

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3613/Del/2015
Asstt. Year: 2011-12

H.L. Malhotra And Company Pvt. Ltd. 506, Dakha House, Pusa Lane, 18/17, W.E.A., Karol Bagh New Delhi – 110 005 PAN AAACH0836J	Vs.	DCIT Circle-12(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ajay Vohra, Sr. Advocate Shri Bharat, Advocate
Department by :	Shri Praveen Kumar, Sr.DR
Date of Hearing	17/01/2019
Date of pronouncement	28/02/2019

ORDER

PER O.P. KANT, A.M

This appeal by the assessee is directed against order dated 31/03/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-4, New Delhi [in short the Ld. CIT(A)] for assessment year 2011-12 raising following grounds:

1. *“That the Commissioner of Income Tax (Appeals) erred on facts and in law in assessing the service charges of Rs. 21,50,970 and furniture hire charges of Rs.13,80,000 under the head 'Income from other sources' instead of 'Profits and Gains from Business and Profession', as declared by the appellant without assigning any reasons thereof.*
2. *That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the disallowance out of legal 'and professional fee:-*
 - a. *Rs. 6,61,800 paid to Mr. Suren Singh Rasaily;*
 - b. *Rs. 19,85,400 paid to Mr. Dilip Sudhakar Deshmukh;*
 - c. *Rs.22,060 paid to Rajesh Shah Engineers & Consultants Pvt Ltd*
3. *That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the disallowance of Directors remuneration amounting to Rs. 8,40,000.*
4. *That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the disallowance of salaries of administrative manager, and other employees.*
5. *That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the disallowance of:-*
 - a. *Staff medical expenses ofRs. 51,900.*
 - b. *Staff welfare Rs.29,514 and*
 - c. *leave travel allowance of Rs.36,000*
 - d. *Telephone expenses of Rs. 1,79,454.*

e. Travelling expenses of Rs. 2,74,629.

f. Out of Internet expenses of Rs. 51,513.

g. Insurance expenses of Rs. 34,258.

6. That the Commissioner of Income Tax (Appeals) erred on facts and in law in confirming the disallowance out car expenses:-

a. Car maintenance Rs. 2,49,242

b. Interest car loan Rs. 1,83,600

c. Depreciation Rs.3,47,530

7. The appellant craves leave to add, alter, amend or vary from the above grounds of appeal before or at the time of hearing. ”

2. Briefly stated facts of the case are that the assessee filed return of income on 30/09/2011 declaring total income of Rs.35,84, 028/-. The case was selected for scrutiny and notice u/s 143(2) of the Income Tax Act, 1961 (in short the Act) was issued and complied with. In the assessment completed u/s 143(3) of the Act on 31/03/2014, the Assessing Officer made addition for deemed dividend amounting to Rs. 12,37,000/- and also disallowed business expenses amounting to Rs.92,91,007/- claimed by the assessee. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who deleted the addition of deemed dividend, however the disallowance of business expenses was only partly allowed. Against the disallowance sustained, the assessee is an appeal before the Tribunal raising the grounds as reproduced above.

3. In the grounds raised mainly two issues are involved. The first issue is regarding the service charges of Rs. 11,50,970/- and furniture hire charges of Rs. 13,80,000/- received by the assessee, which are held by the Ld. CIT(A) as income under the head "income from other sources" whereas according to the assessee same falls under "profit and gains of business and profession". The second issue is disallowance of the various expenses claimed by the assessee by the AO/CIT(A) on the ground that in absence of any business activity same cannot be allowed to the assessee except expenses incurred relevant to the income assessed under the head "income from other sources".

4. Before us, the Ld. Counsel of the assessee submitted that finding of the Assessing Officer and the Ld. CIT(A) that no business activity has been carried out by the assessee for many years including the year under consideration, is not correct and the Tribunal in the case of the assessee for assessment year 2008-09 in ITA No. 756/12/2012 has held that business of the assessee had revived. The Ld. Counsel submitted that in assessment year 2012-13 the Assessing Officer has allowed the business expenditures to the assessee. The Ld. Counsel also referred to the computation of the taxable income filed for assessment 2013-14 wherein assessee has declared profit under the head "profit and gains from business and profession" and the assessment order wherein the Assessing Officer accepted this fact of business activity from providing professional services and hiring of furniture and interiors. The Ld. Counsel submitted that in view of the principle of consistency as laid down in the case of Radhasoami Satsang versus CIT 193 ITR 321 (SC) the finding of

the Assessing Officer, which is sustained by the Ld. CIT(A), need to be reversed . In view of the above, the Ld. Counsel submitted that the expenses debited in profit and loss account are related to the business activity and need to be allowed to the assessee. According to him, once it is held that business was carried on by the assessee, then all the expenses incurred by the assessee are allowable u/s 37(1) of the Act including the expenses which has been allowed u/s 57(iii) of the Act.

