

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Ms. Suchitra Kamble, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 6991/Del/2017 : Asstt. Year : 2013-14**

Bimla Devi, 2/6, East Patel Nagar, New Delhi-110008	Vs	ACIT, Circle-50(1), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ABCPD3481D</b>		

**Assessee by : Sh. Y. P. Rawla, CA**

**Revenue by : Sh. V. K. Kataria, Sr. DR**

**Date of Hearing: 18.02.2021**

**Date of Pronouncement: 19.03.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-17, New Delhi dated 29.09.2017.

2. Following grounds have been raised by the assessee:

*"1. The impugned order of assessment made by Assessing Officer and upheld by Ld.CIT (A) is bad in law, wrong on facts and absolutely based on suspicion, surmises and conjectures.*

*2. The Assessing Officer and Ld.CIT (A) has erred in rejecting the revised computation filled during the assessment proceedings. The additional claim in the revised return was interest paid on O. D. limit of bank utilized for business purpose.*

*3. The Assessing Officer and Ld.CIT (A) has erred in disallowing expenses which were exclusively for*

*business purpose and there is no justification of the disallowance.*

*4. The CIT Appeal has erred in dismissing the grounds of appeal regarding the rejection of revised return.*

*5. It is prayed that appellant may be allowed to add further grounds of appeal at the time of hearing.*

*It is prayed that the addition made of Rs. 2,26,854/- may be deleted and the revised computation may be considered wherein the business loss is increased by Rs. 90,24,572/-."*

3. The assessee filed original return of income declaring a loss of Rs.1,65,97,098/- which has been assessed at Rs.1,63,70,250/- by making 20% disallowance of expenses of Rs.2,26,844/- on account of,

a.	Business Promotion	Rs.1,47,440/-
b.	Car Expenses & Repair	Rs.42,837/-
b.	Festival Expenses	Rs.1,17,434/-
c.	Telephone Expenses	Rs.2,21,777/-
d.	Staff Welfare	Rs.5,61,928/-
e.	General Expenses	Rs.42,802/-

4. Further, the assessee filed revised computation of income during the assessment proceedings declaring a loss of Rs.2,56,21,670/- thus increasing the loss by Rs.90,24,572/- which the Assessing Officer has rejected holding that the revised computation was not supported by the revised return in accordance with Section 139(5) of the Income Tax Act, 1961.

5. The Id. CIT (A) confirmed the order of the Assessing Officer.

6. Heard the arguments of both the parties and perused the material available on record.

7. The revised computation submitted before the AO is as under:

<i>Income from business and profession</i>	<i>-11,962,975.00</i>
<b>REGENT GRAND</b>	
<i>Business Loss as per Original Computation</i>	<i>-27,189.00</i>
<i>Unabsorbed Depreciation</i>	<i>-2,911,214.00</i>
<i>Less: Interest paid on overdraft</i>	<i><u>-1,917,560.00</u></i>
	<i><u>-4,855,963.00</u></i>
<b>PROPERTY BUSINESS</b>	
<i>Loss as per Profit &amp; Loss Account not claimed in the original computation</i>	<i>-7,107,012.00</i>
<i>Income from Capital Gain As per Original Computation of Income</i>	<i>-13,674,227.00</i>
<i>Income from Other Sources</i>	<i>-15,532.00</i>
<i>Net Loss</i>	<i>-25,621,670.00</i>
<i>to be carried forward</i>	
<i>Capital Gain</i>	<i>-13,674,227.00</i>
<i>Unabsorbed Depreciation</i>	<i>-2,911,214.00</i>
<i>Carried Forward Business Loss</i>	<i>-9,051,761.00</i>
<b>Exempt Income</b>	
<i>Agricultural Income</i>	<i>-1,116,020.00</i>
<i>Refund Due</i>	<i>-8,180,00</i>

THE REASON FOR REVISED COMPUTATION:

*The assessee has claimed loss on account of interest paid on OD A/c with Bank of Baroda. The detail is explained as under:*

*The assessee had purchased a plot at 13/12, WEA, Karol Bagh, New Delhi, for trading purpose.*

*Detail of source of purchase amount was as under:*

*The payment of Rs. 800 lacs was made from paid out of borrowings from Bank of Baroda OD A/c with Bank of Baroda jointly with Sh. Satbir Singh.*

*The assessee deposited Rs. 200 lacs in the said OD A/c out of sale of Farm House (Capital Gain of the same is declared in the computation) and Rs. 100 lacs from other unsecured loans raised during the year deposited to the said OD A/c. On the basis of the utilization of OD amount and interest amount comes to Rs. 71,07,012/- on OD account which was utilized for the acquisition of stock in trade.*

*But at the time of filing the Income Tax Return the said property was declared in Stock in Trade of Sh. Satbir Singh. The assessment of Sh. Satbir Singh is also under process before Income Tax Officer, Ward 51(5), New Delhi and we have already filed the modified Trading Account before the Income Tax Officer, Ward 51(5), New Delhi.*

*The assessee paid interest on the OD limit which was not claimed in the original return. A trading, profit & loss account has already been submitted.*

*Copy of the said OD A/c Bank Statement is enclosed for verification. The assessee has paid further interest on OD limit and calculation of interest on the basis of utilization of the amount for business purpose interest paid upto 15/10/2012 comes to Rs. 14,92,217/- which needs to be capitalized to assets i.e. equipment and other plant & machinery and interest paid after 15/10/2012 of Rs. 19,17,560/- is allowable as business expense.*

*The assessee was constructing building and purchasing equipments, air-conditioner, and other plant & machinery for the use of firm M/s. Regent Grand. The funds were transferred from the OD limit in the saving account and in the firm M/s. Regent Continental for repayment of EMI of ICICI Bank Term Loan and also for purchase of assets. While finalizing the balance sheet of the firm, the payment made before 15th Oct, 2012 were taken to Capital A/c without going into depth about the sources of capital. The interest paid on OD withdrawal on account of the assessee has been worked out and submitted to your office. The interest paid is allowable as business expense thus the same is claimed in the revised computation.*

*Due to time limitation, the revised return cannot be filed thus the claim made during the assessment proceedings may be allowed. The detail of amount utilized out of the said OD A/c is separately furnished for verification*

*Sources of Capital in the Firm*

*The assessee had taken loan of Rs. 1260 lacs from ICICI Bank in Oct, 2010 for purchase of land and construction of building.*

*The assessee purchased plot for construction of hotel of Rs. 804 lacs and paid stamp duty. Total amount Rs.8,36,66,100/-.*

*Amount used for construction of the building was Rs.2,72,16,464/-.*

*Amount used for repayment of interest upto 15/10/2012 was Rs. 2,19,83,666/*

*Amount used for payment of vendors for purchase of equipments, plant & machinery was Rs. 1,52,73,716/-*

*The loan from ICICI Bank outstanding as on 10/10/2012 was Rs.1,18,43,121/-*

*Balancing amount was taken to Capital A/c.*

*The assessee has utilized the OD limit with Bank of Baroda jointly held with Sh. Satbir Singh for the purchase of business assets such as equipment, air-conditioner, plant & machinery, etc. and repayment of EMI of ICICI Bank. The EMI were repaid through a partnership firm, Regent Continental.*

*Copy of capital account of Regent Continental for 2011-12 & 2012-13 is enclosed for verification of repayment of EMI of ICICI Bank. On the basis of scrutiny of the said OD A/c, the total amount utilized comes to Rs. 2,84,57,000/-for business purpose.*

8. The sources of Regent Continental are from OD A/c Bank of Baroda. The same is summarized as under:

1. Transfer from OD A/c to Regent Continental	1,68,00,000
From Regent Continental to EMI	1,65,77,211
From Regent Continental to Vendor	50,66,138
Amount refunded by Regent Grand to Regent Continental	26,05,350
2. From OD A/c to Saving Bank A/c	99,75,000
From Saving Bank to Construction	55,76,478
Payment to Vendors	76,74,616

The EMI of ICICI was routed through Regent Continental. It was wrongly debited to Satbir Singh Capital A/c upto 31/03/2012. The same was transferred during the year 2012-13 by the firm. Copy of Bank Pass Book is enclosed for verification of capital invested in the business.

9. The revenue authorities refused the claim of the assessee on the following grounds:

- The OD limit from Bank of Baroda is held jointly by the appellant and her husband Sh. Satbir Singh.
- The OD limit was utilized for the purpose of purchase of share in old building.
- The building is in the name of Mrs. Bimla Devi i.e. the appellant.
- This building was declared as stock in trade of Sh. Satbir Singh.

- There is no clarification as to whether the claim of building as stock in trade of Sh. Satbir Singh has been later revised.
- A revised computation of Smt. Bimla Devi was however, filed claiming that the same building was stock in trade of property business of the appellant
- Thus the appellant made a fresh claim of existence of a new business interest - property business - which was never in existence at the time of filing of original return or in the preceding previous year.
- There is no evidence that the appellant is in the business of purchase and sale of property.
- The only instance filed as evidence by the appellant is assessment order for assessment year 2004-05 in which the appellant had purchased land and constructed some shops which were sold during the year, but these were also shown as profit on sale of shops and not as a property business.
- Thus it is apparent that the claim made by the appellant of existence of property business is an afterthought to claim interest paid on the OD limit of bank of Baroda, which is otherwise not an admissible expense since, there is no nexus with the existing business of the appellant.
- Keeping in view the above facts, the claim of the appellant that the revised computation may be taken for computation of income cannot be accepted. Further, the

decision of the AO to reject it on the basis of delay in claim and the reliance on the decision of Goetze India Ltd. Vs. CIT is also upheld.

10. Culling the relevant facts, we find that the assessee has paid interest on OD limit from Bank of Baroda. The assessee has utilized OD limit jointly held with Shri Satbir Singh for the purchase of business assets. There are two entities namely Regent Grand and Regent Continental, the EMI has been paid from Regent Continental which was wrongly debited to Satbir Singh capital account upto 31.03.2012.

11. Having gone through the crux of the issue, the interest paid by the assessee has to be given benefit of deduction unless found contra. We in principle hold that the assessee is eligible to file revised computation which has to be given due consideration by the revenue authorities.

12. The matter is referred to the file of the Assessing Officer for verification of the facts to examine the claim of the assessee with regard to the loan availed, interest paid and if the interest has been debited to capital account of Shri Satbir Singh or not by going through the bank statements.

13. The appellant has also challenged the disallowance of 20% of the expenses. The disallowance was made by the revenue authorities on the basis that the appellant was unable to file complete bills/vouchers and other details, such as log books, and other documentary evidence to support the expenses. It has also been pointed out by the AO that some expenses have been incurred in cash and there are hand written and self-made

vouchers. The Id. CIT (A) held that there is always possibility to inflate the expenditure on the basis of self-made vouchers which we are unable to accept.

14. We have gone through the assessment order and the reason given by the Assessing Officer that the expenses are neither fully vouched nor fully verifiable. The AO did not bring on record as to what enquiries he wanted to conduct for verification of the vouchers. No disallowance is warranted owing to non-verification of the vouchers produced by the assessee. With regard to the expenses for which no vouchers have been produced, the assessee is hereby given another opportunity to produce all the bills and vouchers before the revenue authorities.

15. In the result, the appeal of the assessee allowed for statistical purposes.

Order Pronounced in the Open Court on 19/03/2021.

Sd/-

**(Suchitra Kamble)**  
**Judicial Member**

**Dated: 19/03/2021**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**