

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.460/Del/2018
Assessment Year: 2011-11

Magnum Aviation Pvt. Ltd., S-241, Panchsheel Park, New Delhi PIN: 1100 92	Vs.	ITO, Ward-16(1), New Delhi.
PAN :AADCM8668C		
(Appellant)		(Respondent)

Appellant by	N o n e
Assessee by	Ms. Garia Sharma, SR. DR

Date of hearing	13.06.2022
Date of pronouncement	23.06.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 08.08.2014 of learned Commissioner of Income-Tax (Appeals)-IX, New Delhi for the assessment year 2010-11.

2. When the appeal was called for hearing, none appeared on behalf of assessee. Even, there is no application by assessee seeking adjournment.

3. On perusal of record, it is observed that on previous five occasions i.e. 10.02.2021, 18.08.2021, 14.10.2021, 16.12.2021 and 23.03.2022 when appeal was fixed for hearing, none appeared for the assessee, despite multiple hearing notices being issued to the assessee through registered/speed post. In fact, proceedings of the bench on 16th December 2021 and 23.03.2022 were uploaded in the official website. Thus, in our view, assessee had sufficient notice of the dates fixed for hearing of the appeal. However, assessee has not cared to appear on any of the dates the appeal was fixed for hearing. The aforesaid facts reveal complete lack of interest of the assessee in pursuing the present appeal. Since, sufficient opportunity of hearing has already been granted to assessee, in our view, assessee deserves no further opportunity. Accordingly, we proceed to dispose of the appeal ex parte qua the assessee after hearing learned Departmental Representative and based on material available on record. Grounds raised by the assessee are as under:

1. That the learned Commissioner (Appeals) has grossly erred in law and on facts in confirming the disallowance of Rs.15,000/- claimed on account of legal and professional expenditure.
2. That the learned Commissioner (Appeals) has grossly erred in law and on facts in confirming the action of the AO of capitalizing the expenditure of Rs.6,05,470/- incurred towards professional fee paid to contractor for building, designing and interior and claimed as revenue expenditure.
3. That the learned Commissioner (Appeals) has grossly erred in law and on facts in confirming the disallowance of Rs.1,58,800/- u/s. 40A(3) of the Income-Tax Act.
4. We have heard learned Departmental Representative and perused the material on record.
5. Briefly, the facts are that assessee, a resident company, is stated to be engaged in the business of import and dealing in various kinds of aeronautical products, spare parts and accessories. It also provides repair and maintenance of air-crafts. For the assessment year under dispute, assessee filed its return of income on 24.09.2010 declaring nil income. As could be seen from the observations of the assessing officer, assessee in his accounts had shown cash in hand of Rs.2,81,898 as on 31.03.2009 and Rs.38,55,115 as on 31.03.2010.

6. In course of assessment proceedings, assessing officer noticed that assessee has debited legal and professional charge of Rs.26,13,880. Alleging that assessee could not furnish details of Rs.15,000 out of such expenditure, assessing officer disallowed the same. Further, assessing officer observed, as per the ledger account, an amount of Rs.6,05,470 is paid to a party, namely. Arts scan for building, design and interior. Being of the view that such expenditure is by nature capital expenditure, assessing officer disallowed the same.

7. Proceeding further, assessing officer noticed that assessee has claimed an amount of Rs.1,58,800 towards repair and maintenance of vehicle. On further scrutiny, assessing officer found that the entire expenditure was incurred in cash and exceeding the threshold limit of Rs,20,000. Accordingly, applying the provisions of Section 40A(3) of the Act, he disallowed the same.

8. Contesting the aforesaid additions/disallowances, assessee preferred appeal before learned Commissioner (Appeals). While disposing of the appeal learned Commissioner (Appeals) granted partial relief.

9. As regards, first issue relating to disallowance of legal and professional charges of Rs.15,000, on perusal of record, it is evident, assessee was unable to furnish any supporting evidence to demonstrate that the amount was actually incurred for the purpose of business. Thus, in absence of any supporting evidence, disallowance, in our view, is justified

10. As regards, the expenditure of Rs.6,05,470, being payment made to contractor for building, designing and interior, while, assessee has claimed it as revenue expenditure, the departmental authorities have treated it as capital expenditure. From the description of the expenditure as per the material available on record, it appears to be expenditure incurred for creating an asset. No contrary material has been brought on record by assessee to demonstrate that by incurring the expenditure, assessee has not derived any enduring benefit. That being the factual position, we cannot accept assessee's claim as revenue expenditure. However, as directed by learned Commissioner (Appeals), once, the expenditure is treated as capital expenditure, assessee must be granted benefit of depreciation in accordance with law.

11. The final issue relates to disallowance of Rs.1,58,800 under Section 40A(3) of the Act. It is the allegation of the departmental authorities that cash payment made by assessee exceeds the threshold limit of Rs.20,000 per day as per section 40A(3) of the Act.

12. Before learned Commissioner (Appeals), assessee had claimed that the expenditures are in the nature of reimbursement of petrol expenses incurred by the employees and have been made against various bills. Assessee had claimed that no single bill is more than Rs.20,000. However, assessee has not furnished any documentary evidence to back its claim.

13. In view of the aforesaid, we do not find any valid reason to interfere with the decision of learned Commissioner (Appeals). Grounds are dismissed.

14. In the result, the appeal is dismissed.

Order pronounced in the open court on 23rd June, 2022.

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 23rd June, 2022.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	16.06.2022
2.	Date on which the draft of order is placed before the Dictating Member:	- .06.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	20.06.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	21.06.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	22 .06.2022
7.	Date on which the final order is uploaded on the website of ITAT:	23.06.2022
8.	Date on which the file goes to the Bench Clerk	23.06.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	