the website of ITAT	24 .01.2019
Date on which the file goes to the Bench Clerk	24 .01.2019
Date on which the file goes to the Head Clerk	