

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "बी" नई दिल्ली में

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं डॉ. बी. आर. आर. कुमार, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No:- 326/Del/2017

निर्धारण वर्ष / Assessment Year: 2012-13

CHL Ltd.,
Hotel The Suryaa,
New Friends Colony,
New Delhi-110025.
PAN-AAACC2587M

.....अपीलार्थी / Appellant

vs

DCIT,
Circle-6(1), New Delhi.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. L.N.Malik, CA,

Sh. Satish Khosla, Adv. & Sh. Manish Malik, Adv.

प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr.DR

सुनवाई की तारीख / Date of Hearing : 03.10.2019	घोषणा की तारीख / Date of Pronouncement: 16 .10.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-2, New Delhi, dated 28.10.2016 passed u/s 143(3) of the Income Tax Act, 1961 relating to assessment year 2012-13.

2. The assessee has raised following grounds in this appeal:-

1. *“That the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in sustaining the disallowance of Rs. 1,36,85,065/- made u/s. 14A of the I.T. Act, 1961 read with Rule 8D of the I.T. Rules, 1962.*

2. *That the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in sustain the disallowance of Rs. 55,27,111/- holding expenditure to be capital in nature as against the claim of the appellant company to be Revenue in nature.*

3. *That the Ld. Commissioner of Income-tax (Appeals) grossly erred on facts and in law in sustaining the disallowance of Rs. 8,07,800/- under the head Personal expenditure as against the claim of the appellant company treating this expenditure as Business Expenditure.*

4. *That the appellant craves, leave to add, amend or alter any grounds of appeal either before or at the time of hearing of appeal.”*

3. The first issue raised by the assessee is against the disallowance made u/s 14A of the Income Tax Act, 1961 (in short “Act”) at Rs.1,36,85,065/-. The Ld.AR for the assessee at the outset pointed out that the disallowance if any, u/s 14A of the Act could not exceed the exempt income which was Rs.2,61,000/- during the year. In this regard, he placed reliance on the ratio laid down by Hon’ble Delhi High Court in the case of Joint Investment P.Ltd. vs CIT 372 ITR 694 (Del.).

4. The Ld. DR for the Revenue placed reliance on the orders of the authorities below.

5. We have heard rival contentions and perused material available on record. The first issue raised in the present appeal is against the disallowance made u/s 14A of the Act. As against the dividend income of Rs.2,61,000/- which was claimed as exempt income under the provisions of the Income Tax Act, the Assessing Officer worked the disallowance u/s 14A of the Act at Rs.1,36,85,065/-. The Hon'ble Delhi High Court in the case of Joint Investment P.Ltd. vs CIT (supra) have laid down the proposition that disallowance if any, under section 14A of the Act is to be restricted to the amount to tax free income. Following the said ratio laid down by the Hon'ble Delhi High Court, we direct the Assessing Officer to restrict the disallowance u/s 14A of the Act to Rs.2,61,000/-. Thus, Ground No.1 raised by the assessee is partly allowed.

6. The Ground No.2 is against the disallowance of Rs.55,27,111/- holding the expenditure to be capital in nature.

7. Briefly facts relating to the issue are that the assessee had claimed certain expenditure as revenue expenditure in its hands. The break-up of the expenditure is available at page 5 of the assessment order. The assessee claimed the said expenditure to be incurred for carrying on its business and hence, the claim u/s 37(1) of the Act. The total expenditure is Rs.61,41,968/-. The Assessing Officer was of the view that incurring of the said expenditure had enduring benefit to the assessee and hence, was capital in nature. He disallowed the said expenditure, but allowed depreciation on the same and hence, the disallowance at Rs.55,27,111/-.

The CIT(A) upheld the same, against which the assessee is in appeal before us.

8. We have heard rival contentions and perused the material available on record. The details of the expenditure disallowed by the authorities below is as under:-

<i>Sl.No.</i>	<i>Dated</i>	<i>Item/Name</i>	<i>Amount(Rs.)</i>
1.	18-May-11	Installation Charges	3,03,325
2.	17-Jun-11	Installation Charges	55,150
3.	02.08.2011	Supply and installation of Boiler Tubes	6,27,932
4.	14.03.2012	Electrical Work	1,55,040
5.	28.03.2012	Electrical Work	24,19,456
6.	07-Jun-11	Teak Wood chair	10,68,750
7.	07-Jun-11	New Toughed Glass entrance door	2,51,064
8.	07-Jun-11	Entrance door	2,51,064
9.	12.02.2012	Partition Work	5,05,829
10.	27.08.2011	Fabrication GI ducting	1,14,039
11.	13.01.2012	FCU Installation	1,03,983
12.	26.08.2011	Electric Work	1,34,296
13.	14.03.2012	Electrical Work	1,55,040

9. The Ld.AR for the assessee pointed out that Item No.4 in the said list and Item No.13 in the said list dated 14.03.2012 is same and double addition has been made in the hands of the assessee on this account. On perusal of the tabulated details in the assessment order, we find merit in the plea of the assessee and hold that double disallowance has been made on account of Rs.1,55,080/-. Similarly, Item Nos. 7 & 8 which is against the invoice dated 07.06.2011 has been considered by the Assessing Officer twice, resulting in double addition. Hence, we delete the sum of Rs.2,51,064/- on this account.

10. The Ld.AR for the assessee further fairly submitted that Item No.6 i.e. purchase of Teakwood chair totaling to Rs.10,68,730/- is to be capitalized in the hands of the assessee. In reply to query of the Bench, Ld.AR for the assessee pointed out that expenditure of Rs.6,27,932/- was against supply and installation of boiler tubes i.e. it was repayment of the earlier boiler tubes and no new asset came into existence. Similar was a plea in respect of electric work totaling to Rs.24,19,456/- vide invoice dated 28.03.2012. The Ld.AR for the assessee pointed out that the said electric work was carried out for running the business more efficiently and this expenditure was incurred on different floors of the unit of the assessee and was revenue in nature.

11. The Ld DR for the Revenue strongly objected to the submission of the assessee.

12. In the totality of the facts and circumstances of the case, we are of the view that the expenditure incurred by the assessee for smooth running of its business is to be allowed as revenue expenditure. Further, by incurring the expenditure, no new asset had come into existence and hence, there is no merit in making the aforesaid disallowance in the hands of the assessee except the expenditure of Rs.10,68,750/-. Accordingly, we allow the expenditure as revenue expenditure in the hands of the assessee and direct the Assessing Officer to capitalize the expenditure of Rs.10,68,750/- and allow depreciation on the same. Hence, Ground No.2 raised by the assessee is partly allowed as indicated.

13. The last issue in present appeal is against the disallowance of travelling expenditure totaling to Rs.8,07,800/-, holding the expenditure to be personal in nature. In the hands of the assessee, the expenditure has been incurred by the assessee on the travelling of the Directors and other employees of the assessee for foreign travel to Ghana, South Africa. The said expenditure is on air tickets and purchase of dollars. The assessee is a limited concern and there is no merit in the orders of the authorities below in making the aforesaid disallowance on account of personal nature. We reverse the findings of the authorities below and allow the claim of the assessee in entirety.

14. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 16th day of October, 2019.

Sd/-

(B.R.R.KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : 16th October, 2019.

* Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy// सहायक रजिस्ट्रार,

आयकर अपीलीय अधिकरण ,दिल्ली

Assistant Registrar, ITAT, Delhi