

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5739/DEL/2015 (A.Y 2011-12)

Jyoti Kachroo C/o. Fiberfill Interiors and Constructions, B-64, Sector-65 Noida AEGPK9779L (APPELLANT)	Vs	JCIT Range-36 New Delhi (RESPONDENT)
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Appellant by	Sh. Dalip K. Kauli, FCA
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	14.02.2019
Date of Pronouncement	13.03.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 14/8/2015 passed by CIT(A)-19, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

1. “Disallowance of Rs.5,00,000/- out of depreciation on Building

Learned Commissioner of Income Tax (Appeals) has erred in law, facts and circumstances of the case by sustaining the disallowance of Rs.5,00,000/- out of depreciation on Building as depreciation on land made by learned Assessing Officer. Learned CIT(A) has reversed the decision of his own court by disagreeing with the view taken by the earlier CIT(A) in this case only for the AY 2010-11. Further learned CIT(A) has relied upon the Income Tax Act of 1922 and Judicial Pronouncement which are irrelevant as on date.

2. Disallowance of Rs.3,87,595/- out of depreciation on Building.

Learned Commissioner of Income Tax (Appeal) has further erred in law, facts and circumstances of the case by confirming the disallowance of Rs.3,87,595/- out of depreciation on Building.

3. Disallowance of Rs.1,97,723/- out of Vehicle maintenance, Vehicle Depreciation and Telephone Expenses.

Learned Commissioner of Income Tax (Appeal) has again erred in law, facts and circumstances of the case by enhancing disallowance from 5% to 10% of Vehicle Repair, Vehicle Depreciation and Telephone Expense amounting to Rs.1,97,725/-. The Disallowance is arbitrary and not based on evidences.”

3. The assessee is engaged in the business of execution of work contract of civil, interior, designer works for corporate and non corporate entities under the name and style of Fibrefill Interiors and Constructions. Apart from business income, the assessee is also deriving income from House Property, Salary from Fibrefill Insulation (India) Pvt. Ltd. and income from other sources. The assessee filed return of income declaring a total income of Rs. 1,49,55,295/- on 23/3/2012. The return of income was processed u/s 143 (1) of the Income Tax Act, 1961. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued and served to the assessee. Notice u/s 142(1) along with questionnaire were also issued and served on 26/7/2013. In response to these notices, Assessee's Representative appeared before the Assessing Officer and furnished information/documents called for from time to time and the same was examined and placed on record by the Assessing Officer. The business performance of the assessee of the year under consideration and comparative figures of last two years are summarized as follows:-

F.Y.	Gross contract receipts	Gross Profit	Net Profit	Net Profit%
2009-10	16,04,80,168	2,43,61,859	80,63,858	5.02
2010-11	25,77,18,566	2,79,89,723	78,61,390	3.05

Thus, the Assessing Officer observed that there was increase in the turnover and gross profit rate over the last year, but the net profit rate has marginally declined. The Assessing Officer made addition of Rs.5 lacs by disallowing depreciation of value of land at 10% amounting to Rs. 5 lacs out of total depreciation of Rs. 16,62,903/-. The Assessing Officer also made an addition of Rs. 3,87,595/- out of the balance amount of depreciation claim of Rs. 11,62,903/- which is 33.33% of the depreciation amounting to Rs. 3,87,595/-. The Assessing Officer also made addition of Rs.29,389/- on account of interest on TDS. The Assessing Officer further made addition of Rs. 4,84,256/- as regards late payment of employees contribution of ESI u/s 2 (24) (x) read with Section 36(1)(va) of the Act. The Assessing Officer lastly made disallowance of Rs. 2,03,916/- in respect of expenses u/s 37(1) of the Act.

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. As regards Ground No.1 relating to disallowance of Rs.5 lacs out of depreciation on buildings, the Ld. AR submitted that the value of land was bifurcated from the total consideration of Rs.25 lacs by Registrar, Noida only to serve the purpose of determining the amount of stamp duty payable at the time of sale cum transfer deed. Proportionate disallowance on hypothetical value of land is unjust and uncalled for. The Ld. AR further submitted that the assessee paid Rs. 1,25,00,000/- for the Industrial build up factory as per the transfer cum sale deed and not for land and building separately as assumed by the Assessing Officer. Thus, there is no bifurcation of total consideration of Rs.1,25,00,000/-. The Ld. AR pointed out that the assessee purchased the fully constructed building i.e. Industrial built up factory and the design and lay out of the structure of the building was best suitable to the business of the assessee. All consideration for purchase were made only keeping in view the suitability of building structure for assessee's business. The Ld. AR submitted

that in earlier assessment year as well as in subsequent Assessment Years, the same has been allowed on building by the Revenue Department and there is a change of opinion/stand in this particular year as well as in Assessment Year 2013-14.

6. The Ld. DR relied upon the Assessment order and order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The Revenue Authorities continuously allowed depreciation on building in earlier Assessment Years 2009-10, 2010-11, 2012-13 & 2014-15 but specifically change its stand in this particular year as well as in Assessment Year 2013-14 without giving proper reasoning towards the same. Thus, following Rule of Consistency, Ground No.1 is allowed.

8. As regards Ground No.2 relating to disallowance of Rs. 3,87,595/- out of depreciation on building pertaining to rental portion of buildings, the Ld. AR submitted that the building is a separate block of asset for depreciation purpose cannot be segregated for the purpose of disallowance of depreciation and hence, the Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. Oswal Agro Mills Pvt. Ltd. (Supra).

9. The Ld. DR relied upon the order of the Assessing Officer and order of the CIT(A).

10. We have heard both the parties and perused the material available on record. In-fact, from the records it can be perused that the assessee purchased the fully constructed building i.e. industrial built up factory and not the land. Therefore, bifurcating the value of land by the Registrar does not specify the value of land and building separately. Therefore, in light of the decision of the Hon'ble Delhi High Court in case of Oswal Agro Mills Ltd. (2011) 197 Taxman 25 (Delhi) wherein it is held that it is difficult to maintain the details of each

assets separately in respect of the land and building constructions and the same will frustrate the very purpose of the provisions if it is done so. The Hon'ble High Court further held that it is also essential to point that the Revenue is not put to any loss by adopting such method and allowing depreciation as the same forms part of the block of assets even when that particular asset is not in use in the relevant Assessment Year. The assessee's case is squarely covered by the decision of the Hon'ble Delhi High Court in case of Oswal Agro Mills Ltd. Hence, Ground No.2 is allowed.

11. As regards Ground No.3, relating to disallowance at 10% amounting to Rs. 1,97,725/- out of Vehicle Maintenance, the same was enhanced by the CIT(A) without assigning any reasons. The Ld. AR submits that the assessee had produced all the detailed documents maintained by the assessee before the Assessing Officer and nature and the business of the assessee justified the quantum of expenditure under these heads of accounts. The assessee also fulfils all the conditions laid down for allowability of expenditure of residual nature u/s 37(1) of the Act. Thus, the Ld. AR submitted that the expenses are incurred for the business of the assessee and directly spring from carrying out the same and are not capital in nature.

12. The Ld. DR relied upon the orders of the Assessing Officer and the CIT(A).

13. We have heard both the parties and perused the material available on record. The details of expenses were given to the Assessing Officer by the assessee during the assessment proceedings which was not considered by the Assessing Officer as well as CIT(A). Besides that the CIT(A) has enhanced 5% to 10% which is not as per the specific provision prescribed u/s 37(1) of the Act. There is no basis for enhancing the expenses and first of all the expenses were properly explained by the assessee during the assessment proceedings. Therefore, we set aside the order of the CIT(A). Ground No.3 is allowed.

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

Order pronounced in the Open Court on 13th March, 2019.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 13/03/2019
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	14.02.2019
Date on which the typed draft is placed before the dictating Member	15.02.2019
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	13.03.2019
Date on which the final order is uploaded on the website of ITAT	13.03.2019
Date on which the file goes to the Bench Clerk	13.03.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	