

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI  
[THROUGH VIDEO CONFERENCING]

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.404/Del./2020  
Assessment Year 2014-2015

Dhanyata Enterprises Private Limited, C-233, Lower Ground Floor, Defence Colony, New Delhi – 110 024. PAN AADCD3204F	vs.	The DCIT, Circle-7(2), C.R. Building, ITO, I.P. Estate, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Rohit Tiwari, Advocate
For Revenue :	Shri R.K. Gupta, Sr. D.R.

Date of Hearing :	31.08.2021
Date of Pronouncement :	24.09.2021

**ORDER**

This appeal filed by the Assessee is directed against the Order dated 29.11.2019 of the Ld. CIT(A)-3, New Delhi, relating to the A.Y. 2014-2015.

2. Facts of the case, in brief, are that the assessee is a company and filed its return of income on 26.11.2014 declaring total income of Rs.34,01,900/-. From the various details furnished by the assessee, the A.O. noted that

assessee-company was incorporated in January 2010 and till A.Y. 2013-14 had done business of imparting training in English Communication Skills, Personality Development & Grooming and Interview Techniques. Assessee-Company had entered into a franchise agreement with M/s BAFEL Academy Pvt Ltd. (British Academy for English Language) for providing training in English Communication Skills etc. Due to reduction in number of students, Assessee-Company has stopped fresh batches in A.Y. 2013-14 onwards. During the year assessee-company earned interest income from investment in flat made with M/s. Vigneshwara Developments Pvt. Ltd. He further noted that the assessee had shown NIL Revenue from operations and shown income under the Head “Income from other sources” interest of Rs.46,03,500/- received from its investment in Flat made with M/s. Vigneshwara Developments Pvt. Ltd. Therefore, the assessee is not having any business receipts, but, mere interest receipts.

2.1. Since the assessee has not carried-out any business activity during the year and no business income

has been declared, the A.O. asked the assessee to explain as why the expenses debited in the P & L A/c should not be disallowed. It was explained by the assessee that all the expenses incurred by the assessee are for the business purposes.

2.2. However, the A.O. was not satisfied with the explanation given by the assessee. He observed that apart from claiming salary expenses of Rs.6 lakhs under the Head “Employee Benefits”, the assessee has also incurred the following expenses :

1.	<i>Car running&amp; maintenance</i>	<i>Rs. 45,500/-</i>
2.	<i>Car insurance</i>	<i>Rs. 11,278/-</i>
3.	<i>Entertainment exp.</i>	<i>Rs. 29,300/-</i>
4.	<i>Festival Exp.</i>	<i>Rs.1,89,000/-</i>
5.	<i>Legal &amp; Professional charges,</i>	<i>Rs. 72,569/-</i>
6.	<i>Miscellaneous expenses</i>	<i>Rs. 19,325/-</i>
7.	<i>Repair &amp; maintenance,</i>	<i>Rs. 15,700/-</i>
8.	<i>Telephone Exp.</i>	<i>Rs. 12,200/-</i>
	<i>Total Expenses</i>	<i>Rs.3,94,872/-</i>

2.3. According to the A.O. although the assessee attended the proceedings, however, failed to produce the complete books of account, bills and vouchers other than

the ledger account of expenses claimed. He further noted that the assessee has debited all these expenses to reduce the taxable income from interest income of Rs.46,03,500/- and the expenses are not laid out wholly and exclusively for the purpose of business. He further noted that the income is being earned as interest from its investment in Flat made with M/s. Vigneshwara Developments Pvt. Ltd., under the Builder Buyer Agreement ["BBA"] and there is neither any proximate relationship of the expenses claimed to such earning nor the assessee has been able to justify the claim of expenditure. He further observed that the expenses so claimed by the assessee do not fall under the purview of Section 57(iii) of the I.T. Act, 1961. Accordingly, the A.O. disallowed the business expenses of Rs.9,94,872/- debited to the P & L A/c and added the same to the total income declared by the assessee and determined the taxable income at Rs.43,96,772/-.

2.4. Before the Ld. CIT(A), the assessee submitted that all the expenses incurred by the assessee are for the purpose of business only and should be allowed. Referring

the various expenses disallowed by the A.O. it was submitted that assessee is a Company and can only be run through natural persons. It was submitted that Salary Expenses of employees consist of one office Boy, one employee for official communication and one driver. Car Running & Maintenance Expenses refer to expenses incurred for visiting various persons to explore business opportunities. Car Insurance Expenses is linked with the Car used for official purpose. Entertainment expenses are also incurred for meeting with persons to generate business opportunities. Festival Expenses are also incurred to generate business opportunities to the assessee-company. Legal and Professional Expenses are incurred for various professional services taken from Chartered Accountants in connection with compliances of law. Miscellaneous expenses are incurred to maintain office of Assessee-Company. Repair & Maintenance expenses are also incurred to maintain the office of Assessee-Company. Telephone Expenses are incurred in connection with amount provided to staff for communicating. It was accordingly submitted that all the

expenses are incurred for the purpose of keeping and maintaining the office of assessee-company and to generate future business prospect for the assessee-company. Thus, all the expenses are allowable as business expenses to assessee-company. Referring to various decisions, it was submitted that expenses incurred to keep alive the corporate entity are allowable expenses.

2.5. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the action of the A.O. by observing as under :

*“8.3. I have considered the facts of the case and the submission made by the AR. It is observed that the appellant has not shown any business income from operations during the year and the interest income has been shown as business income and various expenses have been claimed against this income. Despite specific show cause notice, the appellant failed to justify the claim of expenses against the interest income. Moreover, it was also admitted by the appellant that the business of imparting training was stopped and no new fresh*

*batches were being taken from AY 2013-14 onwards. In view of these facts, the contention that the expenses were incurred for normal business operations is found to be incorrect and it is observed that the expenses claimed do not have any nexus with the business operations which had in fact stopped in the earlier years. Keeping in view all these facts, I don't see any justification in claim of these expenses and therefore, the addition made by the AO is confirmed and the ground of appeal is dismissed.”*

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

- “1. That on the facts & in the circumstances of the case and in law, the order passed by Learned Deputy Commissioner of Income Tax,- Circle-7(2), New Delhi (“Ld. AO”) and Ld. CIT(A) is wrong and bad in law.*
- 2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the*

*action of Ld. AO in assuming the incorrect jurisdiction while passing the assessment order under section 143(3) of the Act. In doing so, the Ld. AO erred in assuming the jurisdiction over the appellant in the absence of the order of transfer of jurisdiction from Income Tax Officer, Ward -7(3), New Delhi to Ld. AO i.e. Deputy Commissioner of Income Tax, Circle 7(2), New Delhi.*

3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A)/Ld. AO erred in making disallowance of all the business expenses incurred by the appellant during the year under consideration. In doing so, the Ld. CIT(A) / Ld. AO grossly erred in:*

3.1. *holding that there is no nexus between the expenses incurred by the appellant and income earned during the year;*

3.2. *disallowance of expenses stating that no business has been carried out by the appellant;*

- 3.3. *not appreciating the fact that the appellant was making efforts to run the business of imparting trainings during the year, however, could not find relevant batches to begin the same; and*
- 3.4. *Not appreciating the fact that expenses incurred by the appellant were routine in nature and were required to run the business.*
4. *That the Ld. AO/Ld. CIT(A) has erred in levying interest under section 234A, 2.34B and 234C of the Act.*
5. *That the Ld. AO/Ld. CIT(A) has erred on the facts and circumstances of the case and in law in initiating the penalty proceedings under section 271(1)(c) of the Act.*
6. *That above grounds of appeal are mutually exclusive and without prejudice to each other.*
7. *The appellant craves leave to add, alter, amend and/or modify any of the ground ground(s) during or before the hearing of the appeal.”*

4. Learned Counsel for the Assessee did not press the Ground challenging the jurisdictional issue as per Ground of Appeal Number. 2, for which, the Ld. D.R. has no objection. Accordingly, Ground of appeal Number.2 is dismissed as not pressed.

5. Grounds of Appeal Numbers 6 and 7 being general in nature are dismissed.

6. So far as Ground of Appeal Number.3 is concerned, Learned Counsel for the Assessee submitted that assessee has not stopped its business activity and because of less number of students it was not viable for the assessee to run the business so assessee did not prefer to incur huge expenditure and thereby huge loss. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs., Integrated Technologies Ltd., in ITA.No.530/2011 Dated 16.12.2011, he submitted that the Hon'ble jurisdictional High Court has upheld the order of the Tribunal wherein the Tribunal under similar circumstances has allowed the claim of depreciation on plant and machinery on the footing that they were kept

ready for use in the business once it got revived and that amounted to passive use of the assets, which would meet the requirements of Section 32 of the I.T. Act, 1961. Referring to the decision of Mumbai Bench of the Tribunal in the case of Sai Fragrance & Flavours (P.) Ltd., 169 ITD 235 (Mumbai.Tribu.), he submitted that under identical circumstances the Tribunal has allowed the claim of various expenses incurred by the assessee to keep the corporate status and the expenses were allowed as deduction under section 37(1) of the I.T. Act, 1961. He accordingly submitted that the Ld. CIT(A) was not justified in upholding the order of the A.O. in disallowing various expenses.

7. The Ld. D.R. on the other hand heavily relied on the orders of the A.O. and Ld. CIT(A).

8. I have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the A.O. in the instant case disallowed expenses of

Rs.9,94,872/- on the ground that assessee has not carried-out any business activity and no business income has been declared and the assessee failed to produce the complete books of account, bills and vouchers etc. I find the Ld. CIT(A) upheld the action of the A.O, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Learned Counsel for the Assessee that it has not stopped its business and is maintaining an office and there is simply lull in the business activity. It is also his submission that due to less number of students the assessee thought it prudent not to admit any student for this year to minimize its expenses. According to him, merely because there is no business income during the year and when the assessee otherwise has maintained its corporate identity and has kept everything ready for reviving the coaching/teaching activities at right time, the Revenue Authorities should not have disallowed the expenditure merely on the ground that there is no business activity carried-out during the year or no business income has been shown during the year.

8.1. I find an identical issue had come up before the Hon'ble Delhi High Court in the case of CIT vs., Integrated Technologies Ltd., (supra). In that case the assessee filed its return of income on 18.10.2004 declaring a loss of Rs.4,85,08,380/-. During the course of assessment proceedings, the A.O. noted that the assessee has debited expenses amounting to Rs.4,82,93,278/- in the profit and loss account, but, no business was done in the relevant previous year and there were no purchases or sales or manufacturing activities carried on by the assessee. The expenses claimed in the P & L A/c included depreciation, bad debts, raw material stock written off and administrative expenses. Since no business activities were carried out by the assessee, the A.O. disallowed the expenditure claimed by the assessee including depreciation on plant and machinery on the ground that the same were also not in actual use for the purpose of the assessee's business during the year. The Ld. CIT(A) directed the A.O. to allow administrative expenses, personal expenses and financial expenses as deduction, but, rejected the claim of

depreciation. The Revenue accepted the order of the Ld. CIT(A) in allowing various expenses claimed by the assessee. So far as the disallowance of depreciation is concerned, which was upheld by the Ld. CIT(A), the assessee approached the Tribunal and the Tribunal relying on the decision of Hon'ble jurisdictional Delhi High Court in the case of Capital Bus Service Pvt. Ltd., vs., CIT [1980] 123 ITR 404 (Del.) allowed the claim of depreciation on the ground that they were kept ready for use in the business once it got revived and that amounted to passive use of the assets which would meet the requirements of Section 32 of the I.T. Act, 1961. Against the order of the Tribunal, the Revenue filed an appeal before the Hon'ble Delhi High Court [i.e., CIT vs., Integrated Technologies Ltd., in ITA.No.530/2011 Dated 16.12.2011] (supra) and the Hon'ble jurisdictional Delhi High Court upheld the decision of the Tribunal by observing as under :

*“8. .... In our opinion, no substantial question of law arises from the decision of the Tribunal. It has been found as a fact by the Tribunal that the assessee had*

*not closed its business and had every intention to revive the same. The basis for this finding is the fact that the assessee had kept its establishment alive by paying salary and other allowances to the staff and had also acquired plant and machinery in the relevant previous year and had further incurred repair expenditure on its existing plant and machinery. These findings have not been challenged by the revenue as perverse. In fact, the allowance of the salary payments, staff welfare and repairs and maintenance expenditure by the CIT (Appeals) was not challenged by the revenue by filing any appeal on those points before the Tribunal and this aspect has been referred to by the Tribunal in para 9 of its order. Thus, the revenue had impliedly accepted the fact that the business was kept alive in the hope of revival and there was only a temporary lull in the business activities. If the assessee had purchased new plant and machinery and had also incurred repair expenditure of Rs.1.23 lakhs in respect of the existing machinery, it is a fair and reasonable inference to draw*

*that the assessee wants to keep the business alive and revive the same at the earliest opportunity. The assessee has also stated before the BIFR that after the change in the business scenario globally, the company is expecting to receive substantial orders for its products. Thus, the finding of the Tribunal that the business of the assessee was not closed is fully supported by facts on record which have not been challenged by the revenue. The other question as to whether the plant and machinery should have been actually put to use in order to be entitled to depreciation under Section 32 and that mere passive use, in the sense that they were kept ready for use as and when the business was revived, would be sufficient compliance with Section 32 should not detain us since it has already been decided in the affirmative by at least three judgments of this Court.*

9. *The Tribunal has referred to the judgments in Capital Bus Service (supra), CIT Vs. Refrigeration and Allied Industries Ltd. (supra) & CIT Vs. Panacea Biotech*

*Ltd. (supra) and has applied the ratio laid down therein to the facts of the present case. The ratio in brief is that it is not necessary that the plant and machinery owned by the assessee should be actually put to use in the relevant accounting year to justify the claim of depreciation and that even if the plant and machinery or other asset is kept ready for use in the assessee's business, the assessee would be entitled to depreciation. The only condition is that the business should not have been closed down once for all and that the assessee should demonstrate that the hopes of the business being revived are alive and real. It is however not a matter that can turn entirely on the assessee's hopes alone. There should be evidence or material to show that the assessee took efforts to keep the business alive in the hope of reviving the same. Maintaining the office and establishment, complying with the statutory formalities, not disposing of the plant and machinery, incurring expenses on the repair of plant and machinery etc., are some of the indications of*

*nurturing the hopes of reviving the business. The above are only illustrative instances and are by no means exhaustive and the question as to whether the assets were kept ready for use in the business is largely to be decided on the facts and circumstances of each case. In our opinion, the Tribunal has not committed any error in applying the ratio laid down in the judgments of this Court to the facts of the present case in order to uphold the assessee's claim for depreciation.*

10. *In the light of the foregoing discussion we are of the view that no substantial question of law arises from the order of the Tribunal for decision. Accordingly, the appeal filed by the Revenue is dismissed with no order as to costs.”*

8.2. Since the facts of the instant case are identical to the facts of the case decided by the Hon'ble jurisdictional Delhi High Court in the case of Commissioner of Income Tax vs., Integrated Technologies Ltd., (supra), I hold that merely because assessee has not earned any business income

during the year, but, has every intention to revive the same, therefore, the various expenses debited to the P & L A/c cannot be disallowed especially when the assessee is maintaining its Office and kept its infrastructure ready for future business. In this view of the matter, I set aside the order of the Ld. CIT(A) and direct the A.O. to allow the expenses claimed at Rs.9,94,872/-. Accordingly, Ground of Appeal Number.3 of the assessee is allowed.

9. Ground of Appeal Number.4 relating to levy of interest under section 234A, 234B and 234C being mandatory and consequential in nature is dismissed.

10. Ground of Appeal Number.5 relating to levy of penalty under section 271(1)(c) being premature at this juncture is dismissed.

11. In the result, appeal of the Assessee is partly allowed.

Order pronounced in the open Court on 24.09.2021.

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

Delhi, Dated 24<sup>th</sup> September, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.