

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 5361/Del/2018
(Assessment Year : 2013-14)

Bistro Hospitality Pvt. Ltd., C-32A, 3 rd Floor, Nathur Singh Market, Masoodpur, Vasant Kunj, New Delhi-110 070 PAN : AABCB 4586 C (APPELLANT)	Vs.	DCIT Circle – 5(1) New Delhi (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Zahid Parvez, Sr. D.R.

Date of hearing:	31.05.2022
Date of Pronouncement:	31.05.2022

ORDER

PER ANIL CHATURVEDI, AM :

The present appeal filed by the assessee is directed against the order dated 15.06.2018 of the Commissioner of Income Tax (Appeals)-2, New Delhi relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in running of licensed restaurant business and running a restaurant chain by the name of 'Thanks God its Friday'. Assessee electronically filed its return of income for A.Y. 2013-14 on 28.11.2013 declaring an income of Rs.1,28,77,440/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 15.03.2016 whereby the total income was determined at Rs.1,92,88,998/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 15.06.2018 in Appeal No.10094/17-18 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *"The CIT(A) has erred in confirming addition of Rs.64,40,487/-.*
2. *The lower authorities have erred in treating repairs and renovation expenses as Capital Expenditure.*
3. *The CIT(A) has erred in holding that amount incurred for repairs/renovation was "incurred for undertaking major civil work including painting, polishing, plumbing change of upholstery, change of toilet facilities, water proofing replacement of tiles, wooden paneling etc., this has resulted into creation of new assets.*
4. *The above grounds of appeal are independent and without prejudice to one another.*
5. *Your appellant craves leave to add, amend, alter, or vary any of the aforesaid grounds of appeal before or at the time of hearing."*

4. The case file of the appeal reveals that the appeal was filed by the assessee in the year 2018. The matter was fixed for hearing for the first time on 08.09.2021. Notice of hearing was sent to the assessee which was returned unserved by the postal authorities with the remarks "addressee left without address". Assessee has not placed on record its changed postal address. The matter was therefore adjourned for hearing for 13.01.2022 and the notice was again issued through registered post. It is seen that thereafter the case for hearing was fixed on various dates and the notice for hearing was also issued but on all those dates there was no appearance on behalf of the assessee nor any adjournment application was moved on its behalf. The details of the dates when the matter was listed for hearing but was adjourned on account of no appearance by the assessee is tabulated hereunder:

1. 08.09.2021 - Hearing notice return back from Postal Authority therefore matter was adjourned to 10.11.2021
2. 10.11.2021 - Notice return unserved with remarks "addressee left without address" therefore matter was adjourned to 13.01.2022
3. 13.01.2022 - None present for the assessee therefore matter was adjourned to 21.03.2022
4. 21.03.2022 - Bench did not function therefore matter was adjourned to 31.05.2022

5. On the present date also, there is no appearance from the side of assessee nor there was any request for adjournment. In such a situation and considering the fact that the appeal has been filed in 2018 and there has been no appearance on behalf of the assessee in the past on any occasion, we proceed to dispose of

the appeal *ex parte qua* the assessee and after hearing the Learned DR.

6. Before us, Learned DR submitted that though the assessee has raised various grounds but the sole controversy is with respect to the confirming the addition of Rs. 64,40,487/-.

7. During the course of assessment proceedings, AO noticed that assessee had debited Rs.2,68,59,216/- and Rs.71,28,916/- under the head “Repair & maintenance (others)” and “Repair and Maintenance (Plant and Equipments)” respectively. The assessee was asked to submit the detailed ledger account and to demonstrate how the expenses were allowable. AO on perusing the details furnished by assessee noted that assessee had made renovation to some of the existing restaurants and the renovation included civil works which were not in the nature of repair but was for bringing new assets into existence by complete change of civil structure as well as installation of new plant and machinery. AO noted that assessee could not justify as to how the expenses could be considered in the nature of repairs. He noted that assessee had undertaken complete renovation by discarding the existing assets and added the assets. He also noted that during the year assessee has shown loss on fixed asset at Rs.1,48,00,000/- which according to him shows that a major overhaul of existing facility was made during the year to bring into completely new facilities. AO thereafter from the perusal of the

details noted that out of the total expenses, expenditure of Rs.64,40,487/- to be a not in the nature of repairs but was for creation of new assets. He therefore held it to be not allowable as revenue expenditure but however allowed 10% depreciation, being applicable to building, furniture and fixtures and thus made a net disallowance of Rs.57,96,438/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal.

8. Before us, Learned DR took us to the findings of AO and supported the order of AO.

9. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to treating the repairs and renovation expenses as Capital Expenditure. We find that AO after considering the submissions of the assessee has noted that assessee had undertaken complete renovation by discarding the existing asset and adding new assets and work undertaken had brought into existence a complete new facility which will benefit for an enduring period and therefore the expenditure was capital in nature. Before us, no material has been placed by the assessee to controvert the findings of AO. In such a situation, we find no reason to interfere with the order of AO which has been confirmed by CIT(A) and **thus the Grounds of assessee are dismissed.**

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 31.05.2022

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

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

*Date:- 31.05.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI