

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 3329/Del/2019
(Assessment Year: 2014-15)

Pluto Facilities Management Pvt. Ltd, B-231, GK-I, New Delhi (Appellant) PAN: AAACP9590P	Vs. ITO, Ward-2(1), New Delhi (Respondent)
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Assessee by :	Sh. Navin Agarwal,CA Ms. Vaishali Garg, CA
Revenue by:	Sh. Om Parkash, Sr. DR
Date of Hearing	09/05/2023
Date of pronouncement	11/07/2023

ORDER

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-7, New Delhi dated 22.02.2019 for AY 2014-15.
2. The assessee has raised the following grounds of appeal:-
 - "1. That the order of the Ld. CIT (Appeals) is bad both in law and on the facts of the case.*
 - 2. That the Ld. A.O. misappreciated the facts by adding an amount of Rs.2,152,662/- on account of the contribution received by the appellant company during the year towards the "Assets Replacement Sinking Fund" which is meant for specific utilization and purpose as per the contractual obligation and the Ld. CIT (Appeals) erred in upholding the same.*
 - 3. That the Ld. A.O did not take into consideration the contractual liability attached to the gross contribution received by the appellant co. and other relevant evidences while framing the assessment and the Ld. CIT (Appeals) erred in upholding the same.*
 - 4. That the Ld. A.O while framing the assessment ignored the relevant clauses of the Agreement wherein the appellant co. is obligated to maintain the premises as well as replace the assets installed in the premises and keep them in impeccable working condition against which the appellant co is receiving the contribution and the Ld. CIT (Appeals) erred in upholding the same.*
 - 5. That the Ld. A.O ignored the relevant evidence regarding the contractual liability of the appellant co. and framed the assessment*

without application of mind in a arbitrary manner and the Ld. CIT (Appeals) erred in upholding the same.

6. That the Ld. A.O ought to have allowed the actual utilization of Rs. 14,28,473/- towards replacement of assets during the year by the appellant co. out of "Assets Replacement Sinking Fund" and the Ld. CIT (Appeals) erred in by not allowing the same.

7. That the Ld. A.O erred in by adding an adhoc amount Rs.6,02,891/- on account of so called unverifiable expenses and the Ld. CIT (Appeals) erred in upholding the same.

8. That the Ld. A.O ignored the fact that the appellant co. Financial Statement are duly audited under law and further has dealing with well known companies whose complete details were submitted during the course of assessment proceedings. The Ld. A.O failed to verify the same and choose to complete the assessment without application of mind in a arbitrary manner and the Ld. CIT (Appeals) erred in upholding the same.

9. That the Ld. A.O has erred in law and on facts of the case by initiating penalty proceedings u/s 271(1)(c) and the Ld. CIT (Appeals) erred in upholding the same."

Ground Nos. 1 to 5 of assessee

3. At the outset, I note that on the ground Nos. 1 to 5 of the assessee, the Id DR did not controvert the contention of the assessee that the issue of addition made by the AO on account of contribution received by the assessee company during the year towards "asset replacement sinking fund", which was meant for specific utilization and purpose as per the contractual obligation is covered by the order of the coordinate bench of ITAT, Delhi dated 04.05.2012 in the case of Alpha Services Vs. DCIT in ITA No. 1063/Del/2011 for AY 2007-08. On perusal of the said order and careful consideration of the facts and circumstances of the case I note that the assessee received an amount of Rs. 21,52,662/- on account of contribution received by assessee during the year towards replacement of assets as sinking fund which was for specific utilization and purpose as per contractual obligation. Under identical facts and circumstances, the coordinate bench of Tribunal in the case of Alpha Services (supra) held that the amount recovered for replacement of assets which is kept as sinking fund and cost of replacement of assets was being utilized out of this

fund. Then, no disallowance or addition can be made in the hands of the assessee as the system followed by the assessee as cogent as the assessee put the amount collected in a sinking fund for utilization of replacement of capital assets. Accordingly, respectfully following the proposition rendered by the coordinate bench in case of Alpha Services (supra) ground Nos. 1 to 5 of assessee are allowed and the AO is directed to delete the addition.

4. Ground No. 6 of assessee is alternative ground claiming actual utilization towards replacement of assets which has become infructuous after allowing grievance of assessee in to to in ground Nos. 1 to 5.

Ground Nos. 7 and 8 of assessee

5. Apropos the Id counsel of assessee submitted that the AO has ignored the fact that financial statement of the assessee company are duly audited under law and further it is dealing with well known companies whose complete details were submitted during the course of assessment proceedings but the AO failed to verify the same and proceeded to complete the assessment without application of mind in a arbitrary manner and Id CIT(A) has also erred in upholding the same.

6. Replying to the above, the Id SR. DR strongly supported the orders of the authorities below and submitted that the AO rightly held that the creditor for expenses/ borrowed to whom payment made is not verified then the disallowances is warranted and AO was very liberal in only making disallowance of 15% of claim expenses and no further interference is called for therein.

7. On careful consideration of the above submission from the orders of the authorities below I clearly note that the AO made disallowance of 15% of total claim of unverifiable expenses. During the first appellate proceedings, the assessee furnished additional

evidence which was forwarded to the AO for his comments and the AO in his remand report submitted that the document submitted by the assessee were examined and summons u/s 131 of the Act were issued to all four companies but they did not respond till submission of the remand report. This shows that the AO as well as the Id CIT(A) made all possible efforts to verify the claim of expenses placed by the assessee but same remain unverifiable and the AO made disallowance of 15% of the total claim which was upheld by the Id CIT(A) after calling remand report from the AO on the additional evidence submitted by the assessee and consideration the response of the assessee. I am unable to see any valid reason to interfere with the findings recorded by the authorities below, particularly based on the facts stated in the remand report therefore, I decline to interfere therein. Accordingly, ground Nos. 7 and 8 of assessee being devoid of merits are dismissed.

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

Order pronounced in the open court on 11/07/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 11/07/2023
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi