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

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

ITA No. 7023/Del/2018
Asstt. Year: 2014-15

Ajay Prakash Shrivastava DGL 121, 1st Floor, DLF the Galleria, Mayur Vihar, Phase-1, Delhi 110 091 PAN AAHPS9513R	Vs.	ACIT, Circle-28(1), New Delhi.
(Appellant)		**(Respondent)**

Assessee by:	Shri Sanjay Kumar Garg, FCA & Shri Akarsh Garg, Adv.
Department by :	Shri Manoj Kumar Mahar, Sr. DR
Date of Hearing	08/08/2019
Date of pronouncement	09/ 08/2019

O R D E R

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against impugned order dated 27.8.2018 passed by the Ld. CIT(Appeals)-10, New Delhi for the assessment year 2014-15. In the various grounds of appeal assessee has challenged the disallowance of claim of revenue expenditure of Rs. 11,34,953/- on the ground that no business activities is carried out by the assessee.

2. The facts in brief are that assessee is an individual and was engaged in the business of computer software and hardware from his proprietorship firm, M/s. Cosmic Software. As stated by the Ld. Counsel Shri Sanjay Kumar Garg, the assessee has been in this business since year 1988 and had a flourishing business for long period. However, later on due to stiff competition and poaching of his employees the business of the assessee has slowed down and could hardly procure any orders. Assessee has not closed his business and to maintain the set up, he had to incur expenses like salaries of the employees and other basic expenses. These expenses are bare minimum to run the set up and for looking for further business opportunities. The expenses like salary and wages were only for four employees who had been working with assessee since long and assessee had also incurred certain telephone expenses, etc. He submitted that business of the assessee firm is still in operation and even though assessee could only procure order of Rs. 1265/-, but that does not mean that assessee's business has been closed down. Assessee is still making efforts to revive the business and is looking for procurement of orders. The expenses claimed as per profit and loss account are factual and have been incurred during the course of the running of the business activities, therefore, same cannot be disallowed mainly on the ground that assessee was not carried out any business activities. In fact, only business has slowed down. He further pointed out that in the assessment year 2012-13 also, when assessee has sale of Rs. 7,614/- and similar quantum of expenditure was incurred, has been allowed by the AO, vide order dated 18.2.2015 passed u/s 143(3).

3. On the other hand Ld. DR strongly relied upon the order of the AO and Ld. CIT (A) and submitted that firstly, assessee has no business as such and the only objective of claiming such expenses was that business loss can be offset rental income. The assessee has income from salary and income from house property and also business loss of Rs. 11,33,688/-, which is only on account of expenditure. Thus, it is clear cut case of evasion of tax and therefore, order of the AO and Ld. CIT (A) should be confirmed.

4. After considering the rival submissions and on perusal of the relevant finding given in the impugned order as well as material referred to before us at the time of hearing, we find that assessee has started its business in information technology and software in the year 1988 and since then, for many years assessee has shown huge turn over. However, due to huge competition and poaching of his employees, the turnover of the assessee from last few years had scaled down to a negligible level. On perusal of the nature of expenditure debited to the profit and loss account, it is seen that same are basically relating to establishment expenses which are mainly salary and wages given to four employees and other routine expenses which are bare minimum for the office establishment and for surviving the business entity. If the business of the assessee has not been closed down then, even if the turnover is low, it cannot be said that expenditure incurred is not wholly and exclusively for the purpose of business. If the expenses have not been found to be for personal nature or non-genuine, or is not in the nature of capital expenditure, then no disallowance can be made u/s 37(1).

Here it is not a case of cessation of business albeit it is a case of temporary lull in the business, which assessee is trying to revive. Moreover in the earlier year, i.e., A.Y. 2012-13 also, on exactly similar set of facts and circumstances, the expenditure claimed by the assessee has been allowed by the AO in scrutiny proceedings u/s 143(3). Thus, in this year also no disallowance of expenditure can be made. In the expenses claimed by the assessee are allowed. Consequently, grounds raised by the assessee are also allowed.

5. In the result appeal of the assessee is allowed.

Order Pronounced in the open court on 09th August, 2019.

sd/-	sd/-
(O.P. KANT)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 09/08/2019

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

ASSISTANT REGISTRAR
ITAT, New Delhi