

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI.**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5641/Del./2016
(ASSESSMENT YEAR : 2011-12)**

**ITA No.5807/Del./2017
(ASSESSMENT YEAR : 2012-13)**

**ITA No.3978/Del./2018
(ASSESSMENT YEAR : 2013-14)**

M/s. Neural Developers Pvt. Ltd., vs. ITO, Ward 3 (3),
(previously known as CitiXsys Software New Delhi,
(India) Pvt. Ltd.),
34 – D, MIG Flats, Sheikh Sarai, Phase-I,
New Delhi – 110 017.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Abhimanyu Jhamba, Advocate
Ms. Hemlata Ranga, Advocate
REVENUE BY : Ms. Rinku Singh, Senior DR

Date of Hearing : 14.03.2019
Date of Order : 29.03.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of composite order to avoid repetition of discussion.

2. The appellant, M/s. Neural Developers Pvt. Ltd (hereinafter referred to as 'the assessee') by filing the present appeals being ITA Nos.5641/Del/2016, 5807/Del/2017 & 3978/Del/2018, sought to set aside the impugned orders dated 28.07.2016, 31.03.2017 & 27.02.2018 passed by Ld. CIT (Appeals)-2, New Delhi qua the Assessment Years 2011-12, 2012-13 & 2013-14 respectively on the grounds inter alia that :-

“ITA NO.5641/DEL/2016

1. *That the learned Income Tax Officer, Ward 3 (3), New Delhi (hereafter referred to as Ld. AO for short) has erred on facts and in law in not allowing the salaries paid to Mrs. Gouri Dhawan and Mr. Kamal Karmakar as a deductible expense from the Revenue offered by the Company.*

2. *That the Ld. AO has erred in law in disregarding the expenses incurred for business purposes and also to maintain the company under the provisions of the Act.”*

“ITA NO.5807/DEL/2017

1. *That the learned Income Tax Officer, Ward 6 (2), New Delhi (hereafter referred to as Ld. AO for short) has erred on facts and in law in not allowing the professional charges of Rs.36,00,000/- as a deductible expense from the Revenue offered by the Company.*

2. *That the Ld. AO has erred in law in not allowing the directors remuneration of Rs.8,63,374/- of the Company.”*

“ITA NO.3978/DEL/2018

1. *In the facts and circumstances of the case, the Ld. CIT (A) erred in summarily dismissing the appeal filed the assessee without discussing the grounds on merits which is unjustified, illegal and against the provisions the Act.*

2. *In the facts and circumstances of the case the Ld. CIT (A) erred in stating that the assessee has not attend the hearings 011*

various dates when the assessee did not receive the notices dated 11/01/18 (Govt registered speed post number ED684319910IN) and dated 22/01/18 (Govt registered speed post number ED6843209Q41) issued to the assessee, which is unjustified illegal and against-the provisions of the Act.

3. In the facts and circumstances of the case, the Ld. CIT (A) erred in stating that no address was mentioned in Form 35, which is incorrect as the Form 35 clearly mentions the address," Neural Developers Pvt Ltd, 34-D, MIG Flats, Sheikh Sarai, Phase-I, New Delhi-I? Moreover, the assessment order was received at the very same address and also notices and other communications for other assessments pending with the Income Tax Department arc received at this address (supra) only,

4. Without prejudice to above, in the facts and circumstances of the case the CIT(A) erred in dismissing appeal filed by the appellant 'thereby holding the income earned from business of subletting of premises as well as office maintenance as income earned from other sources.

5. Without prejudice to above, in the facts and circumstances of the case the CIT(A) erred in dismissing appeal filed by the appellant' thereby confirming the addition of Rs.62,89,739/- made by the AO being he expenses incurred towards Brokerage, Building Repair and Maintenance, Salary of maintenance" staff and Director's Remuneration, finance costs, Depreciation and Other statutory expenses.

6. In the facts and circumstances of the-case, while the assessee did not get justice from the Assessing Officer he was denied the principle of natural justice by the Ld. CIT (A) also which is unjustified, illegal and against provisions of the Act.

7. The assessee prays that the matter be 'remanded back to the Ld. CIT (A) for fresh consideration."

4. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee company is into providing computer software development and software consultancy etc. with

Shri Bineet Jha and Mrs. Archana Kashyap holding 50% each of the total share-holding of the company. AO noticed that during the Assessment Years 2011-12 & 2012-13, assessee company made payment of Rs.6,63,000/- to Shri Bineet Jha as Director's remuneration. Assessee company has also paid salary of Rs.24,00,000/- each to Shri Kamal Karmakar and Mrs. Gauri Dhawan as its employees, whereas assessee company has reflected in the profit & loss account only rental income of Rs.1,50,00,000/-, reimbursement of electricity expenses received from tenant amounting to Rs.24,31,949/- and Annual Maintenance Charges (AMC) income of Rs.37,14,032/-. AO disallowed expenditure on account of salary paid to Shri Kamal Karmakar and Mrs. Gauri Dhawan claimed by the assessee in its profit & loss account on the ground that activities of sub-leasing of premises and providing ancillary facilities like electricity and security etc. did not require any special aptitude or intellectual input on the part of the employees so as to make huge payment of Rs.24,00,000/- each as salary to Shri Kamal Karmakar and Mrs. Gauri Dhawan.

5. In AY 2012-13, AO disallowed Director's remuneration to the tune of Rs.8,63,374/- on the ground that the activities of sub-leasing of premises and providing ancillary facilities like

electricity and security etc. do not require any special aptitude or intellectual input. In AY 2012-13, AO also disallowed an amount of Rs.36,00,000/- claimed by the assessee company on account of professional charges on the ground that the assessee company is carrying on simple business as sub-letting of premises/providing of facilities of electricity and security services etc., do not require any professional support.

6. Assessee carried the matter before the Id. CIT (A) by way of appeals who has partly allowed the appeals for AYs 2011-12 & 2012-13 whereas dismissed the appeal for AY 2013-14 ex-parte. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 & 2 OF
ITA NO.5641/DEL/2016 (AY 2011-12)
AND
ITA NO.5807/DEL/2017 (AY 2012-13)

8. Undisputedly, the assessee has not carried out any business activities during the years under assessment and has only shown rental income for sub-letting the premises and on account of

reimbursement of electricity expenses and Annual Maintenance Charges (AMC) which has been treated as 'income from other sources'. AO has only allowed the deduction on the income which were directly and inextricably linked with deriving of the income from other sources and thereby allowed deduction on the income shown in the P&L account qua lease rental paid and power & fuel.

9. AO in AY 2011-12 disallowed the expenditure claimed by the assessee to the tune of Rs.48,00,000/- in its P&L account on account of salary paid to Shri Kamal Karmakar and Smt. Gauri Dhawan on the ground that activities of sub-leasing premises and providing ancillary facilities like electricity and security etc., undertaken by the assessee during the year under assessments, did not require any expert/skilled input on part of the employees.

10. Ld. CIT (A) has also confirmed the addition made by the AO on account of disallowance of salary claimed to have been paid to Shri Kamal Karmakar and Smt. Gauri Dhawan for AY 2011-12 and disallowance of deduction of director's remuneration and professional charges for AY 2012-13.

11. Ld. AR for the assessee contended that when Shri Kamal Karmakar and Smt. Gauri Dhawan have already paid the tax on the salary received by them as individual tax payee, it amounted to

double taxation which is not permissible under law. It is further contended by the ld. AR for the assessee that when the assessee has not completely abandoned its business, such deductions cannot be disallowed and relied upon the decisions rendered by Hon'ble Punjab & Haryana High Court in *Nakodar Bus Service Pvt. Ltd. vs. CIT – (1989) 179 ITR 506* and the coordinate Bench of the Tribunal in *ITO vs. Mokul Finance Ltd. – 110 TTJ 445*.

12. When, undisputedly, it is not the case of the AO that the assessee has completely abandoned its business, deduction on account of salary paid to Shri Kamal Karmakar and Smt. Gauri Dhawan cannot be denied on the ground that activities of sub-leasing of premises and providing ancillary facilities like electricity and security etc. did not require any expert/skilled input by the employees. Because in some circumstances officials need to be retained to keep the business alive which has not been completely abandoned. At the same time, we are of the considered view that even otherwise, salary drawn by Shri Kamal Karmakar and Smt. Gauri Dhawan was subjected to tax, they being salaried tax payee, though at lower rate, and if it is again taxed in the hands of assessee, it would amount to double taxation.

13. Similarly, AO in AY 2012-13 disallowed the expenditure claimed by the assessee to the tune of Rs.36,00,000/- and Rs.863,374/- on account of professional charges and remuneration paid to the directors respectively and treated the same as income of the assessee under the head 'income from other sources' on the ground that no business was carried out by the assessee, which have been upheld by the Id. CIT (A). However, Id. CIT (A) has converted the income treated by the AO as "income from other sources" to "business income".

14. We are of the considered view that when the addition made by the AO has been treated as income from the business against which no appeal has been filed by the Revenue, business expenses claimed by the assessee cannot be disallowed. So, when the assessee has not completely abandoned its business and to keep its business status alive, deduction claimed by the assessee on account of remuneration paid to the Directors and professional charges cannot be disallowed, particularly when the status of company is undisputedly alive.

15. Moreover, AO as well as Id. CIT (A) have not disputed the books of account, nor declared the expenses as bogus but have merely disallowed the deduction claimed by the assessee on the

ground that no business activities have been carried out by the assessee during the year under assessment.

16. Hon'ble High Court of Punjab & Haryana in case cited as *Nakodar Bus Service Pvt. Ltd.* (supra) while deciding the identical issue held that, “*expenditure incurred in retaining a status of a company/assessee deduction claimed by the assessee on account of salary paid to its employees cannot be disallowed.*”

17. Similarly, coordinate Bench of the Tribunal in case cited as *Mokul Finance Ltd.* (supra) while deciding the identical issue held that merely because of the fact that no business activities have been carried out during the year under assessment expenses on account of salaries paid to the employees cannot be disallowed by returning following findings :-

“5. Having given our careful consideration to the rival contentions and the material on record, we are inclined to uphold the conclusions arrived at by the CIT(A). As Dr. Gupta rightly contends, the assessee being an artificial juridical person, it needs to incur certain expenditure to keep itself afloat and have its continued existence. Unlike a natural person, a company can only operate through other natural persons -whether employees or others. It is not the case of the Assessing Officer that the expenditure of the assessee company are excessive or unreasonable vis-a-vis its legitimate business requirements. The Hon'ble High Courts have consistently held that in the case of the corporate assessee such expenses have to be allowed as deduction irrespective of whether or not the assessee is engaged in active business and even if assessee has only passive incomes. The CIT(A) was, therefore, justified in his conclusions. That is, however, not the only reason why the disallowance made by the Assessing Officer was unsustainable in law. We agree with Dr. Gupta's second line of argument as well. We find that the whole cause of action disallowance of expenses is in the background of

Assessing Officer's observation that the assessee did not carry out any business transactions which at best was Assessing Officer's finding about an activity of business not being functional in the relevant previous year. In our opinion, not carrying on business activity in a particular period cannot be equate with closure of business as it takes an unsustainably narrow view of the scope of cessation of a business. In the case of LVE. Vairavan Chettiar v. CIT [1969] 72 WR 114, their Lordships of Hon'ble Madras High Court were in seisin of a situation where the assessee had obtained an import licence for doing arecanut business but due to adverse conditions in market, he temporarily suspended the arecanut business for the assessment year in question. Nevertheless, he was maintaining the establishment and was waiting for improved market conditions in arecanut. It was thus an admitted position that no activities were carried out so far as this part of the business was concerned. On these facts, their Lordships took note of the position that "There is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of accounts". It was then observed that the question whether the business is being carried on must depend in each case on its own facts and not on any general theory of law. Their Lordships then referred to, with approval, Lord Sumner's observation in IRC v. South Behar Railway Co. Ltd. [1925] 12 Tax Cases 657 that business is not confined to being busy; in many businesses long intervals of inactivity occur "The concern is still a going concern though a very quiet one." After elaborate survey of judicial precedents on the issue, their Lordships concluded, in the light of, as noted above, the factual position that "there is nothing on record to show that he completely abandoned or closed the business forever. On the other hand, his books of account revealed that he was meeting the establishment charges and interest payments as detailed in the accounts in the year of account," that the loss in arecanut business, in which admittedly no activity was carried out during the relevant previous year, was to be set off against assessee's business income in the year. As the ratio of the aforesaid judgment is summed up in the ITR headnotes at p. 115 of the report, "as the assessee was maintaining the establishment and waiting for the improved market conditions in arecanuts and there was nothing to show that he completely abandoned or closed the business forever, the business must be deemed to be continuing". In the light of this legal position,' it would follow that unless there is some material on record to show that the assessee has completely abandoned the share dealing business, merely because there are no business transactions in the relevant previous year cannot be reason enough to come to the conclusion

the business has come to an end. It could not thus be said; as was the case before the Hon'ble Madras High Court, that the assessee had "completely abandoned or closed the business forever". Unless the business is abandoned or closed and even if business is at a dormant stage waiting for proper market conditions to develop, the expenditure incurred in the course of such a business is to be allowed as deduction. For this reason also, the disallowance made by the Assessing Officer was not justified, and the CIT(A) rightly deleted the same."

18. In view of what has been discussed above, we are of the considered view that when assessee has not completely abandoned its business and has kept the business status of the assessee company alive, as not an iota of evidence has been brought on record by the Revenue that the business of the assessee has completely come to an end, the deductions claimed by the assessee on account of salaries paid to Shri Kamal Karmakar and Smt. Gauri Dhawan in AY 2011-12 and professional charges and remuneration to the directors paid in AY 2012-13 are allowable business deductions. Consequently, Grounds No.1 & 2 of ITA No.5641/Del/2016 (AY 2011-12) and ITA No.5807/DEL/2017 (AY 2012-13) are determined in favour of the assessee.

19. So far as, appeal bearing ITA No.3978/Del/2018 for AY 2013-14 is concerned, the Id. CIT (A) has dismissed the appeal ex-parte by recording the fact that notices dated 31.08.2017, 11.01.2018 and 22.01.2018 elicited no response and assessee has failed to appear before him, but has not brought on record any

material if the said notices were ever served upon the assessee. Mere issuance of notice on the address mentioned in form no.35 is not sufficient to treat the notice as served as ld. CIT (A) had the opportunity to serve the assessee by way of dasti notice or by way of substitute service. In these circumstances, we are of the considered view that the assessee has not been provided with adequate opportunity of being heard, hence appeal being ITA No.3978/Del/2018 for AY 2013-14 is ordered to be set aside to the ld. CIT (A) to decide afresh after providing an opportunity of being heard to the assessee.

18. In view of what has been discussed above, assessee's appeals bearing ITA Nos.5641/Del/2016 & 5807/Del/2017 for AYs 2011-12 & 2012 -13 respectively are allowed and ITA No.3978/Del/2018 for AY 2013-14 is allowed for statistical purposes.

Order pronounced in open court on this 29th day of March, 2019.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of March, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-2, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.