

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'F+SMC', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri Prashant Maharishi, Accountant Member**

**ITA No. 7278/Del/2018  
Assessment Year: 2014-15**

Metropolitan Oil and Gas Pvt. Ltd., 21, Basant Lok Complex, Vasant Vihar, New Delhi. PAN – AAICM1817A <b>(Appellant)</b>	<b>vs.</b>	DCIT, Circle 16(2), New Delhi  <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Amar Jeet Singh, CA
<b>Respondent by</b>	Sh. S.L. Anuragi, Sr. DR

<b>Date of Hearing</b>	23.07.2019
<b>Date of Pronouncement</b>	16.10.19

**ORDER**

**Per Amit Shukla, J.M.:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 28.08.2018 passed by the CIT(A)-6, New Delhi for the quantum of assessment passed u/s. 143(3) for assessment year 2014-15.

2. Two effective grounds raised by the assessee read as under :

*"2. The learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in confirming the action of learned Assessing Officer in disallowing earlier year loss of Rs.1,80,689/- u/s. 70 of IT Act, 1961.*

*3. The learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in confirming the action of learned Assessing Officer in disallowing business expenditure incurred during the relevant previous year amounting to Rs.98,13,288/- on the ground that the same has been incurred before setting up of the business ignoring the explanation of the appellant as well as circumstances which exist during the year under consideration and other facts on records thereby wrongly applied the provisions of section 37 of the Act.”*

3. At the outset, ld. counsel for the assessee submitted that ground No. 2 is not pressed. Accordingly, the same is dismissed as not pressed.

4. The brief facts qua the issue relating to disallowance of expenditure of Rs.98,13,288/- are that the assessee company was incorporated on 14.09.2012 for carrying on the business of exploration, processing and trading of crude oil. The main objects of the company were as under :

- a). To carry on the business of exploration of oil and natural gas, to set up refineries, to set up both upstream and downstream petroleum projects in India and abroad.
- b). To acquire drilling rigs both by hiring or manufacture for off-shore and on-shore drillings and to acquire and hire ships and tankers for transportation.
- c). To carry on the business of purchase and sale of petroleum, products, to act as dealers and distributors for petroleum companies and set up delivery outlets for distribution of gas through pipelines and set up delivery stations for all kinds of petroleum products.”

5. The assessee filed return of income on 16.09.2014 declaring total loss of Rs.72,90,702/-. The ld. Assessing Officer asked the assessee to give the details of commencement of business and whether any business activity has been carried out and why the expenses claimed should not be disallowed. In

response, the assessee submitted that it had participated in the Bid process of Government of Nagaland on 5<sup>th</sup> Januray, 2013 for petroleum operations in the State of Nagaland as part of Nagaland Petroleum and Natural Gas Rules & Regulations. The assessee had won the Bids for two blocks, namely Wokha and Peren Zones, which was communicated by letter of intent dated 04.09.2013. Before the allotment of permit, the company analysed all the relevant data, which were available, so that oil production can be started within ten months from the commencement of the work as per commitment in the Bid. The Wokha block already had more than 20 production Wells drilled by the previous company and available for oil production. It was further explained that for this kind of business, lot of time is taken for drilling of new wells. Though the permit was received on 28.02.2014, however, the company was in active business in F.Y. 2013-14 and since the total period available during this year was only a month, therefore, no sale could be effected in such a short period. It was further explained that the assessee has incurred employees benefit expenses to the extent of Rs.56.86 lakhs while the other expenditure was Rs.40.74 lakhs, for which the details were furnished. It was also pointed out that the assessee company was on job but it had to face certain legal hurdles when local persons had dragged the assessee into litigation before the Hon'ble Gauhati High Court and the work of the assessee had suffered. Thus, it cannot be said that no business activity had been carried out and in any way, the business had commenced much before in the relevant financial year. In support, various judicial pronouncements were also cited.

6. The Id. Assessing Officer from the details and submissions filed before him observed that the assessee had received the permit to explore oil only in

February, 2014 and thus, there was no exploration done till 31.03.2014. The expenses have been incurred by the assessee from 31.07.2013 onwards much before the receipt of permit by the company. He held that the assessee may become entitled to claim expenses provided the expenses are incurred in the business after the date of set-up and any such expenditure prior to setting up of the business is not allowable. Accordingly, he disallowed the expenses holding that the impugned expenditure incurred by the assessee were not for carrying on the business but for setting up of the business and there is no evidence for any commercial production/exploration for A.Y. 2014-15.

7. The Id. CIT(A) confirmed the said finding of the Assessing Officer holding that business has actually not commenced and the entire civil assets are in the form of permit fee, against which it has been mentioned that the same will be amortized after commencement of production which is mentioned at Note No. 8 of the financial statement. This itself goes to prove that the production had not commenced in the relevant financial year.

8. Before us, the Id. counsel for the assessee submitted that there is distinction between setting up of the business and commencement of commercial operations and it is not necessary that the business is said to be set-up only when commercial operations starts. In support, he relied upon the judgment of Hon'ble jurisdictional High Court in the case of CIT v. LG Electronics (India) Ltd. (2005) 149 Taxmann 166. He also gave a brief note of business events happened in the last previous year, i.e., F.Y. 2012-13 and in the relevant previous year, i.e., F.Y. 2013-14 which are as under :

- Appellant took participation in the bid process of government of Nagaland on 5<sup>th</sup> Jan. 2013 for petroleum operations in the state of Nagaland as part of Nagaland Petroleum and Natural Gas Rules & Regulations;
- Rs.4.6 Cr. Has been infused in the business in the form of share capital during December 2012 to March, 2013. Accordingly, opportunity cost surrendered for this fund from the date of infusion of the fund in the business.
- The company wins the Bid for two Blocks, namely, Wokha and Peren Zones, which has been communicated by LOI dated 4<sup>th</sup> Sept., 2013.
- Tender fee of Rs. 4 Cr has been paid on 17<sup>th</sup> September 2013.
- Rs. 0.80 Cr. Has been infused in the form of borrowing fund from December, 2013 to March, 2014
- Permit was received for Wokha and Peren Zones on 28.02.2014.

Thus, here in this case, mere referring to the last event of allotment of Permit cannot be a conclusive factor, albeit the allotment of permit is first stage of commencement of business after which exploration work could be started. Under the law, the commencement of business is not the requirement and what is defined in section 3 of the Income Tax Act is that the business must have been set up to claim any expenditure. In the case of the assessee, the group of qualified Promoters and Directors came together to make bid, then they arranged the fund amounting to Rs.4.6 crores and also engaged qualified staff having specialized knowledge in the field of Oil and Gas exploration business. This all proves that the assessee needed to have required

infrastructure to win the Bid and based on that, permit for exploration of two Zones were allotted. Lastly, he relied on another judgment of jurisdictional High Court in the case of CIT vs. Dhoomketu Builders & Development (P) Ltd. (2013) 34 taxmann.com 18.

9. On the other hand, the ld. DR strongly relied upon the order of the ld. CIT(A) and submitted that for claiming expenditure u/s. 37, it is necessary to prove that the same have been incurred for the purpose of business and when business itself is not started, then no expenditure can be allowed. At the best, they can be treated as pre-operative expenditure.

10. We have heard the rival submissions and also perused the relevant findings given in the impugned order as well as the material referred to before us. From the facts, as narrated above, it is seen that the assessee company was incorporated on 14.09.2012 for the purpose of carrying on the business of exploration, processing and trading of crude oil. It had participated in the bid process of Government of Nagaland on 5<sup>th</sup> January, 2013 for petroleum operations in the State of Nagaland and infused funds in the form of share capital. All the events happened in F.Y. 2012-13, which have been incorporated in the foregoing para. During the relevant financial year, the assessee had won the Bid for two blocks, namely Wokha and Peren Zones, for which the letter of intent was communicated on 04.09.2013 and tender fee of Rs.4 Cr. was paid on 17.09.2013. Thereafter, further funds have been infused by the assessee. The assessee received the permit for exploration and digging of Wells in the two Zones on 28.02.2014.

11. What is required to be seen in terms of section 3 of the Act, which defines previous year, is that, the previous year shall be the period beginning with the date of setting up of the business or profession or the date on which the source of income newly comes into existence and ending with the said financial year. Thus, the requirement of law is that the business must have been set up. The Revenue's claim is that since final permit of allotment of tender happened in Feb. 2014 and till the last date of financial year, no operations were carried out and therefore, the business has not commenced and accordingly, the expenditure incurred by the assessee cannot be allowed. In our opinion, bidding for any tender requires lot of preparatory stages and setting up of infrastructure and human resources. It has been stated by the assessee that along with Promoters and Directors, the assessee has engaged qualified staff having specialized knowledge in the field of oil and gas exploration and had incurred major portion of the expenditure on the salaries of the employees. The final allotment of the tender is only the outcome of the various processes and funds infused and therefore, it cannot be held that the business of the assessee had not set up. The business is said to be set up when all the activities in the basket of various activities had commenced and there is clearly a distinction between the setting up of a business and commencement of commercial operations and earning of revenue. From the perusal of profit and loss account, it is seen that apart from major expenditure on salary/wages, there are staff benefit expenses amounting to Rs.56,86,833/- and other expenditure mainly relating to traveling and conveyance, legal and professional charges, repair & maintenance of building, contractor and security services, power and fuel, auditors' remuneration etc. These

expenditures are inextricably linked with the business which, as we find, assessee-company had set-up during the relevant financial year itself. Accordingly, it cannot be held that the business of the assessee had not set up during the financial year. Hon'ble Jurisdictional High Court in the case of CIT vs. LG Electronics (India) Ltd. (supra) had upheld the proposition that there is distinction between the commencement of business and setting up of the business and the two dates need not necessarily clubbed, because section 3 of the Act refers to the date of setting up of business and thereafter the previous year of newly set-up business would commence. Therefore, the expenditure incurred prior thereto can be taken into account for the purpose of newly set up business. Accordingly, we hold that the expenditure aggregating to Rs.98,13,288/- is an allowable expenditure as assessee's business had set up and therefore, the disallowance made by the Assessing Officer and as confirmed by the Id. CIT(A) is directed to be deleted.

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

Order pronounced in the open court on 16<sup>th</sup> Oct., 2019.

Sd/-

**(Prashant Maharishi)**  
**Accountant Member**

Sd/-

**(Amit Shukla)**  
**Judicial member**

Dated: 16<sup>th</sup> Oct., 2019

*\*aks\**

*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*