

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 1588/Del/2020
(Assessment Year: 2018-19)

SNW Smith Consultants Pvt. Ltd, 8 th Floor, Commercial Tower, Hotel Le-Meridien, Janpath, New Delhi PAN: AAKCS4626B	Vs.	ACIT, Central Circle-5, New Delhi
(Appellant)		(Respondent)

Assessee by :	Ms. Hasneeta Matta, Adv Shri Mahesh Kumar, Adv
Revenue by:	Shri H. K. Choudhary, CIT DR
Date of Hearing	04/11/2020
Date of pronouncement	27/11/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-24, New Delhi dated 05.08.2020 for the Assessment Year 2018-19, wherein, the sum of Rs. 1886568/- disallowed by the Id AO were confirmed.
2. The assessee has raised the following grounds of appeal:-
 - "1. *The appellant is a company engaged in the business activities of trade finance, like Letter of Credit and Bill discounting besides consultancy, advisory, structuring and management services relating to trade finance transactions.*
 2. *The return of income for the year under consideration was filed on 30.10.2018 declaring a loss of Rs.21,39,712/.*
 3. *The said return was taken up for assessment u/s 143(3) of the Income Tax Act, 1961 ("Act") and order dated 30.12.2019 passed by Asstt. CIT, Central Circle-5, New Delhi ("Ld. A.O."), assessing the loss at Rs.2,53,144/- after a total disallowance of Rs.18,86,568/- being expenses on account of professional charges (Rs.10,20,000/-) and security services (Rs.8,66,568/-).*

4. *The Ld. A.O. disallowed the professional charges and security services on the ground that there was no business activity of the appellant during the year and that the appellant has not incurred any expenses on rent during the year.*
 5. *During the course of the assessment vide letter dated 25.12.2019 it was submitted that "during the year the business was continued, bank accounts maintained, all statutory compliances were made and the only thing is that no revenue collected during the year and it does not mean that the business has been discontinued".*
 6. *The appellant preferred an application dated 03.02.2020 u/s 154 of the Act seeking rectification of mistake apparent from record as the business expenses incurred are bonafide business expenses as per audited financials which were available with the Ld. A.O. The said application was dismissed vide order dated 06.02.2020 u/s 154 of the Act."*
3. Brief facts of the case shows that the assessee is a company engaged in the business of trade finance. It consists of advisory on letter of credit, bill discounting, advisory, management services relating to trade finance transactions. The assessee filed return of income on 30.10.2018 declaring a loss of Rs. 2139712/-. The case of the assessee was taken up for scrutiny. There is also one more fact which need to be looked into that search in this case was initiated on 28.11.2017. On perusal of the profit and loss account the Id AO found that the assessee has claimed expenditure on account of professional charges and security services amounting to Rs. 1020,000/- and Rs. 866568/- respectively. The Id AO noted that there was no business during the year therefore, he asked that why the above sum should not be disallowed as there is no business in that company. He further noted that as there is no rent paid why expenses can be claimed on security charges. The assessee submitted that during the year the business of the assessee continued, bank account were maintained and all statutory compliance were made. It was further stated that as no revenue could be collected, it does not mean that business has been discontinued. The Id AO was not impressed by the explanation as the assessee did not carry out any activity. Further as no rent was paid how the security expenditure were incurred was also doubted. Therefore, he disallowed the above sum of Rs. 1886568/- and

determined the total loss of the assessee as per order dated 30.12.2019 at Rs. 253144/-.

4. The assessee aggrieved, preferred an appeal before the Id CIT(A). The Id CIT(A) confirmed the above disallowances. He held that the appellant did not have business receipt and there was no justification as to why this expenditure were incurred. He further held that no evidence has been furnished that any business has been set up by the appellant company. Therefore, assessee is in appeal before us.
5. The Id AR submitted a detailed paper book containing 5 pages wherein, the copies of the invoices of consultancy and security services charges along with ledger account are furnished. The Id AR further submitted a detailed compilation of several judicial precedents for allowability of this expenditure. In the end the Id AR submitted that the above expenditure is allowable to the assessee as in the absence of the categorical finding that the business ceased to exist or has been closed, genuine business expenditure cannot be disallowed merely because no revenue generating activity has taken place in given year. For this proposition she relied upon the decision of the coordinate bench in Aarkaaye Builders and Development Pvt. Ltd Vs. ITO 3552/Del/2011. She also relied upon the decision of the Hon'ble Delhi High Court in CIT Vs. Dhookketu Builders and Development Pvt. Ltd 216 Taxmann 76.
6. The Id DR vehemently supported the orders of the lower authorities. He submitted that the assessee has paid a sum of Rs. 10 lakhs to one person for legal advisory as a professional fees. The assessee has not given any details about the nature of the services for which client these above fees was paid. He further referred to the nature of the business of the assessee and submitted that in absence of any work the above expenditure cannot be allowed as taxable expenditure. He further submitted that it is also not shown that where these expenditure has been incurred on behalf of a client or on its behalf. He further stated that the assessee did not explain that what documents were examined by the lawyer or consultant for which fees was paid for legal advisory. With

respect to security services he submitted that there is no property owned or rented by assessee and therefore what for security services charges paid by the assessee is not clear. He therefore, submitted that the assessee has failed to provide any justification of those expenditure whether there are wholly incurred for the purpose of business or not.

7. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has incurred certain expenditure which is disallowed by the Id AO for the reason that the assessee does not have any income during the year and consequently no premises were available with the assessee. Before the Id CIT(A) the assessee submitted the details of professional fees of Rs. 10 lakhs to Mr. Raj Narayan Gupta and fees of Rs. 20 lakhs paid to MZ and Associates. With respect to security services it was stated that the assessee has not paid any rent but has moved into basement of Thapar House being the premise of its group company. The assessee carried out its work from that premises and therefore, security personal continued to be deployed. For the above proposition the assessee has only produced the copies of the bills and ledger account of the expenditure. With respect to the legal expenditure of Rs. 10 lakhs it was not known that what for the above legal expenditure were paid by the assessee. The narration of the above bills speaks that it is professional fees for providing legal opinion and drafting of various legal documents for the clients of the assessee Rs. 10 lakhs are charged. With respect to Rs. 20,000/- the same were paid for the certification related to the companies law filing with MCA. Therefore out of professional fees Rs. 1020,000/- disallowance of Rs. 20,000/- requires to be deleted. But for the legal fees / professional charges, assessee needs to show that whether these expenditure are wholly and exclusively incurred for the purposes of business. Assessee also needs to elaborate the facts about the fact business of the assessee has not ceased to exist. Further, with respect to the security charges a sum of Rs. 60450/- per month were paid to one agency for providing security charges, but assessee needs to establish that those premises are used for the purposes of the business of the assessee. Assessee must show that

it operates from that premises and why it bears whole of the security charges. In view of this, we set aside issue back to the file of the Id AO with respect to legal fees of Rs 10 Lakhs and Security charges with direction to the assessee to prove that same were incurred for the purposes of the business and business of the assessee has not ceased to exist. The judicial precedents relied up on by Id AR on different and distinguishing facts. In the result ground no 3 of the appeal is partly allowed.

8. All other grounds of appeal are merely supportive in nature.
9. In the result appeal of the assessee is partly allowed with above direction.

Order pronounced in the open court on 27/11/2020.

Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 27/11/2020
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	25.11.2020
Date on which the typed draft is placed before the dictating member	25.11.2020
Date on which the typed draft is placed before the other member	27.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	27.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	27.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	27.11.2020
Date on which the final order is uploaded on the website of ITAT	27.11.2020
date on which the file goes to the Bench Clerk	27.11.2020
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	