

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above two captioned cross appeals by the revenue and assessee are preferred against the order of the Id. CIT(A) - 20, New Delhi dated 16.03.2016 pertaining to assessment year 2011-12. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

ITA No. 3158/DEL/2016 [Revenue's appeal]

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs. 55,86,303/- made by the Assessing Officer u/s 24(b) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short].

3. As can be seen from the quantum involved in the Revenue's appeal, the appeal has to be dismissed in the light of the CBDT Circular No. 17/2019 dated 08.08.2019.

4. The Id. DR vehemently stated that this Circular is not applicable to the existing appeals as it is prospective in nature.

5. In our considered opinion, the language of the Circular 17/2019 dated 08.08.2019 clearly shows that it has referred to the earlier Circular 3/2018 and its amendment dated 20.08.2018 vide which monetary limit for filing of Income tax appeals by the department before the ITAT, Hon'ble High Court, SLP/and appeals before the Hon'ble Supreme Court have been specified. It would be pertinent to refer to the Circular No. 17/2019 which reads as under:

"Circular No. 17/2019

New Delhi. 8th August 2019

Subject: - Further Enhancement of Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court - Amendment to Circular 3 of 2018 - Measures for reducing litigation.-

Reference is invited to the Circular No.3 of 2018 dated 11.07.2018 (the Circular) of Central Board of Direct Taxes (the Board) and its amendment dated 20th August. 2018 vide which monetary limits for filing of income tax appeals by the

Department before Income Tax Appellate Tribunal. High Courts and SLPs/appeals before Supreme Court have been specified. Representation has also been received that an anomaly in the said circular at para 5 may be removed.

2. As a step towards further management of litigation. it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly, the table for monetary limits specified in Para 3 of the Circular shall read as follows:

<u>S.No.</u> <u>Appeals/SLPs in IT matters</u>	<u>Monetary Limit</u> <u>(Rs.)</u>
<i>1. Before Appellate Tribunal</i>	<i>50,00,000/-</i>
<i>2. Before High Court</i>	<i>1,00.00.000/-</i>
<i>3. Before Supreme Court</i>	<i>2.00.00,000/-</i>
<i>3. Further, with a view to provide parity in filing of appeals in scenarios where separate order is passed by higher appellate authorities for each assessment year vis-a-vis where composite order for more than one assessment years is passed. para 5 of the circular is substituted by the following para:</i>	

"5. The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the

case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para 3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. Further, even in the case of composite order of any High Court or appellate authority which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para 3. In case where a composite order/ judgement involves more than one assessee. each assessee shall be dealt with separately."

4. The said modifications shall come into effect from the date of issue of this Circular.

5. The same may be brought to the notice of all concerned.

6. This issues under section 268A of the Income-tax Act, 1961.

7. Hindi version will follow. "

6. As mentioned elsewhere by Circular 17/2019, the CBDT has further enhanced the monetary limit for filing of appeals and the same is amendment to Circular 3/2018. We find that Clause 13 of Circular 3/2018 reads as under:

“The Circular will apply to SLPs/appeals/cross objections /references to be filed henceforth in Hon'ble Supreme Court/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/ references. Pending appeals below the specified tax limits in para 3 above may be withdrawn/not pressed.”

7. In light of the above, we are of the considered opinion that Circular No. 17/2019 shall also apply retrospectively to pending appeals. In that view of the matter, the appeal filed by the Revenue stands dismissed.

8. As a result, the appeal of the Revenue stands dismissed.

ITA No. 2283/DEL/2016 [Assessee's appeal]

9. The solitary grievance of the assessee is that the CIT(A) erred in confirming disallowance of business expenses of Rs. 16,16,065/- made by the Assessing Officer u/s 24(b) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

10. On a perusal of the computation of the income vis a vis annual account of the assessee, the Assessing Officer noticed that the assessee has returned income from rent. The Assessing Officer further observed that the assessee did not carry out any business activity and yet claimed loss of Rs. 16,16,065/- under the head 'Income from business'. The assessee was asked to show cause as to why expenditure may not be disallowed since there is no business activity.

11. In its reply, the assessee explained that it is engaged in renting immovable property and for the year under consideration, the assessee company has incurred the following expenses:

1.	Professional & legal charges	-	15,49,885/-
2.	General expenses	-	66,181/-
	Total expenses	-	16,16,066/-

12. The Assessing Officer was of the firm belief that since the assessee has not been engaged in any business activity, therefore, there is no justification of claim of any expense on account of business expenses. The Assessing Officer further observed that the assessee has been allowed statutory deduction under the head 'Income from house property' and, therefore, expenses claimed to the tune of Rs. 16,16,065/- are not allowable expenses and accordingly, disallowed the same.

13. The assessee carried the matter before the Id. CIT(A) but without any success.

5. Before us, the Id. counsel for the assessee drew our attention to the computation of income which is exhibited at pages 24 of the paper book and pointed out that though for the accounting purpose rental income has been shown as business receipts, but while computing the taxable income for the year, rental income has been shown under the head "Income from house property". The Id. counsel for the assessee further drew our attention to the details of expenditure incurred which included professional and legal charges paid to the CA firms for IT matters and Company Law matters and further audit fees paid to

statutory bodies. It is the say of the ld. counsel for the assessee that such expenses are allowable expenses and should be allowed.

6. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and read the relevant observations/findings of the ld. CIT(A).

7. We have given thoughtful consideration to the orders of the authorities below and with the assistance of the ld. counsel for the assessee, we have considered the relevant documentary evidence brought on record in the form of paper book.

8. The bifurcation of expenses claimed by the assessee as exhibited at page 40 of the paper book is as under:

Expense Head	Amount
Professional & Legal	1,549,885
General Expenses ###	66,181
Total Expenses	1,616,066

Prof & Legal Fees -	Details	Total (Rs)
Aneja & Co.	Income Tax	1 5,25,000
Parikh & Associates	Company Law	13,236
Parikh Parekh & Associates	Company Law Matters	5,037
Subramanian Srinivasan & Associates	Company Law matters	6,612
Grand Total		1 5,49,885

9. In our considered opinion, a body corporate has to incur certain expenditure mandatory to maintain its corporate structure. A perusal of the expenses mentioned hereinabove clearly show that all the expenses have been incurred for maintaining corporate structure of the assessee. In our considered view, such expenditure has to be allowed while computing the income of the assessee. Our this view is fortified by the decision of the co-ordinate bench in the case of Mokul Finance Pvt Ltd 29 SOT 11. The relevant findings of the co-ordinate bench read as under:

"3. The material facts of the case are like this. The assessee is a domestic company and, in the relevant previous year, it had income only from interest and dividend. In the course of

scrutiny assessment proceedings, the AO noticed that no business activities were carried out by the assessee. He thus required the assessee to show cause as to "why not the expenses of the assessee be disallowed as there was no business activity during the year" and "the income earned be brought to tax". The assessee submitted that the expenses incurred by the assessee are only on account of salaries and conveyance to staff which was required to run the office, and on account of payment of property tax of the building from which office is run. It was pointed out that there was no sale and purchase of shares in the relevant previous year as the stock market was unstable and market conditions were not stable. There is no dispute about the fact that in the earlier years, the assessee was engaged in business of buying and selling shares and its income from this activity was brought to tax under the head "Business income". The AO rejected the explanation of the assessee by observing that as admittedly there was no business activity during the relevant previous year, no expenses could be allowed. The loss claimed by the assessee was disallowed, and the business income was assessed at 'nil'. Aggrieved, assessee carried the matter in appeal before the CIT(A). The CIT(A) held that the AO has not doubted genuineness of the expenditure, that the expenditure was necessary for running the organisation, that it was neither extravagant nor excessive, and that, therefore, the AO was not justified in disallowing the same. The AO is aggrieved of the relief so given by the CIT(A) and is in appeal before us.

4. Smt. Iyer, learned Departmental Representative, submits that the CIT(A) was influenced by the factors which were not relevant to decide whether or not the expenses in question should be allowed as deduction in computation of business income. She submits that genuineness of expenditure, on which emphasis is placed by the CIT(A), is wholly irrelevant in coming to the conclusion that the expenditure is to be allowed even as there is no business activity during the relevant previous year. It is also pointed out that reasonableness of expenditure also has no bearing on this issue. It is further pointed out that the reasoning of the CIT(A) is vague and lacks specific and cogent reasons, germane to the context, for deleting the disallowance of expenses. Learned Departmental Representative relies upon Tribunals' order in the case of [Adasoft \(India\) \(P\) Ltd. v. Dy. CIT \(2006\) 9 SOT 31 \(Del\)](#) in support of the disallowance of expenditure when business is not in existence. She relies upon the order of the AO, justifies the same, and urges us to restore the order of the AO. Dr. Gupta, learned Counsel for the assessee, supports and justifies the order of the CIT(A). Dr. Gupta submits that the assessee is a company and the expenditure incurred by the assessee are minimal expenditure just to keep the company afloat. It is submitted that the assessee was not carrying out business activity due to adverse market conditions, but the assessee being an artificial juridical person, has to incur expenditure for maintaining its existence

and for carrying out whatever little activities that the assessee is involved in. Our attention is invited to Hon'ble Calcutta High Court's judgment in the case of CTT v. Ganga Properties Ltd. (1993) 199 LTR 94 (Cal) wherein it is held that even when company has only earnings income from other sources, the expenditure incurred by the company for its continued existence and for retaining clerical staff, secretary and accountant and other incidental expenses, are allowable deduction. Dr. Gupta then takes us through the judgment of Hon'ble Punjab and Haryana High Court in the case of Nakodar Bus Service (P) Ltd. v. CLT wherein it was held that even when the assessee's business was discontinued, deduction in respect of salaries paid to employees was allowable deduction against interest income. The next judicial precedent he relies upon is a judgment of Hon'ble Allahabad High Court in the case of CTT v. Rampur Timber and Turnery Co. Ltd. . In this case, it was held that the expenditure incurred by a company, for retaining its status as company and for its continued existence as such, is allowable deduction, even after discontinuation of business in certain circumstances. On the strength of these precedents, he justifies the conclusions arrived at by the CIT(A). His next tier of defence consists of the proposition that only because no business activity is carried on in the relevant previous year, and in the absence of any categorical finding to the effect that business has closed for good, the AO cannot jump to the conclusion that the business has ceased. The distinction between closure of business and suspension of business activity is sought

to be highlighted and the relevant judicial precedents cited. In rejoinder, Smt. Iyer accepts that there is no categorical finding about closure of business, but she adds that the lack of such a finding cannot mean that expenses are to be allowed even as there is no business in existence. She reiterates her submissions and urges us to restore the disallowance made by the AO."

10. Considering the totality of the facts in light of the decision of the co-ordinate bench [supra] we direct the Assessing Officer to delete the addition of Rs. 16,16,065/-.

11. Before parting, we find that the Assessing Officer has relied upon various judicial decisions. A careful perusal of those decisions show that all the decisions relate to the fact that rental income has to be assessed under the head 'Income from house property'. In the case in hand, the assessee has itself assessed rental income under the head "Income from house property'. Therefore, the decision relied upon by the Assessing Officer/DR would do no good to the revenue. Accordingly, the ground raised by the revenue is dismissed.

12. In the result, the appeal of the revenue in ITA No. 3158/DEL/2016 is dismissed and that of the assessee in ITA No. 2883/DEL/2016 is allowed.

The order is pronounced in the open court on 29.01.2020.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 29th January, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	