

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos.1837 & 1838/Del/2016
Assessment Year: 2011-12 & 2012-13**

**Dy. Commr. Of Income-tax,
Circle 7(1), New Delhi.**

**vs Delhi Auto & Genl. Finance (P)Ltd
14-C, Sagar Apartments,
6, Tilak Marg, New Delhi.
PAN: AACCD5848C
(Respondent)**

(Appellant)

**Assessee by
Revenue by**

**Shri Alok Periwal, CA
Shri N.K. Bansal, Sr. DR**

**Date of Hearing 26.02.2019
Date of Pronouncement 14.03.2019**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the separate orders for Assessment Years 2011-12 and 2012-13 both dated 20.01.2016 in Appeal Nos.107 & 370/2014-15 passed by the Learned Commissioner of Income-tax(Appeals)-3, New Delhi {"CIT(A)"}, revenue preferred these appeals. Since the assessee is same and the issues are substantially the same, for the sake of convenience, we pass a common order.

ITA No.1837/Del/2016:

2. Assessee is a company. For the Asstt. Year 2011-12, they have filed the return of income on 30.3.2013 declaring a loss of Rs.42,92,478/-. Learned AO found that no significant business activity was carried out by the assessee during this year and, therefore, disallowed the business expenses to the tune of

Rs.82,01,880/- and depreciation to the tune of Rs.13,39,499/- and interest to the tune of Rs.3384/-.

3. Assessee preferred an appeal before the learned CIT(A) and argued that in this matter there is only a lull in business but the assessed does not go out of business and the very fact that they are maintaining an establishment itself shows that they were waiting for an opportunity for resumption of business in future. It was further submitted that so long as the assessee company did not close down their business permanently, they have to maintain its status as company and discharge certain legal obligations and for such purpose, it is necessary to appoint clerk and secretary or accountant and incur incidental expenses. It was further submitted before the learned CIT(A) that though no manufacturing activity was taking place still the office and establishment were functioning. Lastly, Rs.3384/- was received by the assessee on account of interest on income-tax refund.

4. Learned CIT(A) considered all these facts and in the light of the decision of the Hon'ble Madras High Court in the case of CIT vs. Vellore Electric Corporation Ltd., 243 ITR 529 held that there is a difference between 'lull in business' and 'going out of business' and a temporary discontinuance of business may in certain circumstances give rise to an inference that the business is going through a lean period of transaction but it could be revive if proper circumstances arrive. Besides this, learned CIT(A) further found that the land of the assessee was acquired by the Government u/s 18 of the Land Acquisition Act and the assessee challenged the quantum of compensation and the entire compensation would amount to Rs.460 crore and shall form part of the income of the year in which such income was received. In the light of these circumstances, learned CIT(A) drew an inference that the very fact of the

assessee company continuing to maintain an establishment is the indication of its intention to resume business but till such time it was necessary for them to maintain the status of a company for which certain administrative expenses have to be made. Learned CIT(A), therefore, accepted the contention of the assessee and deleted the disallowance made by the AO to the tune of Rs.82,01,880/- towards the business expenses.

5. Learned CIT(A) further observed that in view of the admission of the assessee that there is no manufacturing activity taking place during the year, the depreciation on the plant and machinery has to be disallowed whereas depreciation on furniture and building has to be allowed so also because of fact that during the year under consideration, the assessee has not received any amount by way of income-tax refund, no income has been booked in the books of accounts and, therefore, the alleged addition of Rs.3384/- should also be deleted.

6. Revenue is, therefore, before us in this appeal. It is argued by the learned DR that the learned AO is justified in disallowing the business expenses in the absence of any business whereas in the submission of the learned AR that learned CIT(A) is right in his approach that it is not the close down of the business but it is only the lull in the business.

7. We have gone through the record in the light of the submissions on either side. As could be seen from the order of the learned CIT(A), the fixed assets of the assessee are the subject matter of litigation u/s 18 of the Land Acquisition Act and the assessee was due to receive a compensation amount of Rs.460 crore with interest which would be the income of the assessee in the year that would be received. In this context, the maintenance of the establishment by the assessee has rightly accepted by the learned CIT(A) as an indication of the

intention of the assessee to resume the business if the opportunity for it arises in future. It cannot be said that the operation of the assessee were closed down permanently or its name struck off the register or that the company is dissolved. In these circumstances, we find every force in the observation of the learned CIT(A) that till such time the company has to maintain its status as company and also has to be discharged certain legal obligations for which it requires the support of the clerical staff and the secretary or the accountant, as the case may be, and also to incur certain incidental expenses in that pursuit. It is, therefore, clear that when the possibility of the revival of the business activities or operation of the assessee are not ruled out once for all, it cannot be said that the assessee company had closed down its operations permanently so as to disallow the business expenditure. The temporary lull in the business during the lean period of transaction cannot be mistaken to be the permanent close down of the business. The clear indication is that the assessee has to maintain its status as company till the end comes and it has to perform certain legal obligations by incurring certain expenditure and more particularly to pursue the litigation as a result of which it has to receive Rs.460 crores approximately which shall form part of the income of the assessee in the year in which it will be received.

8. Further, while recording the fact that no manufacturing activity had taken place by the assessee during the year, learned CIT(A) disallowed the depreciation on plant and machinery but he rightly thought it fit to allow depreciation on furniture and building. We endorse the same view so also CIT(A) rightly deleted the addition of Rs.3384/- by recording a fact that during the year the assessee had not received any amount by way of income-tax refund.

9. In view of this peculiarity of the facts involved in this matter, we are of the considered opinion that the impugned order does not suffer any illegality or

irregularity and on the other hand, the appeal of the revenue is devoid of merit. Hence, ITA No.1837/Del/2016 is dismissed.

ITA No.1838/Del/2016 (AY 2012-13):

10. But for the change in the figures of disallowance of business expenses and depreciation, facts of this assessment year are identical to those involved in the AY 2011-12. For the reasons recorded in the preceding paragraphs for the AY 2011-12, we are of the considered opinion that learned CIT(A) had rightly deleted the disallowance of business expenses and the depreciation in respect of the furniture and building. Accordingly, we dismiss ITA No.1838/Del/2016.

11. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the Open Court on 14th March, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 14th March, 2019.
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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