

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.5080/Del/2016
Assessment Year: 2007-08

Dynamic Universal Ltd. 2/10, Shanti Niketan New Delhi – 110021 PAN No.AAACD3043K	Vs	DCIT Circle – 10 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Puneet Thukral, CA
Respondent by	Ms. Ashima Neb, Sr. DR

Date of hearing:	29/08/2019
Date of Pronouncement:	04/09/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 09.06.2016 of the CIT(A)-3, New Delhi relating to A. Y. 2007-08.

2. The assessee in its only effective ground of appeal has challenged the order of the CIT(A) in confirming the disallowances of expenses of Rs.74,76,907/- made by the Assessing Officer.

3. Facts of the case, in brief, are that the assessee is a

company and filed its return of income on 30.10.2007 declaring total income of Rs.66,99,830/-. Subsequently the case was reopened by recording reasons u/s. 147 and notice u/s 148 of the Act was issued to the assessee. The assessee in its reply submitted that the original return filed earlier may be treated as return filed in response to notice u/s. 148.

3.1 During the course of assessment proceedings the Assessing Officer made addition of Rs.74,76,907/-which is the subject matter of appeal by observing as under :-

“The perusal of records revealed that during the year under consideration, the assessee has earned income of Rs. 15445471/- on the leasing of the property and parking charges received, from different persons. The property on which this income was earned was held by the assessee as stock in trade. Besides the above income, the assessee was not doing any business during the year and claimed Rs 7476907/- as business expenditure Though the rental Income has been offered for taxation by the assessee, under the head House Property, the corresponding expenses have been claimed as business expenses. Since, these expenses were incurred with regard to the Rental Income of the assessee, the same are not allowable as business expense Since, the expense are not related to the income taxable under the head "Business & Profession" the same expenses amounting to Rs 74,76,907/- are disallowed and added back to the income of the assessee Penalty proceedings u/s 271(1)(c) are being initiated separately for concealing true income or furnishing inaccurate particulars of such income.”

4. In appeal the Ld. CIT(A) sustained the addition so made by the Assessing Officer by observing as under :-

“6. In the instant case, the appellant is having the steady income under the head "Income from the House Property" and resorted to the colourable device to show artificial loss under the head "business income" from the consultancy. The counsel of the appellant was asked vide order sheet entry dated 22.03.2016 to submit the complete details of the business conducted.

Various opportunities were given to file the documentary evidence to establish the existence of business run by the company. Vide order sheet entry dated 02.05.2016, the counsel was unable to file any evidence regarding the existence of genuine business activity. Nothing was brought on the record to establish that the appellant is having the "business apparatus". The single receipt of Rs. 1,80,000 has been shown which has been claimed as the business receipt to indicate that the business is being carried out. No other business activity has been shown. The same pattern is followed in the preceding and subsequent years as evident from the chart given in the earlier paras. The counsel drew my attention to the appellate order of my predecessor passed for the A.Y.2008-09 on the similar issue. I have considered the appellate order of my predecessor passed in the preceding year and conclude that the factual issue of the existence of business apparatus and necessary where withal to run the business activity has not been examined in that year. Moreover, the counsel could not establish the existence of business activity during the year under consideration. In view of the discussion, it is held that the loss has been created by resorting to the colourable devices which cannot be part of the tax planning. It is held that the appellant has not carrying out any business activity and business loss is created to reduce the income under the head "House Property". The order of assessment made by the Assessing Officer is, therefore, sustained on this issue.

7. The ground no.5, 6 and 7 have been raised regarding the following additions:-

<i>Interest</i>	<i>Rs.27,27,127/-</i>
<i>Legal expenses</i>	<i>Rs. 40,0007-</i>
<i>Repair and maintenance</i>	<i>Rs.1,32,357/-</i>

7.1 These expenses form part of the business expenses of Rs.74,76,907/- and it has been held in the earlier para's that the appellant is not having any business - activity and the business loss has not been allowed to be adjusted against the "House property". The separate addition made by the Assessing Officer amounts to double addition which is accordingly deleted."

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee at the outset submitted

that identical issue had come up before the Tribunal in assessee's own case for A. Y. 2008-09 and the Tribunal vide ITA No.3573/Del/2012 order dated 17.11.2016 had dismissed the appeal filed by the revenue. Therefore, this being a covered matter in favour of the assessee, the ground raised by the assessee should be allowed.

7. The ld. DR on the other hand submitted that although the Ld. CIT(A) for A.Y. 2008-09 has decided the issue in favour of the assessee, however, the Ld. CIT(A) in the impugned assessment year has not followed the decision of his predecessor and has distinguished the same. The decision of the Tribunal was rendered subsequent to passing of the order by the CIT(A). She submitted that the assessee has credited the rental income in the profit and loss account copy of which is placed on page No.42 of the paper book. The assessee has debited all the expenses in the profit and loss account. Simultaneously the assessee has also claimed deduction u/s. 24 of the IT Act. Thus the assessee is claiming double deduction i.e. one under section 24 and again by debiting various expenses in the P & L account which the assessee cannot do. She accordingly submitted that she has no objection if the matter is restored to the file of the CIT(A) with a direction to decide the issue afresh in the light of the decision of the Tribunal in assessee's own case for A.Y.2008-09.

8. The Ld. Counsel for the assessee in his rejoinder submitted that the Assessing Officer himself has treated the rental income as income from house property. However, he agreed that he has

no objection if the matter is restored to the file of the CIT(A) with a direction to decide the issue afresh in the light of the decision of the Tribunal in assessee's own case for A.Y.2008-09.

9. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer in the instant case has made addition of Rs.74,76,907/- being the various expenses claimed by the assessee against the lease income of the property and parking charges received from different persons. Although the Ld. CIT(A) in assessee's own case for A.Y.2008-09 had decided the issue in favour of the assessee, however, the Ld. CIT(A) in the impugned order has distinguished the order of his predecessor and sustained the addition made by the Assessing Officer the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that the Tribunal in assessee's own case for A.Y.2008-09 has decided the issue in favour of the assessee and the appeal filed by the revenue has been dismissed. However, a perusal of the order of the CIT(A) for the impugned assessment year shows that he had no benefit of the decision of the Tribunal in assessee's own case for A. Y. 2008-09 which was passed on 17.11.2016 which is subsequent to passing of the order by him which is on 09.06.2016. Under these circumstances we deem it proper to restore the issue to the file of the CIT(A) with the direction to decide the issue afresh in the light of the decision of the Tribunal in assessee's own case for A.Y.2008-09 and as per fact and law. Needless to say the Ld.

CIT(A) shall give due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 04.09.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:-04 .09.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	29.08.2019
Date on which the typed draft is placed before the dictating Member	30.08.2019
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	04.09.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	