5. On the contrary, the Ld. DR relied on the order of the Ld. CIT(A) and claimed that the Ld. CIT(A) has made detailed analysis of the sources of the income in the year under consideration and the business activity of travel agent in earlier years and came to the conclusion that income from service charges and hiring of furniture from associated concerns is assessable under the head “income from other sources” and not as “profit and gains of business and profession”. He submitted that when the Ld. CIT(A) has already rejected the claim of the assessee of having engaged in the business activity, he has rightly sustained the disallowance of expenses claimed under the profit and loss account after due verifications, particularly professional fee paid to two professionals. In view of the above, he submitted that order of the Ld. CIT(A) might be sustained.

6. We have heard the rival submissions and perused the relevant material on record. We find that the assessee was engaged in business activity of travel agent in earlier years but in the year under consideration, the assessee has shown income from renting out a property in Mumbai amounting to Rs.

1,20,00,000/- which has been offered under the head “ income from house property”. Against the said rental income, the assessee has already claimed deduction @30% for expenses towards maintenance of the property. The assessee has also shown income from service charges of Rs. 21, 50,970/-from other group companies and hire charges on furniture leased to group company. According to the assessee, the service charges and the hire charges from the furniture falls under the business activity of the assessee and should be assessed as profit and gain of business, whereas according to the Ld. Assessing Officer and the Ld. CIT(A) both these incomes falls under the head “income from other sources”. The contention of the lower authorities are that the assessee has already claimed 30% of the rental income as deduction under the head “income house property” and simultaneously the expenses are also claimed under the head “profit and loss account” without carrying out any business activity.

7. The Tribunal in ITA No. 3875 and 3884/Del/2011 for assessment year 2005-06 in the case of the assessee observed that assessee company was not carrying out its business activity since past 7 to 8 years and thus restricted the salary expenses allowed by the Ld. CIT(A) to nominal amount to keep the corporate status alive. The relevant finding of the Tribunal is reproduced as under:

“11.2 After considering the aforesaid finding of the AO as well as by the Ld. CIT(A),we are of the considered view that it is an admitted fact that the assessee is a company

and its business is travelling related activities. During the assessment year in dispute assessee has shown its income from house property of Rs. 41,11.89/- and income from other sources Rs. 1,52,970/- and service charges of Rs. 19,610/-. Against this income assessee has claimed expenses of Rs. 27,40,339/- and the AO has disallowed the total expenses on the ground that assessee company not carry out any business since 7-8 years and but also not carried out any business activities in future 2-3 years and only expenses incurred u/s 57 & u/s. 24 of the I.T. Act are allowable. Ld. CIT(A) treated services charges as income from other sources, but according to the assessee that the assessee is entitled for all business expenses even during lull period in the business as covered under section 30 to 37 of the I.T. Act. All expenses are to be allowed to either keep the corporate status alive or incurred for the purpose of business during the period of lull. Therefore, the Ld. CIT(A) after examining all the expenses has restricted the disallowance to the tune of Rs. 8,68,705/- and given the relief of Rs.18,35,634/- out of the total disallowance of Rs. 27,04,339/-. We have considered the arguments advanced by both the parties and the order of the Revenue Authority alongwith the details of expenses incurred by the assessee as well as expense allowed by the Ld. CIT(A). As per the details submitted by the assessee In Paper Book dated 29.10.2012 at Page no.77 in which the assessee has shown the details of salary of the assessee employees working with the assessee. For the sake convenience the same is reproduced as under:-

<u>Name</u>	<u>Amount (Rs.)</u>	
1. SH. Bhupender Kumar	117000.00	Accounts Officer
2. Sh. Upendra Prasad	87000.00	Accounts Assistant
3. Sh. Subhash Chandar	75000.00	Executive
4. SH. Hakesh Sharma	73367.00	Computer Operator
5. Sh. Ravinder Singh	74800.00	Executive
6.5h. Shiv Nandan	50665.00	Driver
7. Krishan Dutt Shukla	49400.00	Driver
8. Sh. Ramesh Chand jukhwal	34800.00	Peon
9. Sh. Shankar Rawat	38400.00	Chartered Accountant
10. Sh. Dhirender Panday	14000.00	Assistant
11. Ms. Pooja Gupta	4000.00	Computer operator
Total	642432.00	

11.3 Keeping in view of the above details of salaries paid to the aforesaid employees of the assessee company, we find that Ld. CIT(A) has allowed the entire salary expenses to the assessee in the impugned order which is not permissible under the facts and circumstances of the present case, because the assessee company is not carrying out its business activities since past 7-8 years and also not carry out for subsequent 2-3 years amount to Rs. 6,42,432/- has wrongly been allowed by the Ld. CIT(A). After examining the same, we are of the view that under the facts and circumstances of the case and to keep the corporate status alive, minimum expenses on account of salary should be allowed to the assessee. Therefore, we allow the salary of

one Account Assistant amounting to Rs. 87000/-. Computer Operator Rs. 73,367/- ; Driver Rs. 49,400/- ; Peon Rs. 38,400/- and salary of one CA Rs. 24,000/- only and salary for others claimed by the assessee and the other expenses are disallowed. AO is directed to recompute the income of the assessee, as per the directions given as aforesaid.”

8. Further, the Tribunal in the order for assessment year 2008-09 in the case of the assessee has restored the issue to the file of the Assessing Officer observing as under:

“17. We have heard both the parties and perused the relevant records available with us, we are of the considered view that no doubt the issue in dispute in the present cross appeals are identical, but in the present appeal, with regard to ground no. 1, we find that Ld. CIT(A) has followed the findings of asstt. Year 2005-06 and thus assailed that the service income is to be income under the head “income from other sources”. In this regard, we find that in the year under consideration the business has revived and therefore, the matter needs to be considered afresh by the AO in order to find out the source from which the service income has been earned. Accordingly, Ground No. 1 is set aside to the file of the AO to consider the same afresh.”

9. In view of the above, the contention of the Ld. Counsel of the assessee that the Tribunal has allowed the issue in dispute in favour of the assessee in assessment year 2008-09, is not correct.

10. The Ld. Counsel has contended that the Assessing Officer in subsequent assessment years has assessed the income from service charges and hire charges under the head “profit and gains of the business”. On perusal of the said assessment order for assessment year 2012-13 and 2013-14 available on page 179 and 196 of the paper book respectively, we find that in both the orders the Assessing Officer has not analysed as why the income from service charges and hire charges should be assessed under the head “profit and gains of the business”. The Assessing Officer has simply accepted the income filed by the assessee without going into detail reasoning for assessing the said income under relevant head. We find that in the year under consideration the Ld. CIT(A) has analysed as to why the income from service charges and hired charges of furniture should be assessed under the head “income from other sources”.

11. On this issue the Ld. CIT(A) has mentioned the detail of the expenses claimed by the assessee and the nature of the income earned during the year. The Ld. CIT(A) observed that no documentary evidence in support of the services rendered by the assessee was submitted. After analysis of the facts and circumstances, he held that assessee was not continuing with the travel business and had not started any new business during the year under consideration. The relevant finding of the Ld. CIT(A) is reproduced as under:

“6.3 For deciding the Ground No. 3 of the appeal relating to disallowance of various expenses by the Ld. AO, appellant’s revenue-yielding activities requires examination. It is seen

that the appellant company is the owner of a residential flat in Mumbai, on which it has received rental income of Rs. 1.20 crores, which has been offered to tax as 'income from House property'. The Ld. AO has not changed this treatment, though in AY 2010-11, the same was taxed by the AO as business income.

Secondly, the appellant has claimed to have received hire charges on furniture and interior @,15,000 per month from M/s I.P. Engine Management India (P) Ltd., which is a group company of the appellant (in which Mr. Rajiv Malhotra, Director is a substantiated share holder). It was informed that the appellant had constructed work stations on its property at Surya Kiran, Kasturba Gandhi Marg in respect of which, such charges were received.

Thirdly, the appellant claims to have received service charges of Rs.21,50,970/- from the other group companies, M/s I.P, Engine LLC.(USA) (Rs.13,10,970) and M/s IPE Management (P) Ltd. (Rs.8.40 lakh). It was informed that Mr. Rajeev Malhotra, Director of the company, is based in USA, where he explores various business opportunities. It was informed that the said service charges were paid to the appellant for the purpose of various activities such as management consultancy charges, for which the appellant had hired two professionals, Mr. Dilip Sudhakar Deshmukh, Pune to whom an amount of Rs.19,85,400 was paid while to Mr. Suren Singh Rasaily an amount of Rs.6,61,800 was paid during the year.

6.3.2 As against the above income of Rs.1,61,71,381, the appellant had claimed various expenses amounting to Rs.92,91,007/-, the details of which are given below:

INCOME	
Leave & Licence fee	12,000,000
Hire Charges - Furniture	1,380,000
Service Charges	640,411
	16,171,381
EXPENSES	
Salaries	2,412,209
Rent	208,392
Electricity & Water	247,515
Officer Maintenance	383,373
Printing Stationery	17,160
Postage, Telegrams & Couriers	4,606
Repairs & Maintenance	-
Telephone & Trunk Calls	179,454
Travelling & Conveyance	274,629
Car Maintenance	249,242
Computer Consumable	12,470
Bank charges & Commission	5,172
Insurance	34,258
Interest on Car loan	183,600
Interest paid	-
Internet expenses	61,816
Staff Welfare	29,414
Staff Medical	51,900
Staff Uniform	3,885
Subscriptions	15,627
News Papers & Trade Journals	4,614
Auditors Remunerations	25,000
Legal & Professional Fees	2,950,460
Watch & Wards	158,832
Directors Remuneration	840,000
Hire Charges	-
Other expenses	167,572
Depreciation	769,807
Profit for the year carried forward	6,880,374
	16,171,381

6.4 I find that the Ld. AO was of the view that since the appellant is not carrying out any business activity since last 12-13 years, various expenses claimed cannot be allowed against 'income from other sources'. On careful consideration of the facts of the case, I find that the appellant company has earned rental income from letting out a flat in Mumbai, on which income of Rs.1.20 crores was earned. This income was offered as 'Income from House Property' in the current year. No business expenses have been claimed against this income, hence the allegation of the AO in this regard is baseless.

6.4.2 Other than this, the appellant claims to have let out work stations on a hired premises, on which Hire charges are received from a group company, M/s I.P. Engine Management India Ltd. Against this income, rental expenses & depreciation on work station and salary & remuneration has been claimed, which is justified.

6.4.3 The appellant has claimed that though admittedly, its erstwhile business of travel agency is not in operation, the company is exploring possibilities of other businesses. It was claimed that the hiring charges of Rs.13.80 lakh from letting out workstation to MIs IPE Management India (P) Ltd. were in the nature of income from 'business and profession'.

6.4.4 Further, it was claimed that the professional fee received from MIs IPE LLC (USA) of Rs.13,10,970/- with regard provision of on-line accounting services @ USD 1500/Month was in the nature of a business income. A copy

of the agreement dated 7.1.2009, as modified vide further agreement dated 8.4.2009 was filed before me. On perusal of the said agreement, it is seen that the appellant has agreed to provide the following services:

(1) Maintenance of day to day account on computer;

(2) Reconciliation of Bank statement on monthly basis: and

(3) Raising the client invoice every month, study the same to respective clients and follow-up payment of the invoice.

The appellant was asked to produce evidences in' support of the claim of delivery of such services to the client based in USA, which include maintenance of day to day accounts on computers while, the company has opening WDV of computers of Rs.17,628/- only and no new computer/software were purchased. Similarly, to maintain accounts in terms of Accounting Standard applicable in USA, requires US-specific software and personnel who are well versed with US accounting practices. The appellant has not purchased any software. The appellant has claimed payment of salary to three persons, claimed to be accountant executive, namely; Vikar Arya (Rs.66,600), Mr. Gaurav Nautiyal (Rs.63,800) and Mr. Bhpinder Agrawal (Rs.3,15,900). No evidences of their professional skill/experience with regard US accounting system that too for on-line accounting purpose, were filed. Evidently, 2 of the said executives were paid low salary around Rs.5000/PM, which is not commensurate with market rate for

professionals, who are aware of on-line accounting with knowledge of US accounting. Moreover, the appellant may have required these accountants for its own activities as well. Further, it is also seen that in terms of the said agreement, the appellant was required to raise client invoice on behalf of IP Engine LLC(USA), send the same to client and followup on payment. No evidences of any of such activities undertaken by the appellant was filed before me.

6.4.5 With regard professional fee of Rs.70,000/-p.m. claimed to have been received from IP Engine Management India (P) Ltd., no details or supporting evidences with regard nature of such services were filed.

Keeping in view the above facts and circumstances, I find no merit in explanation of the appellant that the aforesaid receipts from the 2 group companies, namely; M/s IP Engine LLC (USA) (Rs.12,10,970) and from M/s Engine Management India (P) Ltd. (Rs.8,40,000)were in the nature of business income, in the absence of genuineness of claim of the appellant in this regard. It appears that the appellant has not provided any services to their group company and has shown such receipts to give semblance of continuation of business activities in order to claim various personal expenses against the same. In view of the above, I hold these receipts chargeable to tax as 'income from other sources'. In view of this, since appellant has shown rental income as 'income from house property', while hiring charges in respect of workstation, have been held by me as 'income from other sources',

there appears to be no income of the appellant from any of the business activity, as the appellant is not continuing with the travel business and had not started any new business during the year.”

12. In view of the above, we do not find it appropriate to follow the assessment orders for the assessment year 2013-14 following the rule of consistency. In our opinion, there is no error in the order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold that no business activity was carried out by the assessee during the year under consideration and the income from service charges and hire charges is assessable under the head “income from other sources”. The ground No. 1 of the appeal is accordingly dismissed.

13. In ground No. 2 to ground No. 6, the assessee has challenged various expenses claimed under the profit and loss account.

14. We have heard the rival submission of the parties on the issue of disallowance of the various expenses confirmed by the Ld. CIT(A). Since the Ld. CIT(A) has held the income from service charges and hire charges from furniture taxable under the head “income from other sources”, he has examined the allowability of the expenses claimed under the profit and loss account against the income assessed under the head “income from other sources”. Wherever, he found that the expenses are incurred wholly in exclusively for running the income, he has allowed the same. The Ld. CIT(A) has sustained the disallowance observing as under:

“6.4.6 Having held this, I hold that the following expenses are allowable in the hands of appellant, being required for keeping the company alive and for earning 'income from other sources' with or without earning business income:

- (1) Auditor's remuneration*
- (2) Newspaper periodical*
- (3) Subscription*
- (4) Printing stationery*
- (5) Computer consumable*
- (6) Professional fee for income tax matter*
- (7) Rent*
- (8) Accountant's salary*
- (9) Proportionate maintenance charges*

6.4.7 Further, with regard, 'income from other sources', the following expenses can be held as allowable:

- (1) Bank Charges*
- (2) Postage & telegram & courier*
- (3) Computer consumable*

6.4.8 It is seen that the appellant has claimed significant expenses in the nature of watch and ward, water & electricity, telephone expenses, internet expenses office maintenance expenses towards a premises at B-40,

Maharani Bagh. It was informed that at that premise, the company was having a registered office. The said premise has a covered area of 593.69 square mtrs. in which on ground floor, there is one drawing room, dining room, kitchen, study etc and on the first floor are three bed rooms, etc. which were kept for the personal use of the two directors. It was claimed that on the remaining part on the first floor and the second floor the company had its registered office for the purpose of holding business meetings. The Ld. Counsel submitted before me that some part of the expenses of watch and ward, electricity, telephone expenses etc. could be considered for personal purposes and disallowed. Vide letter dated 26.3.2015, the Ld. AR pleaded that 1/6th of such expenses may be considered for disallowance. The appellant invited my attention to the appellate order passed by Ld. CIT(A)-X for AY 2005-06, in which he had upheld the continuance of business, but restricted certain expenses and requested me to follow the same.

However, keeping in view the above discussion, I intend to differ from the Ld. CIT(A)-X and hold that there was no continuance of business of the appellant, as the company's business was closed 12-13 years ago, and there is no evidence of any efforts to revive it. There is no evidence of the appellant starting any new business. However, keeping in view the fact that the appellant's registered office at B-40, Mahanrani Bagh was in a small part of 1st Floor of that premises, the proportionate expenses in respect of this premise in the nature of watch & ward, electricity, telephone,

internet, office maintenance to the extent of only 1/6th are being allowed, as major parts of this premise is used for residential purpose of Directors and their family.

6.4.9 Further, with regard car maintenance, interest on car loans and depreciation on car loans, which are for use of the car by the directors, also cannot be allowed against Income from other sources. With regard Director's remuneration, "other expenses", staff compensation expenses (other than for 3 Accountants and peons), it cannot be held that the same were incurred wholly and exclusively only for earning the 'income from other sources' and allowable u/s 57(iii) and hence, the same are also disallowed.

6.4.10 With regard the payment of legal and professional charges of Rs.29,50,460/-, I have already held that the payment of Rs.2,78,700/- to M/s Vaish Associates for Income Tax Compliance Activities was allowable against income from other sources. Similarly, fees of Rs.2500/- paid to Siddiqui & Associates for Corporate Law compliance activities is also held as allowable. However, it is seen that the appellant had paid an amount of Rs.22,060/- from Rajesh Shah Engineers & Consultancy Pvt. ltd. for consultation and professional services for preparing valuation reports of the office premises no.701 and no.705 at Mumbai, which was let out on which the appellant had earned rental income which have been offered for tax 'income from house property', since the appellant has offered this income as house property income, such expenses also cannot be allowed.

6.4.11 The appellant had claimed to payment of pay Rs.6,61,800/- to Mr. Suren Singh Rasaily and Rs.19.,85,400/- to Mr. Dilip Sudhakar Deshmukh towards management consultancy services. The appellant was asked to explain the purpose of such expenses. The appellant informed that the appellant had rendered professional services during the year, on which income of Rs.21,50,970/- income was earned. It was informed that for this purpose, the appellant had hired 2 professionals one Mr. Suren Singh Rasaily and Mr. Dilip Sudhakar Deshmukh to render these services and also explore new avenues. It is seen that the appellant has earned income from M/s IPE LLC (USA) for the purpose of maintenance of accounts on computers and for issuing the invoice to the clients, therefore, the plea of the appellant does not explain the purpose of such payment, in the light of the agreement dated 7.1.2009 entered with IPE LLC (USA). No explanation whatsoever, towards the income received from IPE Management services India Pvt. Ltd. was given by the appellant. In view of this, I have held such income as 'income from other sources'. Since the explanation of the appellant with regard the payment of these professionals seems vague and inconsistent in view of the nature of income of appellant from IPE LLC(USA) and IPE Management India Pvt. Ltd., the appellant was asked to furnish exact details of service rendered by these 2 professionals. However, no explanation other than a one-line explanation filed the appellant, vide letter dated 7.8.2014 was given.

6.4.12 In order to appreciate the correct nature of service rendered by those professionals, I had issued summon u/s 131 to both the above referred professional on 27.1.2015 calling for their presence on 12.2.2015. On 12.2.2015, Mr. Suren Singh Rasaily appeared before me, whose statement was recorded on oath u/s 131. In his statement, Mr. Suren Singh Rasaily informed that he knew Mr. Rajiv Malhotra since 2007. It was also stated by him that Mr. Rajiv Malhotra has interest in starting intellectual property-centric business strategies in the information technology and service apartment sector for which a separate company was set up by Mr. Malhotra. In response to Question no.5, in which Mr. Suren Singh Rasaily was asked to inform about the manner in which the services was sought by Mr. Malhotra on day to day basis, it was informed that his role was limited to evaluating opportunities and offering advice as and when sought by Mr. Rajiv Malhotra. It was also informed by him in response to Question no.9 that he visited Karol Bagh office only two-three times for signing the documents and picking up the cheques. The above facts clearly show that Mr. Suren Singh Rasaily who is a professional in designing business strategy in the IT and service apartment service was actually working for Mr. Rajiv Malhotra, who is based on USA and not for appellant company. As clearly mentioned by him, Mr. Malhotra had interest in starting intellectual property-centric business in India and abroad for which his service was sought. Since none of the above business activities are being carried out by the appellant, I do not find any justification for

allowing such expenses in the books of the appellant. No doubt, bonafide of such payment stands proved, however, it is evident that Mr. Rasaily was actually working for Mr. Rajiv Malhotra and not for the appellant company and since Mr. Malhotra is a Director in this closely-held company, the payment to Mr. Rasaily by the appellant was only in the nature of an arrangement, with Mr. Malhotra however, for the appellant company, no services was actually rendered by him. With regard the second professional Mr. Dilip Deshmukh also summons u/s 131, were issued. However, he refused to attend as he is based in Pune. In view of the above, the appellant was asked on 19.3.2015 to furnish justification of the service rendered by Mr. Dilip Deshmukh as in the appellant's explanation before me only a short justification given is that 'Mr. Deshmukh was providing Management consultancy services'. The Ld. AR also informed that Mr. Deshmukh was an expert on patent issue. On careful consideration of the facts, it is evident that the appellant is not into business of providing services in the field of IPR/Patent Laws. No explanation, whatsoever, was furnished by the appellant with regard the relevance of the services of Mr. Deshmukh to the appellant company. Keeping in view the above, on merit of the issue, the payment on professional charges to Mr. Suren Singh Rasaily and Mr. Dilip Deshmukh also cannot be held, to be wholly and exclusively incurred for the purpose of earning the 'income from other sources'. In view of this, disallowance is upheld in respect of such expenses.

6.4.13 With regard the depreciation allowance, I have already held that the appellant was not eligible for claim of depreciation on car, as the car was used for the purpose of personal use of directors and in the absence of any business activity carried out by the appellant, the same was not allowable u/s 57(iii) either. However, as the appellant has been earning income from other sources in the nature of hiring charges on work station, the depreciation on work station and the depreciation on various asset used in the registered office of the appellant as also the office in Karol Bagh are held as allowable. For this purpose, the Ld. AO is directed to obtain details of furniture and fixture as per the depreciation schedule and allow the depreciation accordingly. However, with regard the property at Maharani Bagh the depreciation has to be restricted to the extent of i/s" of the allowable amount towards registered office. Similarly, depreciation on Air conditioners installed at property at Maharani Bagh, is to be allowed 1/6th of the expenditure. The AD is directed to allow full amount of depreciation on computer, generator, refrigerator, office equipments and electrical fittings and table wall box.

6.4.14 With regard the office maintenance expenses, on perusal of the details filed by the appellant it is seen that out of the total expenses of Rs.3,83,373/- the major bulk is towards payment to Mr. Malkit Singh (Rs.1,37,000)and Mr. Shapat Ali (Rs.1,23,400/-).The details of the bills of repair from these charges were called for which shows that these bills were towards the property at Maharani Bagh. Keeping

in view my above decision, 1/6th of such expenses are held as allowable towards registered office located in a small part of that premises.”

15. Before us the Ld. Counsel could not point out any error in the order of the Ld. CIT(A) except that the expenses claimed are business expenses and thus allowable under section 37(1) of the act. The Ld. CIT(A) has examined each and every expenses sustained by him. As regard the “watch and ward”, “water and electricity”, “telephone expense”, “Internet expense” and “office maintenance expenses” towards the premise at B-40, Maharani Bagh, he allowed 1/6th of the expenses in view of the part of the building was used as registered office and disallowed the balance as major part of the premise was used for residential purpose of the directors and their family. In respect of legal & professional charges, the Ld. CIT(A) has allowed payment of Rs. 2, 78, 700/- to m/s Vaish Associates against income from other sources. The expenses of Rs. 22,060/- have been found related to let out property and accordingly he has disallowed. Regarding the expenses paid to two professionals namely Mr. Suren Singh Rasaily and Mr. Dilip Sudhakar Deshmukh, the Ld. CIT(A) himself summoned the persons and carried out the enquiries, and after detailed enquiry, he concluded that payment of professional charges were not incurred wholly and exclusively for the purpose of earning “income from other sources”. Similarly he has examined allowability of the depreciation allowance , office maintenance expenses and other expenses under the head “income from other sources”. We do not find any error in the above factual findings of the Ld. CIT(A).

16. In view of the aforesaid discussion, we uphold the finding of the Ld. CIT(A) in respect of the disallowance sustained and the ground nos. 2 to 6 of the appeal of the assessee are dismissed.

17. In the result, the appeal of the assessee is dismissed.

This decision was pronounced in the Open Court on 28th February, 2019.

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 28/02/2019

Veena

Copy forwarded to

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

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi