

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR US, JUDICIAL MEMBER

I.T.A. No. 167/DEL/2020 (A.Y 2014-15)

M/s. Frost Falcon Distilleries Ltd., 406, Elegance Tower, Jasola District Centre, New Delhi-110 025. PAN No. AAACR0233R (APPELLANT)	Vs.	DCIT, Central Circle : 1, Gurgaon. (RESPONDENT)
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Assessee by :	Shri V. K. Bindal; C. A.; & Ms. Rinky Sharma, I.T.P.;
Department by:	Shri Rajendra Jha, Sr. D. R.;

Date of Hearing	07.11.2022
Date of Pronouncement	10.11.2022

ORDER

YOGESH KUMAR U.S.

This appeal is filed by the assessee against the order dated 22.11.2019 of the Id. Commissioner of Income Tax (Appeals)-3, Gurgaon [hereinafter referred to CIT (Appeals)] for Assessment Year 2014-15.

2. The assessee has raised the following substantive grounds of appeal:-
- 1.(a) *The learned CIT(A) erred in law and on the facts in confirming the addition of Rs. 42,19,164/- to the returned income of the assessee by disallowing electricity expenses of Rs. 8,83,939/- (Rs.*

3,52,107 + Rs. 531,832) - Rent expenses of Rs. 30,11,626/- (Rs. 3,46,711+ Rs. 26,64,915) and security expenses of Rs. 3,23,599/- in complete disregard to the explanations given in support of the transactions and documents filed by the assessee.

(b) All the above expenses were incurred by the assessee for the purpose of its business and not of other companies at all and hence fully allowable u/s 37 of the Act. The addition of Rs. 42,19,164/- so made is illegal, against the provisions contained in the income-tax Act, 1961, bad in law and hence liable to be deleted.

2. The learned CIT(A) erred in law and on the facts in confirming the addition of Rs. 2,22,200/- to the returned income of the assessee by disallowing various business expenses namely gift and presentation expenses of Rs. 2,07,000/- fine and penalties of Rs. 15,200/- which were already disallowed by the assessee on its own while computing its taxable income at the time of filing the income tax return which should be deleted.

3. The learned CIT(A) erred in law and on facts in confirming the addition of Rs. 7,06,334/- to the returnee income of the assessee by disallowing various business expenses namely:

Business promotion expenses of Rs. 34,175/-

- ii) Sales promotion expenses of Rs. 36,490/-
- iii) Diwali expenses of Rs. 5,67,960/-
- iv) Entertainment expenses Rs. 33,232/-
- v) Membership fee expenses Rs. 34,477/-

4. The appellant craves the leave to add, substitute, modify delete or amend all or any ground of appeal either before or at the time of hearing.

3. Brief facts of the case are that, the assessee Company derives income from manufacturing and sale of country liquor, filed its return of income for AY 2014-15 declaring a total income of NIL. During the assessment proceedings, the assessee was asked to furnish details regarding expenses claimed during the year and the Assessee filed the details. The Ld. A.O. has disallowed the business expenses of Rs. 42,19,164/- on the ground that the assessee is using the premises/security services/ electricity along with other 17 companies and the same was borne by the assessee for its group companies and therefore the said expenses are held to be not incurred for the business of the assessee. The Ld. A.O. has also disallowed various other business expenses claimed under different heads to the tune of Rs. 10,27,694/- and further disallowed a sum of Rs. 8,615/- u/s 14A of the Act, accordingly, passed the assessment order on 29/12/2016.

4. Aggrieved by the assessment order dated 29/12/2016, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) has confirmed the disallowance of business expenses of Rs. 42,19,164/- made by the A.O. Further in so far as the disallowance of Rs. 2,22,200/- made by the A.O. on various business expenses, namely gift and presentation expenses of Rs. 2,07,000/- and fine a penalty of Rs. 15,200/-, the Ld. CIT (A) has remanded the issue to the A.O. for verification as to whether the same has been already disallowed in the computation of assessable income for the year under consideration and if so, directed to delete the same so as to avoid the double addition. Further, the Ld.CIT(A) has also confirmed the addition of Rs. 8,05,494/- by disallowing various expenses.

5. Aggrieved by the order dated 22/11/2019, the Assessee has preferred the present appeal on the grounds.

GROUND NO.1.

6. The Ld. Counsel for the assessee vehemently submitted that the 17 Companies are having registered address at the premises of the assessee company which were not doing any business/activities in the said premises, those companies were merely having the registered address of the premises of the assessee and the entire expenditure have been incurred by the assessee for its business purpose. Further submitted that the Ld.CIT(A) has neither discussed nor gave any finding on the documents produced by the assessee such as balance sheet of all the 17 other Companies, chart showing activities of each Company and a number of employees of the company etc. Therefore, submitted that the order of the CIT (A) is bad in law.

7. Per contra, the Ld. DR submitted that admittedly there are 17 Companies were having registered address in the single premises, therefore the lower authorities have rightly disallowed the expenses claimed by the Assessee and the assessee has claimed the expenses by inflating the same, thus, the Ld. A.O. and the CIT(A) have committed no error in disallowing the expenses.

8. We have heard the parties, perused the material on record and gave our thoughtful consideration.

9. The assessee has admitted that there were 17 companies have declared the address of the Assessee as their registered address in the ROC. The Ld. CIT (A) considering the said facts observed hereunder:

“In the submission filed during assessment proceedings, it was noticed by the AO that the Friends Colony office was shared by six other companies and Jasola Office by sixteen other companies. However, the entire expenses incurred with relation to these offices were claimed by the appellant company. In view of the same and in

absence of any explanation offered by the appellant, the AO disallowed electricity expenses, rent and security expenses proportionately so as to restrict the expenses claimed by the appellant only to its share.”

10. It is the specific case of the assessee before us that, the Ld.CIT(A) has not considered the paper book produced by the Assessee which comprising of all the explanation and details to prove the case of the assessee. We found that the Lower Authorities have not given any finding on the documents produced by the assessee in the paper book. Therefore, in our considered opinion, the issue requires to be remanded to the file of the A.O. for de-novo consideration and to pass appropriate order after considering the documents produced by the assessee. Accordingly, we partly allow Assessee's Ground No. 1 for statistical purpose by remanding the issue to the file of A.O. for de-novo consideration with a direction to A.O. to decide the said issue afresh after providing the opportunity being heard to the Assessee, Ordered Accordingly.

GROUND NO. 2

11. The ground No.2 is regarding disallowance of Rs. 2,22,200/- on various expenses made by the A.O. which have been remanded by CIT(A) to the file of A.O. with a direction to consider the same in view of the claim of the Assessee that the same have already been disallowed in computation of assemble income for the year under consideration.

12. It is the specific case of the assessee that, the assessee has spent the said amount in cash for gifts and disallowed in the computation of assemble income in the year under consideration. The Assessee has not proved before the lower authorities that the said expenses are related to the business, therefore the Ld.CIT(A) has rightly upheld the view of the A.O that gift and

presentation expenses amounting to Rs. 2,67,000/- for crockery expenses and unrelated to the business of the assessee and disallowed the same. However, the Ld. CIT(A) has directed the A.O. to verify the contention of the assessee and further also directed to delete the addition if the same has already been disallowed in computation of assemble income for the year under consideration so as to avoid the double addition. Very same direction has also been given by the CIT (A) in respect of disallowance of Rs. 15,200/- claimed by the assessee under the head 'fine and penalties'. The said action of the Ld.CIT(A) found to be legal and reasonable which cannot be found fault with. Accordingly, we dismiss Ground No. 2 of the assessee.

GROUND NO. 3

13. The ground No.3 is regarding disallowance of Rs.8,05,494/- which are claimed by the Assessee that the same have been incurred for the purpose of the business, which are allowable under Section 37 of the Act.- The details are hereunder:

- (i) Business promotion expenses of Rs. 34,175/-**
- (ii) Sales promotion expenses of Rs. 36,490/-**
- ii) Diwali expenses of Rs. 5,67,960/-**
- iii) Entertainment expenses Rs. 33,232/-**
- iv) Membership fee expenses Rs. 34,477/-**

It is the case of the Ld. AR that the Ld. CIT (A) has complete disregarded the documents filed and explanations given by the Assessee and further submitted that all the above expenses were incurred by the assessee for the purpose of its business and hence allowable under section 37 of the Act.

14. The Ld.CIT(A) has confirmed the above disallowances on the ground that the assessee was not able to justify how the said claimed business promotion expenses and sale promotion expenses have incurred for the business of the

assessee. Further, in so far as Diwali expenses are concerned, the same have been disallowed on the ground that the authorities the assessee could not specify the name and the person to whom the expenses related and how these expenses were incurred wholly and exclusively for the business purpose. In so far as the Entertainment expenses and club membership claimed by the Assessee, the Ld.CIT(A) is of the opinion that the same were personal activity and not on behalf of the corporate.

15. Though the Ld. Counsel for the assessee vehemently argued that the above expenses are wholly and exclusively incurred on the day to day business of the assessee, but failed to produce any documents either before the lower authorities or before us in support of the contention of the assessee. In our opinion it is for the Assessee to prove that the expenses so incurred are for the purpose of the Business in the true word and spirit of Section 37 of the Act. **Ergo**, we deem it fit to remand the above issue also to the file of the Ld. A.O. for de-novo consideration with a direction to assessee to justify his contention before the Ld. A.O. and the A.O. shall decide the same in accordance with law. Accordingly, the Ground No.3 of the Assessee is partly allowed for statistical purpose.

16. In the result, the appeal of the assessee is partly allowed for statistical purposes, ordered accordingly.

Order pronounced in the open court on :10th **November, 2022.**

Sd/-

Sd/-

(SHAMIM YAHYA)

(YOGESH KUMAR U.S.)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Dated : 10/11/2022

R.N, Sr. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI