

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
I.T.A. No. 5502/DEL/2016 (A.Y. 2012-13)**

DCIT Circle 7 (2), New Delhi (APPELLANT)	Vs.	M/s.Diageo Distilleries Pvt. Ltd. Block-E, 2 nd Floor, MIRA, Plot 1 & 2, Ishwar Nagar, Mathura Road, New Delhi- 110065 PAN : AAKCS4614F (RESPONDENT)
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Appellant by	Sh. Surendra Meena, Sr.DR
Respondent by	None

Date of Hearing	06.08.2019
Date of Pronouncement	23.09.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 29.07.2016 passed by CIT(A)-30, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under :

1. "Ld. CIT(A) erred in law and on facts of the case in deleting the disallowance of Rs.2,79,11,315/- made by AO on account of bank interest expenses. "
2. "Ld. CIT(A) erred in law and on facts of the case in deleting the disallowance of Rs. 44,74,729/- made by the AO on account legal & Professional Fee Expenses."
3. "Ld. CIT(A) erred in law and on facts of the case in deleting the disallowance of Rs.25,27,483/- made by the AO on account warehousing and demurrage charges."

4. *"The appellant craves leave, modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

3. The assessee filed its return of income on 27.11.2012, declaring loss of Rs. 3,62,52,720/-, under normal provisions of the Act. The Assessment u/s 143(3) of the Act, was completed by the order dated 16.03.2015, which was rectified u/s 154 vide order dated 19.08.2015, at total loss of Rs. 13,39,193/-, as against the returned loss of Rs. 3,62,52,720/-, after making the following additions on account of:

- i) Disallowance of interest paid on loan :Rs.2,79,11,315/-
- ii) Disallowance of legal & professional charges :Rs. 61,87,589/-
- iii) Disallowance of warehouse & demurrage charges:Rs. 27,67,483/-

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that as regards to ground no. 1, the CIT(A) erred in deleting the disallowance of Rs. 2,79,11,315/- made by the Assessing Officer on account of bank interest expenses as the assessee failed to prove direct nexus between the expenses wholly and exclusively laid out for its own business purpose as articulated u/s 36 & 37 of the Income Tax Act. Besides that other CBU's are separate and distinct entity. As regards to Ground No. 2 and 3, the Ld. DR submitted that before the Assessing Officer, the assessee failed to explain as to how these huge expenses have been incurred fully and exclusively for its business purposes particularly when there was no business activity during the year.

6. None appeared at the time of hearing on behalf of the assessee despite giving notice. Therefore, we are taking into account the submissions of the assessee before the CIT(A) as submissions before us.

7. We have heard the Ld. DR and perused all the relevant material available on record. As regards to Ground No. 1, from the perusal of the records it can be seen that the loan procured was utilized by the assessee wholly and exclusively for its business as per clause 14 of the arrangement between third party contract bottling units (CBUs). The working capital is advanced to these CBUs so as to enable them to procure material, undertake manufacturing and maintain stocks and debtors for the assessee. The assessee's profit earning source is the arrangement with the CBUs wherein the assessee provides working capital to these CBUs to enable them to procure materials and carry out large scale manufacturing of alcoholic beverages and deliver the same to the assessee's customers on its behalf. Thus, from this it is clear that working capital loan was taken by the assessee for its business purpose and use for business purposes only. Therefore, the CIT(A) was right in deleting this disallowance. Ground No. 1 of the Revenue's appeal is dismissed. As regards to Ground Nos. 2 and 3, it can be seen that it is an admitted position that during the year there was no business activity, but during the said period the assessee incurred expenses on the maintenance of its business establishment. During the said year, the Assessing Officer has not pointed out any bogus or expenditure of personal nature, which will warrant any disallowance. The CIT(A) rightly held that by simply mentioning that the expenditures are not commensurate with the turnover, will not automatically prove that they have not been incurred wholly and exclusively for business purposes. Thus, there is no need to interfere with the findings of the CIT(A). Ground Nos. 2 and 3 are dismissed.

8. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 23rd September, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 23/09/2019

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Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	06.08.2019
Date on which the typed draft is placed before the dictating Member	06.08.2019
Date on which the typed draft is placed before the Other Member	
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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	