

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 2022/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2015-16

M/s.Parrot Grove P. Ltd.,
570, I Floor, Anna Salai,
Teynampet, Chennai – 600 086.

The DCIT,
v. Corporate Circle 5(1),
Chennai.

PAN: AADCP 5727F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri B.S. Purushottam, CA
: Shri Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 24.02.2021

घोषणा की तारीख/Date of Pronouncement

: 19.03.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-3, Chennai, dated 29.04.2019 and pertains to assessment year 2015-16 .

2. The assessee has raised the following grounds of appeal:-

1. The order the Commissioner of Income Tax (Appeals) is contrary to law, facts of the facts and material on record.
2. The commissioner of Income Tax (Appeals) grossly erred in dismissing the assessee's appeal challenging the disallowance of expenses on the ground that there was no commercial activity during the relevant previous year.

The commissioner of Income Tax (Appeals) failed to appreciate that the assessee company was set up in the year 2005 and that substantial sum of revenue was realised from commercial activity during the years ended 31/03/2012, 31/03/2013 and 31/03/2014 as is evident from the financial for the respective years.

The Commissioner of Income Tax(Appeals) is not justified in holding that the expenses incurred during the year have no nexus to the business activities of the assessee company.

The commissioner of Income Tax (Appeals) ought to have appreciated that the expenditure is deductible since the company is bound to incur expenditure to maintain its office, payment of salary, rent, etc.

3. For these grounds and such other grounds as may be canvassed either before or during the course of appeal proceedings the appellant prays that the Incometax Appellate Tribunal may be pleased to direct the officers below to withdraw the disallowance made and accept the income returned by the appellant and render justice.

3. The brief facts of the case are that the assessee company is engaged in the business of real estate development and construction, investment in real estate and trading of commodities, filed its return of income for the assessment year 2015-16 on 29.09.2015 declaring 'Nil' total income. During the year under consideration, the assessee has claimed various

expenses of Rs.4,92,14,830/-, however, not offered any revenue from operations except income from other sources of Rs.36,67,454/-. The AO during the course of assessment proceedings, called upon the assessee to justify deduction towards huge expenditure when there is no revenue from operations for the impugned assessment year. In response, the assessee submitted that although there is no revenue from operations for the impugned assessment year but fact remains that the assessee is in the business of real estate and needs to continue its operations for which necessary expenditure needs to be incurred. Therefore, merely for the reason that there is no revenue from operations, genuine expenditure incurred wholly and exclusively for the purpose of business cannot be disallowed. The AO however was not convinced with the explanation furnished by the assessee and according to him there is no justification for claiming huge expenditure, when there is no business operation for the year under consideration. Therefore, he was of the opinion that there is no nexus between expenditure debited into profit & loss account and business operation of the assessee and therefore, following the decision of ITAT, Bangalore in the case of Kingfisher Training & Aviation Services Ltd., vs.

ACIT disallowed entire expenditure debited into profit & loss account amounting to Rs.4,32,62,470/-.

4. Being aggrieved by the assessment order, assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee reiterated its arguments taken before the Assessing Officer and submitted that when there is a temporary null in the business, relevant expenditure incurred for maintaining continuity of business cannot be disallowed merely for the reason that there is no revenue from operations. The Id.CIT(A) after considering the relevant submissions of the assessee and also by relying upon certain judicial precedents including the decision of Hon'ble Supreme Court in the case of CIT vs. Amalgamations Pvt. Ltd., (1997) 226 ITR 188 held that nexus between expenditure and business is essential for allowing deduction u/s.37(1) of the Act. He further observed that the burden is on the assessee to prove the expenditure claimed satisfies all the ingredients of section 37(1) of the Act. Further, mere payment by itself would not entitle an assessee to claim deduction of a particular expenditure unless the same is provided to be paid for commercial considerations. Therefore, he opined that when there is no

business activity, claiming huge expenditure does not prove the nexus between expenditure and business operation of the assessee. Accordingly, held that there is no error in the findings recorded by the AO while disallowing expenditure debited into the profit & loss account and hence, confirmed addition made towards disallowance of expenditure and dismissed the appeal filed by the assessee. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The Id.AR for the assessee submitted that the Id.CIT(A) has erred in confirming additions made by the AO towards disallowance of expenses without appreciating the fact that when there is temporary null in the business, genuine expenditure incurred for the purpose of business cannot be disallowed merely for the reason that there is no revenue from operations. He, further submitted that there is no finding of fact from the AO that expenditure debited into profit & loss account are not genuine. There is no observation from the AO regarding genuineness of payment made by the assessee. Therefore, when expenditure incurred by the assessee are genuine in nature, which are incurred wholly and exclusively for the purpose of business then

the same cannot be disallowed for the simple reason that there is no revenue from operations, when the assessee has explained reasons for no revenue from operations.

6. The Id.DR on the other hand, strongly supporting order of the CIT(A) submitted that it is an essential condition for allowing any expenditure, that there should be nexus between expenditure and business operations. Unless the assessee proves the nexus, then merely for the reason that said expenditure has been paid through cheques cannot be allowed as deduction. The onus is on the assessee to prove the nexus. In this case, the facts brought out by the authorities clearly indicate that the assessee has failed to prove nexus between expenditure and business operations. Therefore, there is no error in the finding recorded by the Id.CIT(A) to confirm addition made towards disallowance of expenses.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. It is an admitted fact that in order to claim deduction for any expenditure, the onus is on the assessee to prove nexus

between expenditure claimed and business operations. It is also an admitted fact that when there is a temporary null in the business, genuine expenditure incurred for continuity of business operations cannot be disallowed simply for the reason that there is no revenue from operations for the impugned assessment year. In this legal background, if we examine the case of the assessee, it is not the case of the AO that the assessee has not commenced its business operations during the year under consideration. It is also not a case of the AO that the assessee has not earned any revenue from operations in the past. In fact, the evidences filed by the assessee clearly prove that the assessee has revenue from operations right from AY 2011-12 to AY 2014-15. But, there is no revenue from operations for the impugned assessment year. The assessee has explained the reasons for no revenue from operations as per which, there is a temporary null in the business, because of this, assessee could not realize any revenue from operations, but the business operations of the assessee are continued to be carried on, for which it has incurred various expenses. We find force from the arguments of the assessee that the assessee was in the business and has earned substantial revenue from operations up to AY 2014-15. But, fact remains

that for the impugned assessment year, there is no revenue from operations. Therefore, in order to allow deduction for any expenditure, the assessee should prove the nexus between expenditure incurred and debited into profit & loss account and business operations of the assessee. Further, assessee also needs to prove that expenditure has been wholly and exclusively incurred for the purpose of business. In this case, on perusal of details filed by the assessee, we find that although assessee has debited huge expenditure under various heads of expenditure, but failed to file any evidences to prove that there is a nexus between expenditure debited into profit & loss account and business operations of the assessee. Therefore, it is a well settled principle of law that whether or not any revenue from operations normally overhead expenditure incurred for maintaining corporate status of the assessee needs to be allowed. But, to ascertain the fact with regard to nature of expenditure and necessity of incurring such expenditure with reference to business operations of the assessee, the evidences needs to be examined by the AO. Therefore, to verify the claim of the assessee that there is a nexus between expenditure debited into profit & loss account and business operations, the issue has been

set aside to the file of the AO with a direction to the AO to reconsider the explanation furnished by the assessee along with necessary evidences. In case, the AO finds that the expenditure debited into profit & loss account are necessary to incur for maintaining corporate status of the assessee, then the expenditure incurred by the assessee needs to be allowed irrespective of the fact that there is no revenue from operations.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 19th March, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th March, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |