

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, SMC: NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6505/Del/2018  
Assessment Year : 2014-15**

**M/s Universal Book  
Distributors Pvt. Ltd.  
5, Ansari Road, Daryaganj,  
Delhi-110002  
PAN-AAACU0004B**

**Vs. Income Tax Officer,  
Ward-27(1),  
Room No.199, C.R. Building,  
New Delhi**

**(Appellant)**

**(Respondent)**

Appellant by : Ms. Aditi Gupta, CA  
Respondent by : Sh. R.K. Gupta, Sr. DR

Date of hearing : 04.03.2021  
Date of pronouncement : .03.2021

**ORDER**

**PER R.K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 26.07.2018 of the CIT(A)-9, New Delhi, relating to Assessment Year 2012-13.

2. Facts of the case, in brief, are that the assessee is a company and is engaged in the business of trading of books, etc. and also derives rental income. It filed its return of income on 30.09.2014, declaring loss of Rs.4,06,236/- and book profits u/s 115JB of the Act for Rs.11,81,114/-.

3. During the course of assessment proceedings, the Assessing Officer noted that the assessee has declared rental income of

Rs.53,89,061/- and business receipt for Rs.1,32,865/-. He noted that total purchases made by the company was Rs.1,09,613/- from M/s USB Publishers Distributors Pvt. Ltd. (a company in which the director of the assessee is also the substantial share holder and director). The total sales of Rs.1,32,865/- includes an amount of Rs.10,653/- as miscellaneous cash sales and Rs.1,22,211/- for sales to faculty of management, Mohan Lal Sukhadia University, Udaipur. He noted that the assessee has claimed huge expenses under the head "employee benefit expenses" for Rs.41,96,607/- against the total sales amount of Rs.1,32,865/-. The amount of employee expense of Rs.41,96,607/- includes remuneration to Directors of Rs.39 Lakhs. From the various details available with him, he noted that the assessee company was not actually indulged in the business of distribution of books but the intention of the assessee to show the business income was to adjust the huge remuneration paid to the director which is not allowable out of the rental income under the head 'Income from House Property'.

4. The Assessing Officer referred to the assessment order of AY 2012-13 and noted that the assessee company during the impugned assessment year was also following the same modus operandi of adjustment of the income from house property against the heavy losses claimed against business & profession as in the AY 2012-13. He, therefore, asked the assessee to substantiate such huge losses adjusted against the rental income. Rejecting the various explanation given by the assessee, the Assessing Officer computed the income at Rs.37,37,983/- by disallowing the business loss of Rs.41,44,219/-.

5. Before the CIT(A), the assessee made elaborate arguments. However, the CIT(A) also was not satisfied with the arguments advanced by the assessee and upheld the disallowance made by the Assessing Officer by observing as under:-

*“5.2. I have carefully considered the assessment order and the submission made by the AR on the above issue. The appellant company has claimed that it is engaged in the business of supply of books and net loss has been shown from the business at Rs. 41,44,219/- whereas the net income from house property has been shown at Rs. 37,37,983/-. The AO observed that the appellant has only one purchase bill amounting to Rs. 1,09,613/- and that too from its sister concern. Moreover, major sale has been made to only one party i.e., to Mohan Lai Sukhadia University amounting to Rs. 1,22,211/-. The appellant has shown rental income at Rs. 53,39,976/- and adjusted the business loss against it.*

*5.3. During the course of the appellate proceedings, the appellant argued that the quantum of purchase and sale cannot determine whether any business activity is carried out or not. The AR relied on judicial pronouncements wherein even when there was no transaction, the Courts have held that business can still be held to be carried out. However, the decisions relied upon by the appellant are distinguishable because the appellant could not prove with sufficient evidence that any business activity was carried out by the appellant. Merely producing the copy of emails to show that the orders were procured through emails, was not sufficient. Regarding the purchase made from the sister concern, the AR argued that there is no provision in law which bars the appellant from entering into a business transaction with its sister concern. There is no doubt that purchases can be made from sister concerns. However, on perusal of the facts in hand, it appears that the transaction of purchase has been done merely to show that a business activity has been carried out, whereas in effect, no business activity has actually been undertaken by the appellant.*

*5.4 The AR also argued on the aspect of commercial expediency and submitted that the question of commercial expediency is to be judged by the appellant and not by the AO and also relied on various judicial pronouncements. The case laws relied by the appellant are applicable when there is a business activity and thereafter, certain expenditure is incurred wholly and exclusively for the purpose of the said activity. The aspect of commercial expediency plays its role only in such circumstances to determine*

*whether the expenditure is allowable or not. I have already held in the preceding paragraph that the appellant had not carried out any business activity during the year under consideration. Hence, the question of commercial expediency does not arise.*

5.5 *As far as the contention of the AR, that both the appellant as well as the director, fall under the same tax bracket of 30%, is concerned, I do not agree with this aspect also. Both the persons are separate taxable persons and hence, this argument is not acceptable that disallowance in the hands of the appellant leads to double taxation.*

5.6 *I do not find any infirmity in the order of the AO. The appellant has claimed to have shown the rental income merely to set off the business loss. From the facts, it is clear that in order to reduce the tax liability, the appellant has created an impression of doing a business by introducing small amount of purchase from its sister concern and claimed huge expenditure of remuneration as a business expense. The amount of remuneration payable to the director of the appellant was in fact connected with the enhancement of rent which is definitely not for the purpose of business of the appellant.*

5.7 *Moreover, disallowance on identical issue was made by my predecessor in the case of the appellant during AY 2012-13. The appellant had filed an appeal before Hon'ble Delh Tribunal against that order which was remanded back to the file of the AO. The AO after due consideration, made the same disallowance of business loss and he held that in the years prior to AY 2012-13, no remuneration was paid to the director and in fact the quantum of sales was also very low (as was in AY 2014-15 i.e., the year under consideration). The payment of remuneration started only from AY 2012-13 when the property was let out and hence, it is amply clear that the remuneration was paid with the sole intention to reduce the tax liability by setting it off against the property income.*

5.8 *In view of the above and considering the fact that on identical issue the disallowance was sustained by my predecessor, the addition made by the Assessing Officer is hereby confirmed and this ground of appeal of the appellant is dismissed."*

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:-

1. (a) *That the learned CIT(A) has erred in sustaining the disallowance of business loss amounting to Rs. 41,44,219/-, made by the learned Assessing Officer on the alleged contention that no business was carried on by the appellant since only one purchase has been made merely to show that a business activity has been carried out and major sale has been made to only one party.*
- (b) *That further in this connection, the learned CIT(A) has erred in concurring with the contention of the learned Assessing Officer that the managerial remuneration of Rs. 39,00,000/- paid to the Managing Director, had been paid with the intention to reduce the income from house property which the appellant earned during the year under consideration.*
- (c) *That in this connection, the learned CIT(A) has erred in disregarding the aspect of commercial expediency.*
- (d) *That in any case and without prejudice, no loss to revenue is caused as the Managing Director has paid tax at the same rate at which the appellant was taxable.”*

7. The Learned counsel for the assessee referring to the copy of the order of the Tribunal in assessee's own case for AY 2012-13 submitted that identical issue had come up before the Tribunal in assessee's own case for the AY 2012-13. The Tribunal vide ITA No.172/Del/2019, order dated 21.02.2020 has decided the issue in favour of the assessee. Since, the CIT(A) while deciding the issue against the assessee has followed the order of his predecessors for AY 2012-13 and since, the Tribunal has decided the issue in favour of the assessee, therefore, this being a covered matter in favour of the assessee, the grounds raised by the assessee should be allowed.

8. The Ld. DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT(A).

9. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also gone through the order of the Tribunal in assessee's own case for AY 2012-13. We find that the assessee in the instant case, is engaged in the business of supply of books and is also deriving income from house property. It has shown loss from business at Rs.41,44,219/- and the income from house property at Rs.37,37,983/-. Since, the assessee has made purchases of Rs.1,09,613/- and that too from its sister concern and since, the major sale has been made to only one party i.e. to Mohan Lal Sukhadia University amounting to Rs.1,22,211/-, the Assessing Officer held that the intention of the assessee was only to set off the rental income against such business loss. He, therefore, disallowed the business loss claimed by the assessee against the rental income. We find that CIT(A) confirmed the action of the Assessing Officer, the reason of which has already been reproduced in the preceding paragraphs.

10. We find that the CIT(A) while deciding the issue against the assessee has followed the order of his predecessors for AY 2012-13. We find the order of the AY 2012-13 of the CIT(A) has been reversed by the Tribunal in assessee's own case vide ITA No. 172/Del/2019, order dated 21.02.2020. The relevant observations of the Tribunal reads as under:-

*“4. On the perusal of record and after hearing both the authorized representatives, the limited issue which arises is against the disallowance of the managerial remuneration paid to the Managing Director Sh. Anshul Chawla of Rs. 36 Lacs.*

*5. The Hon'ble Bombay High Court in CIT Vs. Indo Saudi Services (Travel) (P.) Ltd. (2008) 219 CTR 562 (Bom) had laid down the proposition that where the assessee and its*

*subsidiary were in the same tax bracket and paid same rate of tax, there was no question of diversion of funds by paying higher rate to the subsidiary company and hence no disallowance under section 40(A)(2) of the Act. Applying the said proposition to the facts of the case where the Director Shri. Anshul Chawla is assessed to tax and has paid taxes on the said remuneration received by him then it cannot be said that there was diversion of funds by the assessee to its Managing Director for tax avoidance. Hence there is no merit in making any disallowance on account of the said managerial remuneration paid to the Managing Director. Accordingly, we direct the AO to allow expenditure of Rs. 36 Lacs. The grounds of appeal raised by the assessee are allowed.*

*6. In the result, the appeal of the assessee is allowed.”*

11. Since, the CIT(A) while deciding the issue against the assessee has followed the order for AY 2012-13 and since the Tribunal has already decided this issue in favour of the assessee for Assessment Year 2012-13, therefore, respectfully following the decision of the Tribunal in assessee's own case for Assessment Year 2012-13, we set-aside the order to the CIT(A) and direct the Assessing Officer to allow the business loss amounting to Rs.41,44,219/- claimed by the assessee which includes an amount of Rs.39 Lakhs paid to the Managing Director. The grounds raised by the assessee are accordingly allowed.

12. In the result, appeal filed by the assessee is allowed.

Oder pronounced in the open court on 19/03/2021.

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Delhi/Dated-19.03.2021

*Shekhar*

Copy forwarded to: -

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

By Order

Assistant Registrar,  
ITAT, Delhi