

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE HON'BLE PRESIDENT, SHRI G.S. PANNU
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No.3555/Del./2018
(ASSESSMENT YEAR : 2013-14)**

Delhi Auto and General Finance vs. DCIT, Circle 7 (1),
Private Limited, Delhi.
14-C, Sagar Apartments,
6, Tilak Marg,
New Delhi – 110 001.

(PAN : AACCD5848C)
(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Alope Periwal, CA
REVENUE BY : Shri Harpal Singh, Senior DR

Date of Hearing : 25.10.2021
Date of Order : 23.12.2021

ORDER

PER AMIT SHUKLA, JM :

Aforesaid appeal has been filed by the assessee against the impugned order dated 30.03.2017 passed by the ld. CIT (Appeals)-I, Noida for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2010-11.

2. In the grounds of appeal, the following grounds are raised by the assessee :-

"1. Action of Commissioner of Income Tax (A) in upholding the addition made by Deputy Commission of Income Tax on account of Disallowance of Administrative Expenses of Rs.48,48,892/- to the returned income is

unjust, illegal arbitrary and against the facts and circumstances of the case.

2. Action of Commissioner of Income Tax (A) in upholding the addition made by Deputy Commission of Income Tax on account of Depreciation of Fixed Assets of Rs.7,93,830/- to the returned income is unjust, illegal arbitrary and against the facts and circumstances of the case.

3. Facts in brief are that the assessee company has filed its return of income on 31.03.2015 declaring loss of Rs.63,24,110/-. AO noted that the assessee had not shown any revenue from operation whereas it has claimed expenditure to the extent of Rs. 56,15,907/-. He also observed that no significant business activities were carried out by the assessee company during the relevant assessment year 2013-14 and only other income of Rs.9,500/- has been shown in the profit & loss account. In response to the show-cause notice, the assessee submitted that assessee company had not earned any revenue from business activities, however, continuous efforts have been made to revive the business, therefore various, expenditure was incurred, namely, staff salary, security services, rent, etc. However, AO disallowed the entire expenditure of Rs.56,15,907/- on the ground that the assessee has not shown any business activities during the year. He further observed that assessee has claimed depreciation of Rs.7,93,830/-; and since assessee has not carried out the business activity in the current year, therefore, there is no question of using the assets for the purpose of business or profession during this assessment year and accordingly, he

disallowed the claim of depreciation of Rs.7,93,830/- and was added back to the income of the assessee.

4. Ld. CIT (A) observed that though there is neither substantial closure of the business nor there was any temporary lull, in fact the assessee's business activities have completely halted for the last 6 – 7 years, therefore, by no stretch of imagination, such a situation can be classified that there is a temporary lull. However, he held that only few expenses can be considered to be business expenditure in case of assessee that can be allowed and accordingly, he held that certain expenses, i.e. paying of statutory dues, legal & professional charges, audit fee and salary of some employees, and accordingly he held that part of the amount should be allowed. Accordingly, out of salary and wages expenditure claimed at Rs.25,46,049/-, he confirmed the disallowance amounting to Rs.23,46,049/- holding that Rs.2,00,000/- is sufficient. Secondly, under the head legal professional charges amounting to Rs.4,54,655/- and audit fee amounting to Rs.1,12,360/-, he allowed in full. However, the balance expenditure claimed was confirmed.

5. In respect of disallowance of depreciation, he confirmed the action of the AO on the same ground that no business activities were carried out.

6. Before us, ld. counsel submitted that in the assessment year 2012-13, CIT (A) has allowed the similar expenditure in the profit & loss account which has been confirmed by the Tribunal. In support, he relied upon the

decision of the Tribunal in **ITA Nos.1837 & 1838/Del/2016 for AYs 2011-12 & 2012-13 order dated 14.03.2019**. On the other hand, ld. DR for the Revenue relied upon the orders of AO and ld. CIT (A).

7. We have carefully considered the submissions and gone through the impugned order as well as material placed on record. We find that in the earlier years, on similar facts and circumstances wherein there was no revenue from operations and assessee had incurred similar nature of expenditure debited to the profit & loss account, mostly under the heads, viz., salary and wages, employees benefit expenses and other expenses including statutory expenses and audit fees, were held to be allowable. One important fact noted by the Tribunal in the earlier years is that the fixed assets of the assessee company were subject matter of litigation u/s 18 of Land Acquisition Act and assessee was due to receive compensation of Rs.460 crores which would be the income of the assessee in the year to receive. The assessee was maintaining this establishment and corporate set up for which it had incurred certain expenditure. Accordingly, the Tribunal allowed the expenditure after observing and holding as under :-

“7. We have gone through the record in the light of the submissions on either side. As could be seen from the order of the learned CIT(A), the fixed assets of the assessee are the subject matter of litigation u/s 18 of the Land Acquisition Act and the assessee was due to receive a compensation amount of Rs.460 crore with interest which would be the income of the assessee in the year that would be received. In this context, the maintenance of the establishment by the assessee has rightly accepted by the learned CIT(A) as an indication of the intention of the

assessee to resume the business if the opportunity for it arises in future. It cannot be said that the operation of the assessee were closed down permanently or its name struck off the register or that the company is dissolved. In these circumstances, we find every force in the observation of the learned CIT(A) that till such time the company has to maintain its status as company and also has to be discharged certain legal obligations for which it requires the support of the clerical staff and the secretary or the accountant, as the case may be, and also to incur certain incidental expenses in that pursuit. It is, therefore, clear that when the possibility of the revival of the business activities or operation of the assessee are not ruled out once for all, it cannot be said that the assessee company had closed down its operations permanently so as to disallow the business expenditure. The temporary lull in the business during the lean period of transaction cannot be mistaken to be the permanent close down of the business. The clear indication is that the assessee has to maintain its status as company till the end comes and it has to perform certain legal obligations by incurring certain expenditure and more particularly to pursue the litigation as a result of which it has to receive Rs.460 crores approximately which shall form part of the income of the assessee in the year in which it will be received.”

8. In this year also, the aforesaid decision of the Tribunal will apply *mutatis mutandis*. Respectfully following the same, we direct AO to allow expenditure claimed in the profit & loss account. Ground No.1 raised by the assessee is allowed.

9. Insofar as the issue relating to depreciation, it is sufficient that on similar facts, asset's depreciation was allowed in the earlier years, therefore, this year no different treatment can be given simply because the business could not be carried out in this year. Accordingly, depreciation amount of Rs.7,93,830/- is also allowed.

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

Order pronounced in open court on this 23rd day of December, 2021.

**Sd/-
(G.S. PANNU)
PRESIDENT**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated the 23rd day of December, 2021/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-34, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.