

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2676/Del/2018, A.Y.2014-15

Giri Buildwell Pvt. Ltd. R-23 LG-1 and 3 Nehru Enclave New Delhi- 110019 PAN : AABCG2921Q	Vs.	DCIT, Circle-10(1), New Delhi
Appellant		Respondent

Assessee by	Dr. Rakesh Gupta, Adv. & Sh. Somil Agarwal, Adv.
Revenue by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	17.07.2023
Date of Pronouncement:	21.08.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Assessee against the order dated 09.03.2018 of CIT(A)-35, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 418/16-17 arising out of an appeal before it against the order dated 28.10.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Circle-10(1), New Delhi (hereinafter referred as the Ld. AO).

2. The brief facts of the case are that Assessment in this case was completed on a total income of Rs. 58,09,620/- as against returned income of Rs.

41,95,030/-. While doing so the assessing officer has made the following addition. :

S.N.	Particulars	Amount (Rs.)
1.	Alleged addition on account of disallowing business expenses.	14,10,163/-
2.	Alleged addition on account of disallowance under section 14A	2,04,430/-

2.1 The Ld. AO observes that the entire activity of the assessee company revolves around earning of income from income from house property along with income under the head income from capital gain, there is no business activity, therefore, business expenses claimed by the assessee were disallowed and added back to the income of the assessee.

2.2 The detail of business expenses disallowed are as under:

Salaries and other benefits	143,743/-
Director Remuneration	600,000/-
Staff Welfare & Other allowance	56,699/-
Conveyance	48,300/-
Membership Fee &	60,039/-
Insurance Charges	46,808/-
Vehicle Running &	61,725/-
Telephone expenses	54,936/-
Audit Fees	29,214/-
Donation	43,200/-
Electricity expenses	82,484/-
Security Charges	94,126/-
Legal & professional expenses	29,680/-
Other expenses	25,308/-

2.3 Ld. Counsel has submitted that the main activity of the company is sale/purchase and construction of the property and not the rental income. Apart from that the company is maintaining the Inventory of Rs. 59,580,020/- but due to adverse market condition no sale/ purchase of property could be made during the year under considerations. However, the company is to maintain the office

to carry on its main business activity and to incurred the expenses wholly and inclusively for business purposes. Ld. Counsel has submitted that for maintenance & marketing for selling the existing inventory the company is to maintain all the basic expenses like Salary to staff & director, staff welfare, conveyance, telephone, electricity, insurance, membership fee, vehicle running expenses, security charges and other statutory expenses, otherwise the company could not sell the inventory. Therefore these expenses are mandatory in nature to meet out any business opportunity to sell the inventory and should be allowed as business expenses. It is submitted that the assessee was not carrying out business activity due to adverse market conditions, but the assessee being an artificial juridical person, has to incur expenditure for maintaining its existence and for carrying out whatever little activities that the assessee is involved in. Unlike a natural person, a company can only operate through other natural persons—whether employees or others.

3. Assessee has come in appeal before the Tribunal raising following grounds :

“1. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in sustaining the addition of Rs 14,10,163 incorrectly and unjustifiably made by the assessing officer.

2. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that there was no business activity in the year under consideration even when the main purpose for which the company has been floated is carrying on the business.

3. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the expenses of Rs 14,10,163 are part of expenses of Rs 34,10,822 claimed as deduction u/s 24 of the Act.

4. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that expenses of Rs. 14,10,163 are related to earning income from house property.

5. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in rejecting the contention of the

assessee that the expenditure of Rs 14,10,163 are for the purposes of maintaining the co operate structure of the company.

6. On the facts and in the circumstance of the case and in law the CIT(A) erred in not appreciating the fact that the expenses allowable u/s 24 can not include the expenses of Rs 14,10,163 which had been incurred for maintaining and running the business of the company and cannot be part of the expenses allowable u/s24.

7. On the facts and in the circumstances of the case and in law the CIT(A) was incorrect and unjustified in not allowing the expenses incurred and claimed rightly under the head of business income.”

3.1 Ld. CIT(A) has sustained the order of ld. AO.

3.2 On the other hand, Ld. DR supported the findings of Ld. Tax Authorities below.

4. Appreciating the matter on record, it can be observed from the order of Tax Authorities below that the 10% deduction from the income under the head, “income from house property” u/s 24 of the Act has been considered by them to take care of all expenses. On the contrary, the assessee has made a claim that apart from the income made by way of renting of properties, there were other inventories and the assessee was making certain expenses for preservation of that inventory.

5. After taking into consideration the details of business expenses disallowed. The Bench is of considered opinion that as for the purpose of Section 37 of the Act the Tax Authorities were under obligation to examine the expenses to consider if the same were for the purpose of business and had business expediency as explanation. It is now a settled proposition of law that merely because the business stands abandoned or closed or dormant due to market conditions, a corporate assessee still needs to incur certain expenditure to keep itself floated. Reliance in this regard can be placed on the judgment ;

- 1. ITO vs. Mokul Finance (P) Ltd. (2007) 110 TTJ 0445 (Del)**
- 2. CIT vs. Ganga Properties Ltd., (1993) 199 ITR 0094 (Cal)**

3. *Nakodar Bus Service (P) Ltd. vs. CIT, (1989) 179 ITR 0506 (P&H)*
4. *CIT vs. Rampur Timber & Turnery Co. Ltd. , (1981) 129 ITR 0058 (All)*
5. *L.VE. Vairavan Chettiar vs. CIT, (1969) 72 ITR 0114 (Mad)*

6. Thus Bench is of considered opinion that the 30% standard deduction from the income under the head, “income from house properties” does not take care of all such expenses, which have an explanation of business expediency attached to them beyond the repair and maintenance and such like expenses, against the rental properties. Ld. Tax Authorities have fallen in error in out rightly declining expenses claim in the P & L account by the assessee which had no direct concern with the rented properties but were for keeping the business entity functional as a running concern. Non-examination of the same for purpose of Section 37 of the Act makes disallowance absolutely arbitrarily. Thus, the ground raised are sustained and **the appeal of assessee is allowed.**

Order pronounced in the open court on 21st August, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

Date:-21st.08.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI