

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI

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

ITA No. 6655/DEL/2019 [A.Y. 2013-14]

M/s Cambridge Construction [Delhi] Ltd  
11, Monnet House, Masjid Moth  
Greater Kailash, Part - II, New Delhi

Vs. The I.T.O  
Ward -5(3)  
New Delhi

PAN: AAACC 0295 N

(Applicant)

(Respondent)

Assessee By : Shri V.K. Jain, CA

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 11.07.2023

Date of Pronouncement : 14.07.2023

**ORDER**

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

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 33, New Delhi dated 28.05.2019 pertaining to Assessment  
Year 2013-14.

2. The grievances of the assessee read as under:

*“1 (a) That on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in confirming the disallowance towards cost of improvement of Rs. 4,96,548/- for calculating Long Term Capital Gain on account of non-availability of bills. The Ld. CIT(A) has failed to appreciate that expenses were incurred in earlier years FY 2006-07 & FY 2007-08 and duly reflected in earlier years audited balance sheets and duly assessed thus disallowance confirmed by Ld. CIT(A) is erroneous, illegal & bad in law.*

*1 (b) That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in confirming the disallowance of Rs. 3,17,1701- as cost of improvement on account of property tax and RS.7,50,189/- on account of cost of improvement and erred in not allowing the total indexed cost of improvement of Rs. 24,82,069/- for calculating Long Term Capital Gain.*

*2(a) That on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in not allowing the set off of brought forward Long Term Capital Loss of Rs. 10,95,43,214/- pertaining to AY 2007-08 against long term capital gain for the year under consideration, despite the facts that the appellant has filed its return of income on or before due date u/s 139(1) of the Income Tax Act, 1961 on 30/10/2007 for AY 2007- 08 in . time. The disallowance of brought forward long term capital loss of Rs. 94,093,5061- is erroneous, illegal & bad in law.*

*2(b) That on the facts and in the circumstances of the case the Ld. CIT(A) has arbitrarily relied upon the assessment order passed u/s 143(3) of Income Tax Act, 1961 for A Y 2007-08*

*without appreciating the fact that in the assessment order the Ld. AO has not disallowed the Long Term Capital Loss duly claimed in the return of income for A Y 2007- 08 and hence stands assessed.*

*2(c) That the Ld. CIT(A) has totally ignored the request of the appellant company during appellate proceedings to verify the Long Term Capital Loss for AY 2007-08 from Assessment records duly assessed u/s 143(3) vide order dated 23.11.2009.*

*3. The Ld. CIT(A) has erred in confirming the disallowance of Rs. 7,00,343/- claimed as business loss on alleged belief that the appellant company has not carried any business during the year under consideration. The Ld. CIT(A) has failed to appreciate that the appellant company is engaged in business of construction and development of immovable property, real estate, dealing and investment in real estate and regular revenue expenditure incurred by way of administrative expenses etc. are allowable u/s 37 of the Income Tax Act, 1961.*

*4. The appellant craves leave to add, alter, amend, modify or forego any of the grounds of appeal before or at the time of hearing.”*

3. The underlying facts in the issue raised vide Ground No. 1 are that the Hon'ble Delhi High Court passed an order dated 06.08.2012 u/s 391 r.w.s 394 of the Companies Act, 1956 approving the Scheme of Demerger and Merger filed by the

assessee company. Property Division of M/s Nourish Organic Foods Pvt Ltd [NOFPL], transferor company, merged with the assessee company w.e.f. 01.04.2011.

4. As per the scheme of arrangements, line by line transfer of assets, liabilities and reserve of transferor company relating to the property division merged with the resultant company, the assessee inherited the following five properties at their book value:

Sl. No.	Property	Amount [Rs.] [Book Value]
(i)	Khasra No. 655, Sainik Farm, Neb Sarai, New Delhi [3650 Sq. yds]	30,00,000
(ii)	Khasra No. 637, Sainik Farm, Neb Sarai, New Delhi [1200 Sq. yds]	2,57,62,000
(iii)	7, Poorvi Marg, Vasant Vihar, New Delhi	30,00,000
(iv)	Khasra No. 524/2, Neb Sarai, New Delhi [500 Sq. yds]	8,00,000
(v)	Farm house, measuring 0.25 Acre land and double storey building and other structure standing therein at Khasra No. 22, Village Deoli and Mehrauli, New Delhi	40,00,000
	Total	3,90,62,000
	Liabilities due to Monnet Ispat & Energy Ltd	2,63,50,000

5. During the year under consideration, the assessee sold property at Sr. No. 3 for a consideration of Rs. 14 crores on which the assessee earned long term capital gain [LTCG] of Rs. 9,53,65,881/-. The assessee adjusted this LTCG from the brought forward long term capital loss [LTCL] for A.Ys 2005-06 and 2007-08.

6. On perusal of the computation of LTCG, the Assessing Officer noticed that the assessee has taken total cost of assets sold at Rs. 2,64,72,187/- for indexation purposes, while the book value of the assets transferred to it was Rs. 2,57,62,000/-. The assessee was, therefore, asked to file the details of the value taken for indexation purposes.

8. In its reply, reply, the assessee stated that the original cost of the assets was Rs. 2.16 crores to the previous owner. Further expenses of Rs. 17,79,881/- were made in F.Y. 2006-07, Rs. 26,69,204/- in F.Y. 2007-08, Rs. 3,83,003/- in F.Y. 2009-10 and Rs. 40,000/- in F.Y. 2012-13 to arrive at total cost of Rs. 2,64,72,187/-. Since the assessee had brought forward losses from A.Ys 2005-06 and 2007-08, the LTCG was adjusted against these brought forward losses.

9. On perusal of the details, the Assessing Officer noticed that barring the amount of Rs. 40,000/-, all the expenses have been incurred by the previous owner NOFPL, which is already added in the book value of assets, as these are capital expense and is properly reflected in the book value shown at the time of merger at Rs. 2,57,62,000/-.

10. Since the assessee was not able to produce the bill of Rs. 4,96,548/-, the Assessing Officer disallowed the claim of such expenses from the cost of improvement.

11. The assessee challenged the addition before the Id. CIT(A) but without success.

12. Before us, it has been strongly contended that all the expenses were incurred by the previous owner long time back and, therefore, the assessee is not in a position to file the bills/vouchers.

13. Be that as it may, in our considered opinion, if the expenses were incurred by the previous owner, the same becomes part of book value of impugned asset and book value pursuant to the order of the Hon'ble

High Court was Rs. 2,57,62,000/-. Therefore, any expenses incurred by the previous owner must have found place in this book value. Considering these facts, we do not find any error or infirmity in the findings of the ld. CIT(A). Ground No. 1(a) and (b), taken together are dismissed.

14. The underlying facts in the issue raised vide Ground No. 2(a) and (b) are that the assessee has set off its LTCGs earned during the year under consideration with brought forward losses of A.Ys 2005-06 and 2007-08. The assessee was asked to justify its claim of brought forward losses.

15. In its reply, the assessee filed copy of Income tax return and assessment order u/s 143(3) of the Act passed by the then AO.

16. On perusal of the same, the Assessing Officer noticed that assessment for A.Y 2007-08 was completed at an income of Rs. 1,45,467/- against the NIL returned income which was adjusted out of brought forward losses. No details whatsoever were filed by the assessee as a proof, in support of its claim of brought forward loss for A.Ys 2005-06 and 2007-08.

17. The assessee strongly contended that since the loss was not disallowed by the Assessing Officer, it can be safely presumed that he has allowed the losses.

18. This contention of the assessee was dismissed by the Assessing Officer who was of the opinion that in the assessment order, the Assessing Officer has made it very clear that the assessee filed its return declaring NIL income and after making certain additions/ disallowances, total income assessed for A.Y 2007-08 was Rs. 1,45,467/-. The Assessing Officer, accordingly, disallowed the set off of loss.

19. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) but without any success.

20. Before us, the Id. counsel for the assessee reiterated the facts, drew our attention to the return filed and pointed out that it has disclosed the amount of loss in the return of income and since the assessee has no role in framing the assessment order, the assessee cannot be held to be responsible for the action of the Assessing Officer.

21. Strong reliance was placed on the decisions of the Hon'ble Punjab and Haryana High Court in the case of Hari Iron Trading Co. Vs. CIT 263 ITR 437, Hon'ble Delhi High Court in the case of Usha International Limited ITA No. 2026/2010 order dated 21.09.2012 and the decision of the Hon'ble Delhi High Court in the case of Eicher Ltd 294 ITR 310.

22. Per contra, the ld. DR strongly supported the findings of the lower authorities.

23. We have given thoughtful consideration to the orders of the authorities below and have carefully considered the judicial decisions relied upon by the ld. counsel for the assessee.

24. At the very outset, all the decisions relied upon by the ld. counsel for the assessee are not at all relevant to the facts of the case in hand. There is no dispute that the assessment order for A.Y 2007-08, framed u/s 143(3) of the Act is completely silent on the brought forward/carried forward losses.

25. The ld. counsel for the assessee has time and again emphatically stated that the assessee has no control over the language of the assessment order framed by the Assessing Officer. This may be true, but, at the same time, law has provided a tool to the assessee in the form of Section 154 in the Act by which the assessee can always ask the Assessing Officer to rectify the mistake apparent from record.

26. When the assessee received the assessment order for A.Y 2007-08, he was well aware that the Assessing Officer has not allowed the carried forward of losses claimed by it and yet chose to remain silent and did not care to invoke the provisions of section 154 of the Act, nor filed any appeal before the ld. CIT(A).

27. Now, at this stage, referring to the return for A.Y 2007-08, the ld. counsel for the assessee cannot claim that the loss was claimed by the assessee. Assuming, yet not accepting the loss was claimed by the assessee, but the fact of the matter is that he said loss was never assessed and allowed by the Assessing Officer. Therefore, we do not find any merit in the claim of the assessee. We decline to interfere with the findings of the ld. CIT(A). Ground No. 2 with all its sub-ground is dismissed.

28. Ground No. 3 relates to the disallowance of Rs. 7,00,343/- being business loss.

29. The Assessing Officer disallowed the claim of expenses on the ground that the assessee has not carried on any business during the year under consideration. The Assessing Officer further observed that the assessee has also not carried on any business in the previous and succeeding A.Y. The Assessing Officer added back the claim of expenses.

30. The disallowance /addition was challenged before the ld. CIT(A) but without any success.

31. Before us, the ld. counsel for the assessee drew our attention to the profit and loss account and pointed out that total expenses claimed by the assessee was at Rs. 16,28,515/- and in the computation of income, the assessee has suo moto added back the expenses to the tune of Rs. 4,84,008/- and has only claimed those expenses which were necessary to maintain the corporate status of the assessee.

32. The ld. DR strongly supported the findings of the Assessing Officer.

33. We have carefully perused the orders of the authorities below. The undisputed fact is that in the profit and loss account, the assessee has claimed expenses of Rs. 16,28,515/- which consists of depreciation and amortization expenses of Rs. 7,06,235/- and administrative and other expenses of Rs. 92,228/-.

34. The details of administrative and other expenses are given at Page 15 of the Paper Book under the head Note. No. 13. A perusal of the details shows that the expenses are for electricity and water charges, rates and taxes, payment to auditors, file fees, nominal bank charges. In our considered opinion, such expenses are incurred to maintain the corporate status of the assessee. Whether the assessee has carried on any business or not is not material in so far as these expenses are concerned. We, accordingly, direct the Assessing Officer to delete the disallowance of Rs. 7,00,343./-. Ground No. 3 is, accordingly, allowed.

35. In the result the appeal of the assessee in ITA No. 6655/DEL/2019 is partly allowed.

The order is pronounced in the open court on 14.07.2023.

**Sd/-**

**[ANUBHAV SHARMA]  
JUDICIAL MEMBER**

**Sd/-**

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

Dated: 14<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	
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