

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

**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2180/Del/2015  
Assessment Year: 2010-11**

DCIT, Circle 7(1),  
New Delhi.

Vs

Delhi State Industrial and  
Infrastructure Development  
Corporation Ltd.,  
N-36, Bombay Life Bldg.,  
Connaught Circus, N.Delhi.  
PAN: AAACD1257F

**Assessee by: Shri Yogesh Jain, CA  
Revenue by: Ms Ashima Neb, Sr. DR**

**Date of Hearing                      01.05.2019  
Date of Pronouncement        13.05.2019**

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Challenging the order dated 22.1.2015 in Appeal No.514/14-15 passed by the Id. Commissioner of Income-tax (Appeals)-14, New Delhi (for short 'Ld. CIT(A)'), revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a State Government Corporation engaged in the activities of industrial development of National Capital Region of Delhi as a developing agency. For the Assessment Year 2010-11, they have filed their return of income on 24.3.2011 declaring a total income of Rs.34,82,83,107/-. Learned AO by

order dated 14.3.2013 assessed the income at Rs.48,03,00,500/- by making certain additions which includes for the purpose of this appeal a sum of Rs.1,10,21,002/- under the head “Administration and Selling Expenses” and a sum of Rs.87,45,643/- in respect of maintenance charges. Aggrieved by these additions, assessee preferred appeal and the learned CIT(A) by way of the impugned order deleted these two additions also. Hence, the revenue preferred this appeal stating that the ld. CIT(A) erred in deleting these two additions.

3. It is the argument of the ld. DR that there was no evidence available before the ld. CIT(A) also to reach a different conclusion from the one reached by the ld AO, who had recorded that this expense was not wholly and exclusively for the purpose of business. She further submitted that in respect of the addition of Rs.87,45,643/- also no evidence was available on record and, therefore, ld. AO was justified in making such additions.

4. It is the submission on behalf of the assessee that this expense was incurred on the occasion of Diwali, Holi etc., which is customary on such occasion to give gifts to the employees and associates as a matter of cordiality and incentives for better performance. He submits that since no doubt has ever been raised against the incurrence of the expense in any preceding or subsequent year, it is clear basing on what the ld. AO concluded that it is not wholly and exclusively for the purpose of business of the assessee. He further submitted that similar expenses have been incurred in the earlier years and subsequent years also and they were allowed by the ld. AO. Lastly, he submits that the expense incurred by the assessee is linked with business and it has direct nexus

with their business and, therefore, it cannot be said that such an expense is not wholly and exclusively for the purpose of assessee's business.

5. Reliance is placed by the assessee on the decision of the ITAT, Chandigarh Bench in the case of Punjab Power Packs Ltd. vs DCIT (1999) 71 ITD 163 (Chd) where it is held that the distribution of gifts/sweets by the PSU to employees and associates is an allowable expense.

6. It could be seen from the record that the ld. AO does not doubt the genuineness of the expense. It is also not in dispute that this is a routine expenditure incurred by the assessee for the years prior to and subsequent to the Asstt. Year 2010-11 and it is also not the case of the revenue that such an expense was disallowed by the ld. AO for any of such years other than the year under consideration.

7. Learned CIT(A) gave a factual finding that similar expenses were incurred by the assessee for the years prior to the year under consideration and such an expense was incurred under the sub head of "staff welfare and benefit". Further, it is customary to make the small gifts on the occasion of celebrations like Diwali, Holi etc., as an incentive for better performance.

8. In the case of the Panjab Power Packs Ltd (supra), the assessee was also a public sector undertaking and claimed deduction of a sum of Rs. 2,16,394/- under the head 'Diwali expenses' incurred on gifts/sweets provided to the employees and other business associates, which was almost disallowed by the ld. Assessing Officer. It was held that

distribution of sweets, gifts on the occasion of Diwali is an allowable expenditure.

9. Further, nowhere the Id. AO had given the finding that the assessee did not incur any such expense or the reasons for his conclusion that such an expense is not wholly and exclusively for the purpose of the assessee's business. In these circumstances, we are of the considered opinion that there is no error in the reasoning or the conclusion of the Id. CIT(A) on this aspect. This ground of appeal is dismissed.

10. In respect of the addition relating to the maintenance charges of Rs.87,45,643/-, the fact is that the assessee had received the same as ground rent and maintenance charges from allottees under low cost housing scheme and same was not offered to tax on the ground that the same is part of Narela Revolving Fund and belonging to the Delhi Government. Learned AO did not agree with the contention of the assessee and made the addition. Learned CIT(A) deleted the same by placing reliance on the order of the Tribunal for the Asstt. Year 2005-06 and 2009-10 to give relief to the assessee.

11. It is the argument of the Id. DR that there is no bifurcation of this figure of Rs.87,45,643/- into ground rent part and maintenance charges and in view of the decision of the Hon'ble jurisdictional high Court in assessee's own case in ITA No.375 of 2015, maintenance charges have to be treated as income of the assessee.

12. It is an admitted fact that in the balance sheet of the assessee the composite figure of receipt of ground rent and maintenance charges was shown and there was no enquiry at any point of time as to the quantum

of maintenance charges and ground rent. The Hon'ble High Court, in the order dated 17.8.2018 in ITA No.375 of 2017 observed as under:

“The court finds that this issue was not examined in depth with reference to the accounts of the assessee either by the AO or the CIT(A) or even the ITAT. They appear to have treated both the maintenance charges and ground rent alike whereas the decisions of the ITAT in favour of the assessee, even for the earlier AYs, were specific to the issue of maintenance charges and not ground rent. Consequently, the impugned orders of the ITAT, the CIT(A) as well as the AO on the issue of ground rent for this AY 2008-09 is hereby set aside and the said issue is remanded to the file of the AO for re-determination in accordance with law after examining the accounts of the assessee and any further evidence that may be led on this issue by the parties.”

13. In view of the above direction of the Hon'ble jurisdictional High Court, we deem it just and necessary to set aside this issue to the file of the Id.AO for compliance of the same. This ground is, therefore, allowed for statistical purposes.

14. In the result, appeal of the revenue is allowed in part for statistical purposes.

**Order pronounced in the Open Court on 13<sup>th</sup> May, 2019.**

Sd/-  
**(G.D. AGARWAL)**  
**VICE PRESIDENT**  
Dated: 13<sup>th</sup> May, 2019/VJ

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

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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