

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

Before Sh. Bhavnesh Saini, Judicial Member

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

(Through Video Conferencing)

ITA No. 4536/Del/2017 : Asstt. Year : 2014-15

Statkraft Markets Pvt. Ltd., 403, 4 th Floor, Salcon Rasvilas Building, Saket District Centre, New Delhi-110017	Vs	DCIT, Circle-24(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAQCS6900E		

Assessee by : Sh. R. M. Mehta, Adv.

Revenue by : Ms. Richa Khoda, CIT DR

Date of Hearing: 08.03.2021

Date of Pronouncement: 26.04.2021

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)-30, New Delhi dated 31.05.2017.

2. The details have been taken from the record before us.

3. The Id. CIT (A) upheld the disallowance made by the Assessing Officer on account of employee benefit expenses, depreciation and other expenses on the grounds that the assessee is not started their business operations and hence the expenses are not allowable.

4. The relevant facts of the case for adjudication of the issue are that the assessee company was incorporated on 13.12.2011

with the objective to purchase, sell, distribute, trade, import, generate and deals all types of electric power. The company earned income on FDRs of Rs.4.42 Cr. and consultancy of Rs.13.45 lacs. To achieve its objective, there is a mandatory requirement for the company to obtain license from Central Electricity Regulatory Commission (CERC) and for the same, the assessee company has applied for Power trading license to the Central Electricity Regulatory Commission (CERC) in March, 2012 and finally got the license in June, 2012. The company had acquired license to commence its business in June 2012, hence it can be concluded that the business has been commenced in FY 2013-14.

5. In reference to the contention of AO that the assessee has not started any real operation during the relevant previous year and the expenses incurred are preoperative expenditure, we have examined the following facts:

- 1) Application of License with Central Electricity Regulatory Commission (CERC) - Application filed with CERC dated 20.03.2012 as obtaining the license from the CERC is mandatory requirement to carry out the objectives of the business.
- 2) License was granted by CERC vide No. 58/Trading License/2012/CERC dated 21.06. 2012.
- 3) The assessee has also applied for membership with Indian Energy Exchange(IEX) dated 20.11.2013 and became the member which is an essential activity carried out by the assessee for attaining the business objective.

4) Recruited technically qualified employees

The roles of employees are as follows:

- To support business development for the markets team.
- Responsible for monitoring regulatory developments
- Performing quantitative analysis for a range of commercial products and services
- Delivering on a range of price forecast using different models
- Responsible for maintaining close coordination with origination(business development, portfolio management, & risk management)
- To support finance and accounts of the company

6. Bank accounts - During the financial year 2013-14, the assessee has three operating bank account i.e. ICICI, Kotak Mahindra Ban and Yes Bank.

7. Agreement have been entered into by the assessee with Malana Power Company Limited (MPCL). The revenue from MPCL and AD Hydro Power is duly accounted the amount of INR 17,27,663/-.

8. Revenue for Management Services- The assessee company has provided Management Consultancy service were to M/s Statkraft India Pvt. Ltd. for which fees of Rs. 13,45,080/- ,was received, on which TDS was also made.

9. We have gone through the judgments relied by the assessee.

- Jubilant Offshore Drilling Pvt. Ltd. [TS-771-ITAT-2014(DEL)]
- M/s Omniglobe Information Tech India Pvt. Ltd. [TS-526-HC-2014(DEL)]
- M/s Carefour WC & C India Private Limited Vs DCIT [2015] 53 taxmann.com 289 (Delhi)
- CIT Vs Samsung Electronics India Limited [2013]37 taxmann.com 239 (Delhi)
- M/s Jcdecaux Advertising India (P) Ltd [TS-253-HC-2015(DEL)]
- M/s CIT Vs ESPN Software India (P) Ltd [2009] 184 TAXMANN 452(Delhi)
- CIT v. L.G. Electronic (India) Ltd. [2006] 282 ITR 545/[2005] 149 Taxman 166(Delhi)

10. On going through the above facts and circumstances mentioned from point 1 to 9 and relying on the judgments of the Hon'ble Jurisdictional High Courts above and since the assessee has obtained the license to do the business, opened the bank account for incurring the business expenditure, recruited the qualified employees to run the business efficiently, received management consultancy fees, obtained a membership of India Energy Exchange(IEX) and also as evident from Bank account statement paid the Annual client registration fee of Malana Power Company Limited (MPCL) paid to IEX for client and subsequent to which assessee has entered in to agreement with MPCL on April 3, 2014, in keeping in view the fact that for the assessment year 2012-13, the Id. CIT (A) allowed the expenses and such decision was accepted by the revenue and

for the assessment year 2013-14, the AO has allowed the expenses, for the instant year i.e. A.Y. 2014-15, we hereby hold that no disallowance on account of expenditure is called for.

11. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 26/04/2021.

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 26/04/2021

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