

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 2293/DEL/2018 [A.Y. 2012-13]

NLMK India Service Centre  
Pvt. Ltd., Unit No.236A, South  
Building, District Centre, Saket  
New Delhi

Vs. The A.C.I.T  
Circle - 18(2)  
New Delhi

PAN: AAACN 1328 B

(Applicant)

(Respondent)

Assessee By : Shri Anuj Tiwari, CA

Department By : Shri M. K. Pandey, Sr. DR

Date of Hearing : 06.07.2023

Date of Pronouncement : 10.07.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order dated 05.12.2017 by the CIT(A)-24, Mumbai pertaining to Assessment Year 2012-13.

2. Grievances of the assessee read as under;

"1. The Ld. Commissioner of Income-Tax (Appeals) has grossly erred both on facts and in law in confirming the action of the Ld. Assessing Officer (Ld. AO) in holding that as the business has not generated any revenue the appellant was not having any business during the year, thereby disallowing the expenses amounting to INR 15,583,063/- under section 37(1) of the IT. Act, 1961.

2. The Ld. Commissioner of Income-Tax (Appeals) has grossly erred both on facts and in law in holding that the appellant has not discharged its onus of submitting relevant details and documents to substantiate the genuineness of expenses claimed despite of the fact that all the information as asked for in the notice and in the personal hearings were submitted before the Ld. AO and as well as before Ld. CIT(A)

3. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal."

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the judicial decisions relied upon by both the sides.

4. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings and on perusal of the financial statements of the assessee, the Assessing Officer observed that the assessee has not earned any revenue for the year under consideration. The assessee was asked to show cause why the loss claimed should not be disallowed in the absence of generation of revenue for the year under consideration.

5. In its reply, the assessee stated that as there was decline of demand from major customer, the assessee could not generate any revenue during the year under consideration. It was strongly contended that merely because the revenue is NIL does not imply that there is no business in the year.

6. Submissions of the assessee were dismissed by the Assessing Officer who completed assessment proceedings by disallowing the entire expenses claimed in the profit and loss account.

7. The assessee carried the matter before the Id. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. counsel for the assessee that the assessee expanded its business by acquiring assets of its main customer/contractor and prior to the year under consideration the assessee was engaged in the business of cutting and storing of steel and earning job-work charges from its main customer - National Lamination Industries.

9. The ld. counsel for the assessee further stated that during the year under consideration the assessee undertook forward integration of its business and, therefore, the revenue of the assessee was reduced to NIL. However, the assessee continued to incur usual expenses and because of the expenses, the assessee returned a loss of Rs. 1,58,83,060/- and the Assessing Officer has wrongly disallowed the loss so claimed.

10. Per contra, the ld. DR read the operative part of the assessment order and the order of the first appellate authority. It is the say of the ld. DR that the assessee has not started any new business and has simply shunted its old business. Therefore, it cannot be said that there was a lull in the business.

11. We have given thoughtful consideration to the rival contentions. The undisputed fact is that for the year ended 30.06.2011, the assessee has shown revenue from operations at Rs. 1,64,86,934/- and usual expenses on employees financial cost and depreciation was allowed as claimed by the assessee.

12. During the year under consideration, we find that the assessee has stopped doing job work for National Lamination Industries and due to change in the management, the assessee embarked upon new adventure. However, for running the business set up, the assessee had to incur usual expenses relating to employee benefits, financial costs and depreciation etc. Therefore, it cannot be said that the assessee has not done anything, which prompted the Assessing Officer to disallow the entire claim of loss.

13. In our considered opinion, it is not necessary that income is earned for allowability of expenses. All that matters is the business should be in existence while claiming the expenditure.

14. Since the business of the assessee was in existence and have in fact, resumed from subsequent F.Ys., it can be said that there was temporary lull in the business and it can be safely concluded that the

assessee took efforts to keep the business alive in the hope of saving the same by embarking upon new adventure. The assessee was very much maintaining office and establishment, complying with statutory formalities, keeping plant and machine intact, incurring routine expenses indicating nurturing the hopes of reviving the business.

15. Considering the facts of the case in totality, we do not find any merit in the findings of the Id. CIT(A) which we set aside and direct the Assessing Officer to allow loss as claimed by the assessee.

16. In the result, the appeal of the assessee in ITA No. 2293/DEL/2018 is allowed.

The order is pronounced in the open court on 10.07.2023.

Sd/-

**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 10<sup>th</sup> JULY, 2023.

VL/

Copy forwarded to:

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

Asst. 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	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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