

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 2878/DEL/2018 (A.Y 2013-14)**

**(THROUGH VIDEO CONFERENCING)**

Khemka Stuart Leisure Ltd. BGJC & Associates LLP, Raj Tower, G-1, Alakhnanda Community Centre, New Delhi AAACK4630P <b>(APPELLANT)</b>	Vs	DCIT Central Circle-18 New Delhi <b>(RESPONDENT)</b>
---	----	---

<b>Appellant by</b>	<b>Sh. Rajeshwar Painuly, CA</b>
<b>Respondent by</b>	<b>Sh. M. K. Pandey, Sr. DR</b>

<b>Date of Hearing</b>	<b>11.10.2021</b>
<b>Date of Pronouncement</b>	<b>13.10.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against order 22/03/2018 passed by CIT(A)-27, New Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:-

*"1. The Hon'ble CIT(A) has not followed the law and natural justice while confirming additions and disallowances by the Ld. A.O.*

*2. That the Hon'ble Commissioner of Income Tax (Appeals) has erred in law and on facts by confirming the addition on account of disallowing expenses of Entertain Tax of Rs. 2,40,09,979/-"*

3. The return of income was filed on 18/9/2013 declaring loss of Rs.2,51,16,000/-. Statutory notice u/s 143(2) of the Income Tax Act, 1961

was issued on 11/9/2014. Notice u/s 142(1) along with questionnaire was issued on 22/6/2015. As notice u/s 143(2) and 142(1) was not responded, show cause notice for penalty u/ 271(1)(B) was issued on 3/9/2015 to which no reply was received from the assessee. Subsequently, penalty u/s 271(1)(B) for Rs. 20,000/- was levied on the assessee company. Subsequently, CA/Authorized Representative of the assessee attended the proceedings from time to time and filed reply and details. The Assessing Officer observed that the assessee has claimed operating expenses of Rs.2,40,09,979/- on account of the Entertainment Taxes. The Assessing Officer held that though the assessee claimed the payment of Rs. 2,40,09,979/- in pursuance of the order of the Districted Magistrate and Hon'ble Allahabad High Court as operating expenses, these expenses are not of business nature but are of penal nature. Therefore, the Assessing Officer made additions of Rs. 2,40,09,979/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) erred in confirming the addition on account of disallowing expenses of Entertainment Tax. Without taking into account cognizance of the evidences placed before the Assessing Officer as well as before the CIT(A). The Ld. AR further submitted that the true interpretation of Section 37(1) along with Explanation 1 of the said Section as not taken into account. Therefore, the Ld. AR submitted that the matter may be remanded back to the file of the CIT(A).

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has claimed the payment of Rs. 2,40,09,979/- as operating expenses on account of Entertainment Taxes. The Assessing Officer as well as the CIT(A) has not taken proper cognizance of the

order passed by the District Magistrate as well as Hon'ble Allahabad High Court. Therefore, we are remanding back the entire issue to the file of the CIT(A) for proper adjudication as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

8. In the result, the appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on this 13<sup>th</sup> Day of October, 2021**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 13/10/2021

*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

