

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F": NEW DELHI]**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 5689/Del/2017
(Assessment Years : 2012-13)

ACIT, Circle : 20 (2) New Delhi.	Vs.	QNS Facility Management Pvt. Ltd., 6-Community Centre, Saket, New Delhi - 110 017. PAN: AAACU1291Q
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(Appellant)	(Respondent)
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Assessee by :	None;
Department by:	Ms. Kirti Sankratyayan, Sr. D.R.;
Date of Hearing :	07/09/2021
Date of pronouncement :	16/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the ld. ACIT, Circle 20 (2), New Delhi, for assessment year 2012-13 against the order passed by the ld. CIT (Appeals)-36, New Delhi, dated 19.06.2017 raising the following grounds of appeal:-

"1. Whether on the facts and under the circumstances of the case, the Ld.CIT(A) has erred in law in deleting disallowance of Rs. 4,95,99,044/-, ignoring the fact that the total maintenance charges received by the appellant irrespective of its nomenclature constitutes revenue receipts and appropriation out of the same for so called sinking funds cannot be allowed as deduction.

2. Whether on the facts and under the circumstances of the case, the Ld. CIT (A) has erred in deleting the disallowance of Rs. 4,95,99,044/- being amount transferred to asset replacement account from the maintenance fees & charges, ignoring the fact that the assessee is not the owner of the property and

plant/equipments installed in the complex and it adopted this method to avoid being taxed on the amount by way of a colourable device, as the utilization amount is Rs. 1,92,715/- out of transferred amount of Rs. 4.96 crores during the year.

3. The appellant craves to be allowed to add any fresh ground(s) of appeal and/or delete or amend any of the ground(s) of appeal. “

2. Brief facts of the case shows that assessee is a company engaged in the business of facility management including operation and maintenance of common areas and service equipment. It filed its return of income on 26.03.2014 at Rs.31,06,41,840/-. The case of the assessee was picked up for scrutiny and the assessment order was passed determining the total income of the assessee at Rs.36,29,950/-. The ld. Assessing Officer made a disallowance of Rs.4,95,99,044/- on account of maintenance fees and charges transferred to asset replacement account. A further disallowance on provision of bad debt was also made of Rs.26,60,069/-. On appeal before the ld. CIT (Appeals) the above disallowances were deleted for the reason that for assessment years 2009-10, 2010-11 and 2011-12 an identical issue has been decided in favour of the assessee by the co-ordinate bench. Therefore, the ld. Assessing Officer aggrieved is in appeal before us.
3. At the time of hearing despite notice none appeared on behalf of the assessee. However, a letter was submitted that assessee is a subsidiary of Unitech Limited and assessee is also under-going the process of Insolvency Resolution in view of the order of the Hon'ble Supreme Court as well as the NCLT. The order dated 20.01.2020 says that there shall be a moratorium against the institution of proceedings against Unitech Limited and its subsidiaries.
4. The Hon'ble Supreme Court in Civil Appeal No. 10856/2016 in Bhupinder Singh Vs. Unitech Limited has also passed an order wherein the moratorium is granted against institution of proceedings against Unitech Limited and its subsidiaries. In view of the above order of the Hon'ble Supreme Court, the appeal filed by the ld. Assessing Officer is not maintainable. Further as the issue is squarely covered by the order of the co-ordinate bench in assessee's own case for earlier years as stated by the ld. CIT (Appeals) which is not controverted by the ld. DR, on the merits the appeal of the ld. Assessing Officer deserves to be dismissed.

5. In view of the above fact and in view of the order of the Hon'ble Supreme Court, the appeal filed by the ld. Assessing Officer is dismissed.

Order pronounced in the open court on : 16/09/2021.

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

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 16/09/2021.

MEHTA

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	7.09.2021
Date on which the typed draft is placed before the dictating member	7.09.2021
Date on which the typed draft is placed before the other member	7.09.2021
Date on which the approved draft comes to the Sr. PS/ PS	16.09.2021
Date on which the fair order is placed before the dictating member for pronouncement	16.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	16.09.2021
Date on which the final order is uploaded on the website of ITAT	16.09.2021
date on which the file goes to the Bench Clerk	16.09.2021
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	