

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3630/Del./2019
(ASSESSMENT YEAR : 2013-14)**

Jyoti Kachroo,
B – 64, Sector 65,
Noida – 201 301 (Uttar Pradesh)

vs.

ACIT, Circle 60 (1),
New Delhi.

(PAN : AEGPK9779L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Dalip Kaul, CA
REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 07.06.2022
Date of Order : 24.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld.
CIT (Appeals)-23, New Delhi pertaining to Assessment Year 2013-14.

2. The grounds of appeal taken by the assessee read as under :-

“1. Disallowance of Rs.5,00,000/- out of depreciation on Building

Learned Commissioner of Income Tax (Appeals) has erred in law, facts and circumstances of the case by sustaining the disallowance of Rs.5,00,000/- out of depreciation on Building as depreciation on land made by learned Assessing Officer. Learned CIT(A) has reversed the decision of his own court by disagreeing with the view taken by the earlier CIT(A) in this case only for the AY 2010-11.

2. Disallowance of Rs.2,82,289/- out of depreciation on Building.

Learned Commissioner of Income Tax (Appeal) has further erred in law, facts and circumstances of the case by confirming the disallowance of Rs.2,82,289/- out of depreciation on Building.

3. Disallowance of Rs.1,44,436/- out of Telephone Expenses.

Learned Commissioner of Income Tax (Appeal) has again erred in law, facts and circumstances of the case by sustaining disallowance out of Telephone Expenses although reduce the disallowance from 20% to 10% of Telephone Expense amounting to Rs.1,44,436/-. Disallowance is arbitrary and not based on evidences.

4. Disallowance of Rs.3,41,075/- out of Vehicle maintenance and Depreciation on Vehicle.

Learned Commissioner of Income Tax (Appeal) has again erred in law, facts and circumstances of the case by sustaining disallowance out of vehicle maintenance and depreciation expenses although reduce the disallowance from 30% to 15% of vehicle maintenance and depreciation on vehicle expense amounting to Rs.1,44,436/ -. Disallowance is again arbitrary and not based on evidences.

5. Disallowance of Rs.2,61,200/- u/s 40A(3) of the IT Act.

Learned Commissioner of Income Tax has again erred in law, facts and circumstances of the case by disallowing Rs.2,61,200/- u/s 40A(3) of IT Act.

6. Lessor Credit of TDS amounting to Rs.7,17,985/-.

Learned Commissioner of Income Tax has again erred in law, facts and circumstances of the case by not giving appropriate direction for giving credit of TDS amounting to Rs.7,17,985/ -. Ld CIT(A) has merely dismissed the ground stated this ground for statistical purposes.”

3. Brief facts of the case are that assessee is an individual engaged in the business of works contracts of civil, interior & other allied works for corporate and non-corporate entities under the name and style of M/s. Fiberfill Interiors & Constructions. During the course of assessment, Assessing Officer made disallowance on account of depreciation of Rs.5,00,000/- on the ground that land portion included in the building was

not eligible for depreciation. Further he noted that part of the building was rented and assessee has claimed deduction u/s 24 of the Income-tax Act, 1961 (for short 'the Act'). He made further proportionate disallowance amounting to Rs.2,82,289/-. Further AO made ad hoc disallowance of 20% on account of telephone expenses and 30% on account of depreciation on car & vehicle repair maintenance. Further he made disallowance u/s 40A(3) amounting to Rs.2,61,200/-.

4. Against the above order, assessee filed an appeal before the Id. CIT (A). Ld. CIT (A) confirmed all the additions.

5. Against this order, assessee has filed appeal before the ITAT. We have heard both the parties and perused the record.

6. Ld. counsel for the assessee submitted that grounds relating to ad hoc disallowance and depreciation are covered in favour of the assessee by decision of the ITAT in assessee's own case for AY 2011-12 vide order dated 13.03.2019 in ITA No.5739/Del/2015.

7. Furthermore, regarding disallowance u/s 40A(3), ld. counsel of the assessee pleaded that the days on which the impugned payments were made were falling under the exception clause.

8. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

9. We note that the issue of depreciation was considered by the ITAT in assessee's own case as above and the same was allowed as under :-

“5. As regards Ground No.1 relating to disallowance of Rs.5 lacs out of depreciation on buildings, the Ld. AR submitted that the value of land was bifurcated from the total consideration of Rs.25 lacs by Registrar, Noida only to serve the purpose of determining the amount of stamp duty payable at the time of sale cum transfer deed. Proportionate disallowance on hypothetical value of land is unjust and uncalled for. The Ld. AR further submitted that the assessee paid Rs. 1,25,00,000/- for the Industrial built up factory as per the transfer cum sale deed and not for land and building separately as assumed by the Assessing Officer. Thus, there is no bifurcation of total consideration of Rs.1,25,00,000/-. The Ld. AR pointed out that the assessee purchased the fully constructed building i.e. Industrial built up factory and the design and lay out of the structure of the building was best suitable to the business of the assessee. All consideration for purchase were made only keeping in view the suitability of building structure for assessee's business. The Ld. AR submitted that in earlier assessment year as well as in subsequent Assessment Years, the same has been allowed on building by the Revenue Department and there is a change of opinion/stand in this particular year as well as in Assessment Year 2013-14.

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

7. We have heard both the parties and perused the material available on record. The Revenue Authorities continuously allowed depreciation on building in earlier Assessment Years 2009-10, 2010-11, 2012-13 & 2014-15 but specifically change its stand in this particular year as well as in Assessment Year 2013-14 without giving proper reasoning towards the same. Thus, following Rule of Consistency, Ground No.1 is allowed.

8. As regards Ground No.2 relating to disallowance of Rs. 3,87,595/- out of depreciation on building pertaining to rental portion of buildings, the Ld. AR submitted that the building is a separate block of asset for depreciation purpose cannot be segregated for the purpose of disallowance of depreciation and hence, the Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of CIT vs. Oswal Agro Mills Pvt. Ltd. (Supra).

9. The Ld. DR relied upon the order of the Assessing Officer and order of the CIT(A).

10. We have heard both the parties and perused the material available on record. In-fact, from the records it can be perused that the assessee purchased the fully constructed building i.e. industrial built up factory and not the land. Therefore, bifurcating the value of land by the Registrar does

not specify the value of land and building separately. Therefore, in light of the decision of the Hon'ble Delhi High Court in case of Oswal Agro Mills Ltd. (2011) 197 Taxman 25 (Delhi) wherein it is held that it is difficult to maintain the details of each assets separately in respect of the land and building constructions and the same will frustrate the very purpose of the provisions if it is done so. The Hon'ble High Court further held that it is also essential to point that the Revenue is not put to any loss by adopting such method and allowing depreciation as the same forms part of the block of assets even when that particular asset is not in use in the relevant Assessment Year. The assessee's case is squarely covered by the decision of the Hon'ble Delhi High Court in case of oswal Agro Mills Ltd. Hence, Ground No.2 is allowed."

10. The issue of ad hoc disallowance was also dealt with by the ITAT and finding that no cogent material was produced by the AO for the disallowance, the same was deleted. We find that the aforesaid decision of ITAT fully applies to the present case. It is not the case that the decision of ITAT was reversed by Hon'ble jurisdictional High Court, hence the grounds for disallowance of depreciation and ad hoc disallowance of expenditure on account of telephone and vehicle are directed to be deleted.

11. As regards ground of disallowance u/s 40A(3), Id. counsel of the assessee states that date on which payments were made were public holidays and hence the same falls under the exception clause and the same should be allowed. Since this is factual aspect we deem it appropriate to remit this issue to the file of AO. AO shall consider the issue afresh and decide the issue only for those payments, which were made on those days that the assessee claimed as bank holidays, is found to be correct and found to be falling under the exception clause.

12. As regards the other payment on the ground of only business exigency, we do not find any infirmity in the orders of the authorities below on this issue.

13. As regards the ground of less credit of TDS, since the matter is going back to the AO, AO shall examine the same and decide as per law.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 24th day of June, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 24th day of June, 2022
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-23, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**