

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1866/Del/2023  
(Assessment Year : 2021-22)

Krishak Bharati Cooperative Limited, A-60, Kailash Colony, New Delhi – 110 048 <b>PAN No. AAAAK 0203 G</b> <b>(APPELLANT)</b>	Vs.	DCIT Central Circle – 30 New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri Aman Goel, C.A.
Revenue by	Shri Sandip Kumar Mishra, Sr. D.R.

Date of hearing:	11.10.2023
Date of Pronouncement:	30.10.2023

**PER SHAMIM YAHYA, AM :**

This appeal filed by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals)-30, New Delhi dated 18.05.2023 pertaining to Assessment Year 2021-22.

2. The grounds of appeal filed by assessee, which reads as under:

- “1. The Ld. CIT (A) erred in law and on facts in confirming the disallowance of Rs.67,71,508/- being amortization of lease payment. These are allowable business expenditure for determining the taxable income and should have been allowed.
2. The appellant contends that amortization of these expenses over the period of the lease is revenue expenditure and is in the nature of rent paid for the use of land. It is not in the nature of capital expenditure as the assessee does not get any legal title or any right over the land.

3. *The above grounds are independent and without prejudice to one and another.*
4. *The appellant also prays to add, amend, alter or forgo any of the grounds at the time of hearing.”*

3. During the year under consideration assessee has claimed an amount of Rs.67,71,508/- on account of amortization of Lease hold land in its Profit and Loss Accounts:

Sr. No.	Particulars	Amount of amortization claimed (Rs.)
1.	Land at Noida wherein office building (A 8-10, Sector – 1, Noida) of the Society at Noida is situated	3,41,912/-
2.	Land at Visakhapatnam for construction of Rural Godown leased from Port Trust	39,23,146/-
3.	Land of Tuicorin for construction of Godown leased from Port Trust and others	
4.	Land at Shahjahanpur	25,06,450/-
	<b>Total</b>	<b>67,71,508/-</b>

4. It was treated as capital expenditure by the AO and he did not allow amortization. Further observation in the order of the AO are as under:

*“23. The entire reply of the assessee has been considered which is more or less same as in the preceding year. The undersigned has also gone through the cases relied upon by the assessee, which are distinguishable from the facts of the instant case. The assessee in its computation has claimed the deduction of Rs.67,71,508/- as amortization of lease rent. In this regard, it is important to note that by merely changing the name of expenditure, the claim of the assessee does not become entitled u/s 37 whereas the allow ability of depreciation is to be considered u/s 32. It is obvious from the nature of these expenses that they provide the assessee enduring benefits spread over several decades. Making the part of the payment annually does rd change the nature of the expenditure. The assessee's claim is accordingly rejected u/s 37 of the income tax, Act 1961 which prohibits deduction of any capital expenditure.*

*24. It is pertinent to mention here that the Hon'ble Delhi High Court has dismissed the appeal of the assessee on this issue and the addition made by the AO has been upheld. Accordingly, the deduction on account of amortization of lease rent amounting to Rs.67,71,508/-is disallowed and added back in the income of assessee.”*

5. Upon assessee's appeal, Learned CIT(A) confirmed the same.
6. Against the above order, assessee appealed before us.
7. We have heard the rival submissions and perused the material on record. Learned Counsel for the assessee fairly conceded that land at Noida and land at Shahjahanpur are duly covered by the order of Delhi High Court as above. Hence, amortization of these lands is to be disallowed. Thus in case of above two lands, we uphold the order of Learned CIT(A).
8. As regards land at Visakhapatnam and at Tuticorin is considered, the Learned Counsel for the assessee has submitted that on the same matter earlier ITAT has remanded the matter to the file of AO.
9. Upon careful consideration, we note that ITAT in its order for A.Y. 2016-17 in ITA No.581/Del/2022 has considered the identical issue and has held as under:

*“6. We have carefully perused the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. An identical issue came up for hearing before this Tribunal in Assessment Year 2012-13 in ITA No. 5711/DEL/2017. This Tribunal has considered the issue at Para 6 of its order and, thereafter, held as under:*

*“7. Insofar as the amortisable portion of the lease taken from the Noida Authority is concerned, Ld. AR fairly admitted that this issue is covered against the assessee by the order of the Hon’ble Delhi High Court in ITA No.205/2010 dated 12.07.2012 pertaining to the assessment year 2004-05, and though the assessee is in appeal before the Hon’ble Supreme Court on that issue, as the things stand today the assessee is bound by the order of the Hon’ble Delhi High Court.*

*8. Assessee is, therefore, confining the challenge in respect of the land at Visakhapatnam into Tuticorin, which issue is quite different from the issue relating to the Noida land. On this aspect it is the submission of the Ld. AR that in assessee’s own case for the assessment year 2008-09 in ITA numbers.2304 and 2321/Del./2012, a Coordinate Bench of this Tribunal considered the same and after careful consideration thereof it was observed that the nature of lease, the location of the land, the terms and conditions of lease etc, for example, it is located in the Porto premises, the entry and exit of which is with Port Security, land used only for storage during transit etc., that the assessee has in its long time lease with Visakhapatnam Port trust is different from the terms and conditions of lease from Noida Authority; that the principle on the issue whether the rent in question is to be allowed as Revenue expenditure or not, is laid down by the Hon’ble High Court in assessee’s own case for earlier assessment years and this depends on the facts of each case; that the issue was to be examined in the interest of Justice; that no prejudice would be caused to the Revenue in examining the matter once again; and therefore, the issue was set aside to the file of the learned Assessing Officer for considering the arguments of the assessee de novo in accordance with law.*

*9. Ld. AR, in all fairness, submits that the same course as adopted for the assessment year 2008-09 may also be followed for this assessment year in restoring the issue to the file of the learned Assessing Officer for considering the facts and circumstances relevant for this particular assessment year and to take a call de novo. Ld. DR reports no objection for sending it back to the learned Assessing Officer. Recording the same, we allow this ground for statistical purpose, by restoring the issue to the file of the learned Assessing Officer to take a view de novo for this particular*

*assessment year after hearing the assessee de novo in accordance with law.”*

7. *Finding parity on facts, respectfully following the findings of the coordinate bench, amortization portion of the lease taken from Noida authority is decided against the assessee and the challenge in respect of land at Vishakapatnam and Tuticorn is restored to the file of the Assessing Officer to be decided as per directions given in Assessment Year 2012-13 [supra].*

10. We find that the facts are similar, hence, following the aforesaid ITAT order in assessee's own case, we restore the issue of land amortization at Visakhapatnam and Tuiticorin to the file of Assessing Officer to decide as per the directions as given above.

11. In the result, this appeal of assessee is allowed for statistical purposes.

**Order pronounced in the open court on 30.10.2023**

**Sd/-**

**(YOGESH KUMAR US)  
JUDICIAL MEMBER**

Date:- 30.10.2023

*Priti Yadav, Sr. PS\**

Copy forwarded to:

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

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI