

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.6537/Del/2019
Assessment Year: 2013-14

Drishti India Ltd.,
C-161, East of Kailash,
New Delhi.

Vs. ITO,
Ward-7(4),
New Delhi.

PAN: AAACD2685D

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Om Prakash, Sr. DR
Date of Hearing	:	07.06.2022
Date of Pronouncement	:	04.07.2022

ORDER

This appeal filed by the assessee is directed against the order dated 17.06.2019 of the CIT(A)-3, New Delhi, relating to Assessment Year 2013-14.

2. The notice for today's hearing has been properly served on the assessee. Despite service of notice, neither the assessee nor his authorized representative appeared nor any adjournment application has been filed. In view of this factual position, I am compelled to proceed to decide the appeal ex parte qua the assessee, after hearing the arguments/submissions of the ld. Sr. DR.

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

“1. That the learned Commissioner of Income Tax (Appeals)-3, New Delhi has erred both in law and, on facts in upholding the addition to income made by the learned Income Tax Officer, Ward-7(4), New Delhi of the appellant company of Rs. 26,64,104/- on account of absences of business activity .

2. That while sustaining the aforesaid addition the learned Commissioner of Income Tax (Appeals) has completely overlooked that. The jurisdiction of the revenue is confined to deciding the reality of the expenditure, namely, whether the amount claimed for deduction was factually expended or not, and whether it was wholly and exclusively for the purpose of the business. Once that conclusion is reached in favour of the assessee, deduction of the entire amount should follow as a matter of course (Sanjeevi & Co. Vs. CIT (1966) 62 ITR 156 (Mad)).

3. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding the levy of interest of under section 234B of the Act which is not leviable on the facts and circumstances of the case of the appellant company.

Prayed: It is therefore prayed that, it be held that order disposing of the appeal by the learned Commissioner of Income Tax (Appeals) be set-aside. It is further prayed that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It is also prayed that, additions made and sustained alongwith interest levied may kindly be deleted and, appeal of the appellant company be allowed.”

4. From the grounds raised by the assessee as well as from the submissions before the Id. CIT(A), it is clearly discernible that the assessee is challenging the disallowance made by the AO and partly confirmed by the Id.CIT(A) amounting to Rs.11,21,305/- pertaining to ‘other expenses’ and Rs.4,81,600/- pertaining to ‘expenditure on salary.’ It is the main contention of the assessee that the

jurisdiction of the Revenue is confined to the deciding the reality of the expenditure, namely, the amount claimed for deduction was factually expended or not and whether it was wholly or exclusively for the purpose of business of the assessee. It has also been contended that once that conclusion is reached in favour of the assessee, the deduction of the entire amount should be allowed. From the submissions and grounds raised by the assessee before the Id.CIT(A), it is also seen that the AO, in para 4, while making disallowance, alleged that no business activity being carried during the year under consideration is also confirmed by the fact that no electricity or generator expenses have been incurred by the assessee during the year although the assessee company is having computer and other electrical equipments. On this count, the AO disallowed the expenses, salary and also disallowed the claim of depreciation by observing that it is not proved that the assets have been put to use during the relevant period. However, the Id.CIT(A), after considering the submissions of the assessee, held that the appellant has already disallowed depreciation in the computation of income and furnished the copy of the same and, therefore, further disallowance of depreciation was deleted and the balance disallowance was upheld. The sole argument taken by the AO for making the impugned disallowance is that when there is no revenue from operation, the fact of no business activity being carried out during the year gets fortified and in view of no electricity or generator expenses, this factual situation also dismiss the claim of expenses of salary. However, I may point out that from the relevant para 4 of the AO and from the

detailed written submissions placed by the assessee before the CIT(A) as reproduced in para 5.2 of the first appellate order, I clearly observe that it is not the case of the AO that the assessee had not incurred the impugned expenditure or those were not incurred for the purpose of business of the assessee, but, the sole allegation or basis for making the disallowance is that there is no revenue from operations and no business activity being carried out during the relevant period. The assessee is a limited company which is a legal entity and requires some legal compliances as per the provisions of the Companies Act as well as other applicable laws for maintaining her existence and status as a limited company. In this situation, even if there was no revenue from operations and no business activity was carried out during the relevant period, the claim of expenditure on salary and other expenses cannot be denied on the said basis. From the assessment as well as first appellate order, I clearly gather that no objection has been raised regarding quantum and incurring of expenditure for the purpose of business of the assessee, but, the sole basis and allegation for making disallowance is that no business activity and no revenue from business operations which cannot be a basis for making disallowance of routine expenses and salary expenses for a limited company which is mandatorily required to make some compliances as per relevant applicable provisions of the Companies Act and other laws. Therefore, I decline to accept the basis taken by the AO and confirmed by the Id.CIT(A) for making the impugned disallowance of expenditure on 'other expenses' and 'salary' which was necessary for the legal

existence of the appellant company. Therefore, the sole grievance of the assessee is allowed and the AO is directed to delete the addition.

5. Ground No.3 of the assessee is consequential in nature, therefore, the same is not being adjudicated.

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

Order pronounced in the open court on 04.07.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 04th July, 2022.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi