

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'E', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri B.R.R. Kumar, Accountant Member**

**ITA No. 3829 & 3830/Del/2016
Assessment Year: 2010-11 & 2011-12**

Nanda Mint & Pine Chemicals Ltd., 1/10, Munshi Niketan, Asaf Ali Road, Near Kamla Market, New Delhi. PAN – AACCN0965G (Appellant)	vs.	DCIT, Circle 13(1), New Delhi. (Respondent)
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Appellant by	Sh. K. Sampath, Advocate & Sh. Raj Kumar, Advocate
Respondent by	Ms. Rinku Singh, Sr. DR

Date of Hearing	14.08.2019
Date of Pronouncement	19.08.2019

ORDER

Per B.R.R. Kumar, A.M.:

In ITA No. 3829/Del/2016 for A.Y. 2010-11, following grounds have been raised by the assessee :

1. That the order passed by the Ld. CIT(A) is arbitrary, erroneous, misconceived and against law and must be quashed;

2. That the confirmation of following disallowances made by the Assessing Officer by the Ld. CIT(A) is fallacious and unjust and must be quashed;

- i) Rs.25,000/- u/s 40A(3) of the Act*
- ii) Rs.7,67,103/- on account of sales tax demand*
- iii). Rs.22,00,295/- on account of office and administrative expenses.*

3. *That the enhancement of income in a sum of Rs.7,17,554/- by the Ld. CIT(A) is grossly arbitrary, capricious, unwarranted and unjust and must be quashed.*

2. **Disallowance u/s. 40A(3):** During the assessment proceedings,, the Assessing Officer found that an amount of Rs.25,000/- has been paid in cash to one Mr. Kumar Jha on account of expenses incurred by him. The Id. CIT(A) confirmed the addition holding that the provisions of section 40A(3) are very specific and clear.

3. Section 40A(3) reads as under :

“Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, 45 or use of electronic clearing system through a bank account, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure.”

4. Before us, during the arguments, the Id. AR argued that this amount was incurred as legal fee paid to the Advocate as well as reimbursement of stationery and clerkage incurred by the Advocate. Hence, it consists of different items and the reimbursement of items cannot fall into the provisions of section 40A(3).

5. We find that even the assessment order mentions the fact that the amounts have been reimbursed. Since the amount consists of Advocate fee and filing expenses, it cannot be treated as an aggregate amount spent in a

day. Hence, in the peculiar facts of the case, the addition made by the Assessing Officer is to be deleted.

6. **Sales Tax Payment:** We find from the record that this payment is on account of Additional Sales Tax paid on account of VAT liability. Since the amount is on account of Sales Tax liability which is allowable u/s. 37 and not any penalty paid as held by the Assessing Officer, we hereby delete the addition made by the Assessing Officer on account of Sales Tax demand.

7. **Administrative Expenses:** The amount of Administrative Expenses has been disallowed by the Assessing Officer on the premise that there was no business activity in the year in question.

8. During the arguments before us, it was submitted that the expenses are carried out necessarily for maintaining the business structure of the company for office maintenance and for other administrative contingencies. The legal expenses, loss on sale of assets, plant repair and maintenance expenses, bank commission, salary and wages to the existing employees have to be paid even though the company is not in ponderable field owing to unrest and the change of policy in the geographical area of Jammu. We hold that the expenses cannot be disallowed based on the premise that no sales have been undertaken by the assessee. The expenses incurred by the assessee for maintenance of business have to be allowed as per the provisions of section 37 of the IT Act. Hence, the disallowance made by the Assessing Officer is hereby deleted.

9. Regarding ground No. 3, wherein the Id. CIT (A) enhanced the amount of disallowance on the premise that the business of manufacturing or otherwise was not carried during the year in question. The entire expenses cannot be disallowed in view of the fact that the provisions do not entitle the Revenue to allow expenses only in case of earning of income. The business expenses are to be allowed u/s. 37 irrespective of the fact whether sales have been undertaken or revenues have been earned or not. What needs to be examined is whether the expenses incurred are genuine or bogus. In the absence of any evidence to prove that the expenses have not been bogus, no disallowance is called for. Since the assessee has to maintain the plant and machinery in running condition even though no sale has taken place, the expenses have to be allowed as per the provisions of the Act. Hence, we, hereby delete the enhancement made by the Id. CIT(A).

ITA No. 3830/Del/2016 (A.Y. 2011-12):

10. The assessee has raised following grounds :

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in :

- 1. not allowing expenses incurred on maintaining and running the business of the assessee while computing the income from business and other sources;*
- 2. enhancing income by Rs.1,29,840/- on account of electricity refund;*
- 3. not determining speculation loss and allowing the same.*

All the above actions being arbitrary, erroneous, misconceived and unjust must be quashed with directions for relief.

11. The Assessing Officer disallowed the expenses on the premise that no business is in existence.

12. Before us, it was argued that the assessee company has neither dissolved nor the business undertaking was sold out. The business continued to exist as a juristic entity. The business production was nil and hence, no sales were effected which does not mean that the business is not in existence. The business was in existence with future prospects of running of business and earning of income. We hold that expenses cannot be disallowed just because no operation or sales have been effected. The plant and machinery have to be maintained and the personal employed have to be paid, office and factory have to be kept in a running condition. Reliance is placed on the judgment of Hon'ble Bombay High Court in the case of Karsondas Ranchoddass, 83 ITR 1, wherein it has been explained that "even if the business dealings have not been carried out by the assessee during the year still the loss incurred during the year was required to be allowed if the business establishment by itself existed". We also note that in the assessment year 2013-14, in the similar circumstances, the Revenue has allowed the expenses incurred on the ground that it is not the number of transactions that determines existence of a business but whether the entity has wound up in its entirety that counts. Keeping in view entire gamut of circumstances, we hereby hold that the additions made by the Assessing Officer are not legally sustainable.

Electricity Refund (Ground No. 2):

13. Since all the expenses are adjudicated to be allowable, the electricity expenses would also be covered under the same and any refund received would only result into decrease of the loss returned by the assessee.

14. The assessee has included speculation loss of Rs.7,67,620/- in the other expenses claimed by the assessee. The Id. CIT(A) directed the Assessing Officer to determine the same in accordance with law, hence, we decline to interfere with the issue.

15. In the result, the appeal for A.Y. 2010-11 is allowed and that for A.Y. 2011-12 is partly allowed.

Order pronounced in the open court.

Sd/-

(Bhavnes Saini)
Judicial member

Sd/-

(B.R.R. Kumar)
Accountant Member

Dated: 19.08.2019

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi