

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH.YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.2433/Del/2013  
Assessment Year: 2009-10

<b>Kay Jay Fincap Ltd. Sachinanand Farm House, Kishangarh Village, (Near DDA Sports Complex), Lane Green, Avenue, Vasant Kunj, New Delhi-110070 PAN No.AAACK0163H</b>	<b>Vs.</b>	<b>DCIT Circle – 5 (1) New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Anil Kumar Malhotra,CA
Respondent by	Sh. Anuj Garg, Sr. DR

Date of hearing:	20/06/2022
Date of Pronouncement:	20/06/2022

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal filed by the assessee is preferred against the order of the CIT(A)-15, New Delhi dated 26.12.2012 for A.Y. 2009-10.

2. The grievance of the assessee read as under :-

**1. Grounds of Appeal No.1**

*Disallowance of depreciation of Rs.2.35.788/- on Farm House*

*The Farm House is a Business asset duly reflected in fixed assets schedule of the company, is being used as Registered Office of the company w.e.f. 10.04.2008. This property also earns a lease rent of Rs.7.50 lacs. Previously this was used for holding of meetings.*

*The disallowance by the Hon'ble CIT(A) is arbitrary, not founded on facts and is prayed to be deleted.*

## **2. Grounds of Appeal No.2**

*Disallowance of claim of Depreciation of Rs.12.29.184/- on an Effluent Treatment Plant*

*The Hon'ble CIT(A) has confirmed disallowance without analyzing the full facts of the case. The additions to this Effluent Treatment Plant are genuine and are fully vouchable.*

*The disallowance is arbitrary and is prayed to be deleted.*

## **3. Grounds of Appeal No.3**

*Disallowance of interest paid to Shri K.K. Jaioo Rs.21.91.781/- on a loan of Rs.2 crore*

*The Hon'ble CIT(A) has arbitrarily disallowed the genuine interest paid by the assessee, whereas the fund was used as Investment in pursuance of main objects of the company and is a Business Expenditure fully admissible.*

*The disallowance is arbitrary and is prayed to be deleted in full.*

## **4. Grounds of Appeal No.4**

*Disallowance on account of expenses on power and fuel amounting to Rs. 1.31.112/-*

*The Hon'ble CIT(A) has arbitrarily disallowed the above expenditure relying on the activity of the assessee in Assessment Year 2008-09 which changed from manufacturing to leasing & finance w.e.f.*

*March, 2008.*

*The disallowance is not founded on facts and is prayed to be deleted.*

**5. Grounds of Appeal No.5**

*Disallowance on account of expenses incurred on repairs amounting to Rs.6.78.072/- on building repairs*

*The Ld. CIT(A) has disallowed the above addition on the ground that this pertains to farm house without realizing that the Farm House property is the Registered Office of the company and is a business asset used for Business. Also it is earning a lease rent.*

*The disallowance is not founded on facts and is prayed to be deleted.*

*6. The assessee company craves mercy to add or amend any grounds of appeal.*

3. Ground No.1 relates to the disallowance of depreciation on farm house. At the very outset the Counsel for the assessee drew our attention to the order of this Tribunal in ITA No.264/Del/2009 order dated 30.06.2020 and pointed out that this Tribunal has allowed depreciation on the farm house treating the farm house as business asset.

4. We have carefully perused the order of this Tribunal for A.Y. 2005-06. We find force in the contention of the Counsel. This Tribunal on identical set of facts has allowed the depreciation

claimed on the farm house, therefore, respectfully following the decision of the coordinate Bench we direct the AO to allow depreciation on the farm house as claimed by the assessee. Ground No.1 is allowed.

5. Ground No.2 relates to the depreciation on an Effluent Treatment Plant.

6. During the course of the assessment proceedings the AO noticed that assessee has claimed depreciation on effluent treatment plant at Rs.27,45,223/-. The AO further noticed that the bills were in the name of Hema Engineering Industries Ltd., and, therefore, disallowed the claim of depreciation.

7. Before us the Counsel for the assessee stated that assessee is a lessor and Hema Engineering Industries Limited is lessee and inadvertently the bills were in the name of lessee and the lessee has given an affidavit in respect of this and further certified that the lessee has not claimed any depreciation on the effluent treatment plant.

8. We have carefully perused the assessment order. We find that the AO has not disputed that effluent treatment plant was given on lease by the assessee to Hema Engineering Industries.

Though the bills are in the name of the lessee but the affidavit of the lessee cannot be ignored. Therefore, in the interest of the justice we restore this issue to the files of the AO. The AO is directed to examine the affidavit of the lessee and decide the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee. Ground No. 2 is allowed for statistical purpose.

9. Ground No.3 relates to the disallowance of interest paid to Krishan Kumar Jajoo amounting to Rs.21,91,781/-. While examining the balance sheet of the assessee the AO noticed that the assessee has taken unsecured loan of Rs. 2 crores and paid interest of Rs.21,91,781/-. The AO formed a belief that the loan of Rs.2 crores has been invested in purchase of shares of M/s. Ruptech Educational India, the dividend income of which is exempt u/s. 10. Drawing support from the provisions of section 14A of the Act. The AO disallowed the entire interest of Rs.21,91,781/- paid to Krishan Kumar Jajoo.

10. Before us the counsel for the assessee stated that the entire loan has been used by the assessee in its business and the

investment in the purchase of shares was made out of own funds which has not been properly examined by the AO.

11. We have carefully perused the Assessment Order there is no dispute that loan of Rs. 2 crores was taken by the assessee but it cannot be said that the shares have been purchased out of this loan which prompted the AO to invoke the provisions of section 14A for making the impugned disallowance. In our considered opinion that the AO should have examined whether the loan was utilized for the purchase of shares or in the business of the assessee. We accordingly direct the AO to decide the issue afresh after verifying the facts relating to the usage of the loan and also the source of investment in the purchase of shares of Ruptech Education India. Ground No.3 is accordingly allowed for statistical purpose.

12. In the result, the appeal of the assessee is allowed in part for statistical purpose.

The order is pronounced in the open court on 20.06.2022.

Sd/-  
**(YOGESH KUAMR US)**  
**JUDICIAL MEMBER**

\*NEHA, Sr. Private Secretary  
Date:- 13.06.2022

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
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Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	