

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1952/Del/2019, A.Y. 2015-16

Modipon Ltd., Ghaziabad Hapur Road., Modi Nagar, Ghaziabad	Vs.	ITO, Circle-17(1), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	None
Revenue by	Shri Jeetender Chand, Sr. DR

Date of hearing:	22.09.2022
Date of Pronouncement:	22.09.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Assessee against order dated 17.12.2018 passed in appeal no. CIT(A), Delhi-6/10423/2017-18 for assessment year 2015-16 by Commissioner of Income Tax (Appeals)-6, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 23.12.2017 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by ACIT, Circle-17(1), New Delhi.

2. The facts in brief are that return of income was filed on 30/09/2015

declaring a loss of Rs. 2,28,14,922/-. The case was selected for scrutiny through CASS and notice under section 143(2) dated 06/04/2016 was issued and was duly served upon the assessee. Ld AO observed that during the year under consideration, the assessee company showed interest income from FDR, rental income and other non-operative income. On perusal of the Balance Sheet and Note No. 20 of the Balance Sheet, the AO noted that the assessee had claimed expenses of Rs. 26,93,000/- as business promotion expenses. The assessee was asked to explain why the business promotion expenses should not be disallowed and added back to the income as the said expenses had no connection with revenue generation for the year under consideration. In response it was, inter *alia*, submitted that though the manufacturing activities had not been carried on, the assessee had the intention to carry on any other business for which it was exploring the possibility of commencement of a new business. It was also submitted that though the manufacturing operations had been closed due to continuous losses, it had sold the workers quarters and earned Rs. 4,62,78,282/- which due to the said gain being deemed to be short term capital gain under section 50, could not be considered as business income. It was also submitted that in view of this the company is deemed to be carrying on business and all expenses including interest paid and publicity' expenses were incurred to carry on business.

2.1 The contentions of the appellant were considered but were not found to be acceptable. It was noted that the assessee had itself admitted in its submission that it had closed down its business and was not carrying on any business during the year under consideration. The AO also discussed the provisions relating to section 50 in the context of the submission of the appellant and noted that the intention behind the introduction of the said section was to restrict the assessee from getting the double benefit of

depreciation as well as long-term capital gains. Accordingly, the claim of the assessee regarding claim of business promotion expenses was not found to be acceptable and the amount of Rs. 26,93,000/- was disallowed and added back to the total income.

3. Ld. CIT(A) has sustained the same and the assessee is in appeal raising following grounds :-

“That on the facts and in the circumstances of the case and in law the Commissioner (Appeals), erred in confirming the disallowance of the expenditure of Rs. 26,93,000/- incurred wholly and exclusively for the purpose of the business.”

4. Heard. As the case was called for hearing, non-appeared for the assessee and record shows earlier on 21.06.2022 also non-appeared and notices were issued for today still none has appeared. No more notice is justified.

5. Ld. DR was heard who submitted that there is no error in the findings of the Ld. Tax Authorities below.

6. Giving thoughtful consideration to the matter on record, it can be observed that it is admitted case of the assessee that it has closed down primary business and was not carrying any business during the year under consideration. The disallowed expenditure is of the nature business promotion expenses and certainly that indicates that there should be some business activity going on or at least some identifiable business activity in the pipeline. However, the assessee's claim was of exploring the possibility of commencement of new business. Such general statement cannot justify and expenditure under the head 'business promotion expenses'. There is no

error in the findings of Ld. Tax Authorities below. The ground has no substance. **The appeal of assessee is dismissed ex parte.**

Order pronounced in the open court on 22nd September, 2022.

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

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 22.09.2022

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI