

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3502/Del/2017
(Assessment Year: 2013-14)

Classic Motors Pvt. Ltd, 101, Competent House, F-14, Connaught Place, New Delhi PAN: AABCC9312R	Vs.	ACIT, Circle-6(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri A. K. Batra, FCA
Revenue by:	Shri Amit Dal, Sr. DR
Date of Hearing	01/11/2019
Date of pronouncement	31/01/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-2, New Delhi dated 31/03/2017.
2. The assessee has raised the following grounds of appeal :-
 - “1. *On the facts and circumstances of the case the Commissioner of Income-tax (Appeals) is wrong in upholding the addition of Rs. 7,93,333/- on account of repair and maintenance expenses on the building and machineries which is used by the assessee company for business purposes.*
 2. *That the Commissioner of Income-tax (Appeals) is wrong in disallowing a sum of Rs. 11,19,161/- being 25% of various administrative expenses.”*
3. Brief facts of the case is that the assessee has filed its return of income on 26/09/2013 declaring income of Rs. 1,99,07,420/-. Assessment u/s 143(3) of the Act was passed on 28/01/2016 declaring total income of the assessee at Rs. 2,43,90,806/-. The assessee preferred appeal before the Id CIT(A) who passed an order partly allowing the appeal of the assessee. Some of the additions were sustained and therefore the assessee is in appeal before us.

4. The first ground of appeal is against the sustaining the disallowance of Rs. 79,33,334/- on account of repairs and maintenance expenditure of building and machinery.
5. The ld AO noted that assessee is engaged in the business of restaurant and bar and banquet hall in the name of Pind Baluchhi & Classic Bangquet on sharing basis with another company. It is also in the business of amusement games. The assessee has incurred an expenditure of Rs. 793334/- , on labour charges of Rs. 338575/- on repairs and maintenance of building of Rs. 343838/-. Repairs and maintenance of generators of Rs 1,10,921/- was also claimed. Assessee has shown part of the property as self occupied and used for business and partly let out. Since, the assessee is claiming 30% deduction on account of repairs and maintenance under the head “income from house property” the ld AO disallowed the above claim. On appeal before the ld CIT(A) he noted that identical issue was there in AY 2009-10 and 2010-11 and ITAT set aside the issue back to the file of the ld AO to bifurcate the expenses incurred on repair and maintenance on rented properties and on self occupied and allowed the repairs and maintenance on the later portion. In absence of any such detail he confirmed the addition.
6. The ld AR submitted that the identical issue is raised before the coordinate bench for Assessment Year 2012-13 and vide para No. 7 and same was set aside to the file of the ld AO.
7. The ld DR reiterated the orders before the lower authorities.
8. We have carefully considered the rival contentions and find that in the present case the situation is identical. The ld CIT(A) has also noted that the assessee has failed to show documentary evidence with respect to repair expenses incurred in connection with the self occupied premises as well as property used for the business of the assessee. However, before us the assessee has furnished the details of such repair expenses. But, in view of the decision of the coordinate bench for Assessment Year 2012-13 wherein, relying on the decision in Assessment Year 2010-11 the matter is restored back to the file of the ld AO, for similar reasons we also set aside this issue to the file of the ld AO. Accordingly, ground No. 1 of the appeal is allowed with above direction.

9. Ground No. 2 is against the confirmation of disallowance of Rs. 11,19,161/- being 25% of various administrative expenses. The fact shows that assessee has incurred expenditure of Rs. 4981277/- related to advertisement, electricity, insurance and printing and stationary charges etc. The assessee could not establish that how the same is allowable as business expenditure therefore, the AO made disallowance of 25% of such expenditure.
10. On appeal before the ld CIT(A), the ld CIT(A) confirmed the addition.
11. Before us the assessee submitted that similar issue was involved i.e. earlier years the addition was also deleted by the coordinate bench. He referred to the orders of the coordinate bench for Assessment Year 2010-11 and 2011-12. He submitted that the ld CIT(A) erroneously confirmed the addition on ad hoc basis.
12. The ld DR supported the orders of the lower authorities.
13. We have carefully considered the rival contentions and find that the disallowance made by the ld AO is an ad hoc disallowance. If on examination, the ld AO does not find any expenditure, not related to the business of the assessee, he should have disallowed only the expenditure to that extent. In fact, the disallowance made by the AO is merely adhoc disallowance. The ld CIT(A) failed to note that the assessee himself has disallowed Rs. 5,04,632/- being expenses in relation to let out properties. Therefore, without finding any further expenditure related to the income from house property, the confirmation of the ad hoc disallowance by the ld CIT(A) cannot be accepted. When the assessee says that it has incurred expenditure for the purpose of business it is for the AO to say that these expenditure are not wholly and exclusively incurred for the purpose of business. It is not the case of the revenue that assessee has not furnished relevant information or details of such expenditure. Accordingly, ground No. 2 of the appeal is allowed.
14. In the result appeal of the assessee is allowed for statistical purposes.
Order pronounced in the open court on 31/01/2020

-Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 31/01/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi