

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE,
SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3219/Del/2019
(ASSESSMENT YEAR 2014-15)**

Chipsan Aviation Pvt. Ltd. 234, Vasant Enclave Vasant Vihar New Delhi- 110 057 PAN-AAECC 9786E (Appellant)	Vs.	Addl.CIT Special Range-2 New Delhi (Respondent)
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**Stay Application No.204/Del/2020
Arising out ITA No.3219/Del/2019
(ASSESSMENT YEAR 2014-15)**

Chipsan Aviation Pvt. Ltd. 234, Vasant Enclave Vasant Vihar New Delhi- 110 057 PAN-AAECC 9786E (Appellant)	Vs.	Addl.CIT Special Range-2 New Delhi (Respondent)
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Appellant by	Mr. Ved Jain, Adv. Mr. Sandeep Manaktala and Mr. Aman Garg, CAs
Respondent by	Mr. Vivek Upadhyay Sr. DR

Date of Hearing	17/08/2023
Date of Pronouncement	06/11/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-2, New Delhi [“Ld. CIT(A)”, for short], dated 21/01/2019 for Assessment Year 2014-15. The concise grounds taken in this appeal are as under:

“i. That the Ld. Assessing Officer neither raised any question regarding the investment made which is allegedly held as unexplained investment by the Ld. AO nor any show cause notice was issued before making addition u/s 69 of the Income Tax Act, 1961 pertaining to takeover of Asset by the Appellant Company and made addition of Rs.1,30,10,398/- as unexplained investment, which is against the Principle of Natural Justice, illegal and bad in law.

ii. That the additions of Rs.5,85,003/- on account of Depreciation on Land & Building by the Assessing Officer were without any rationale and basis. The Ld. Assessing Officer have drawn parallel to the addition to the Assets of Rs.1,30,10,398/- with the Depreciation on Land & Building as mentioned in Grounds of Appeal 2(i) above.

iii. That the appellant is not pressing for other Grounds of Appeal as prayed in the Appeal.

iv. That the appellant crave the liberty and pray for allowing add, amend, delete any ground of appeal or advance argument further with permission of the Hon’ble ITAT at the time of argument.”

2. The brief facts of the case are that the assessee filed its return declaring total income of Rs.37,69,870/-, the case of the Assessee was selected for scrutiny and a notice u/s 143(2) was issued. During the assessment proceedings, it was noticed by the AO that the Assessee company has shown total turnover

Rs.14,88,33,944/- as against Rs.5,70,45,441/- in the last period, after setting off total expenditure of Rs.14,46,34,241/- against the above receipt, a net profit of Rs.41,99,703/- has been shown in the profit and loss account. On comparison with the last year's figure, it was noticed by the Ld. A.O. that the net profit has not increased commensurate with the increase in the turnover. The AO was of the opinion that the Assessee has inflated its expenses under certain heads of expenditure with an intention to reduce the incidence of tax. Accordingly, the Ld. AO vide assessment order dated 23/12/2016 made following disallowance/additions:-

1. Out of Handling Charges	43,14,092/-
2. Out of Crew Accommodation Expenses	5,43,397/-
3. Out of Legal and Professional Expenses	91,200/-
4. Out of Other Expenses	5,00,000/-
5. Depreciation on land & building	5,85,003/-
6. Cost of land (not proved)	1,30,10,398/-
7. Prior Period Expenses	40,667/-
8. Donation-no evidence filed	41,000/-
	<u>1,91,25,757/-</u>
	2,28,95,627

3. Aggrieved by the assessment order dated 23/12/2016, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 21/01/2019 restricted the disallowance to 25% on

Handing Charges and Crew Accommodation Charges as against the disallowance of 50% made by the AO. Further, confirmed the disallowance of other expenses of Rs.5,00,000/-, prior period expenses of Rs.40,667/-, Legal and Professional Charges of Rs.91,200/- and Rs.41,000/- of Donation. The Ld. CIT(A) also confirmed the addition made u/s 69 of the Act of Rs.1,30,10,398/- and restricted the disallowance of depreciation on land and building at 10%.

4. Aggrieved by the order of the Ld. CIT(A), the Assessee preferred the present appeal on the concise grounds mentioned above. The assessee by way of concise grounds of appeal restricted the grounds only in respect of the addition made u/s 69 of the Act of Rs.1,30,10,398/- and the addition of Rs.5,85,003/- on account of depreciation of land and building.

5. Ground No.(i) is regarding addition made u/s 69 of the Act pertaining to takeover of asset by the Assessee company, wherein the Ld. AO made addition of Rs.1,30,10,398/- as unexplained investment. The Ld. Counsel for the Assessee submitted that the

Ld. AO wrongly invoked Sec.69 of the Act without considering the reply and the documentary evidence produced by the Assessee, the AO and the Ld. CIT(A) have ignored the vital fact that the Assessee taken over a partnership firm Chipsan Aviation 'as is where is basis' on 31/03/2013. The Ld. AR made elaborate written submission and also relied on the various judicial pronouncements in support of the argument.

6. Per contra, the Ld. DR relying on the orders of the lower authorities submitted that the addition was made due to lack of necessary documentary evidence, the Assessee has not produced any decision of Board meeting for taking over of the partnership concern nor any audited account of the erstwhile partnership concern was produced. Since, there was no evidence of past assessment of the erstwhile partnership to prove that the assets of land are already well explained and in the absence of documentary evidence, the addition made u/s 69 of the Act has been rightly made by the AO and sustained by the Ld. CIT(A).

7. We have heard the both parties, perused the materials available on record. During the assessment proceedings, the AO noticed that a major part of the land was stated to be emanating from ancestral property and a very small part of the same, from someone with a note like 30-40BDS. Since, there was lack of clarity, the Assessee has been asked to furnish cogent and requisite details in respect of the land. The assessee has not produced the documents and the details as to the costs and sources etc. In the absence of cogent and requisite details in support of the contention of the assessee, the AO treated cost of land of Rs.1,30,10,398/- as unexplained investment u/s 69 of the Act. During the appellate proceedings, the Assessee contended that the assessee had taken over a partnership Firm 'Chipsan Aviation' along with its assets and liabilities by the Assessee company. As per the observation of the Ld. CIT(A), though the Assessee had mentioned regarding enclosing of documentary evidence of land belonging to the partnership, no such evidence have been enclosed in the submission and the assessee has also not produced any documents regarding decision of its Board meeting for taking over of the partnership concern nor

any audited account of the erstwhile partnership concern were produced, thus, the Ld.CIT(A) confirmed the addition made by the AO in following manners:

“8.9 In respect of addition u/s 69 of Rs. 1,30,10,398/- on account of land, the addition was made due to lack of necessary documentary evidence regarding addition of land which was shown in the books of the appellant during the year. The appellant has submitted in writing about taking over of a partnership firm Chipsan Aviation (partnership concern) alongwith its assets and liabilities by the appellant company. It has also mentioned about enclosing documentary evidence of land belonging to the partnership.

8.10 However, it is clear that no such evidence has been enclosed in submissions as clearly discussed in the above paras. There is neither any document regarding decision of its Board meeting for taking over of the partnership concern nor any audited account of the erstwhile partnership concern as repeatedly claimed in all written replies. There is no evidence of past assessment of the erstwhile partnership to prove that the assets of land are already well explained. It has also not explained the nature and contents of stamp papers either before the AO or during appellant proceeding.

8.11 Since the appellant has supposedly taken over all assets of partnership during the year, its acquisitions need to be explained properly. It has enclosed stamp papers of Kerala written in local language allegedly the papers of land belonging to the erstwhile partnership concern. But the nature and content of stamp papers of Kerala has not been explained either in written submission or during hearing in remand.

8.12 As the appellant is assessed in Delhi and the stamp papers are in local language of Kerala, it was necessary to explain the nature and contents in written submissions and duly explain before the AO during remand. (All Indians do not understand Malyalam). It was also necessary to enclose audited accounts of both the partnership and appellant company with proof of decision taken by the board for taking over the business of another concern. However, no documentary evidence has been adduced except whining and pining that the reply filed by it on various dates is not being considered and repeated allegations that opportunity is not given. The case is badly documented and poorly represented.

8.13 As there is nothing to explain the contents of stamp or to prove that the company has actually acquired these assets on taking over the firm's assets which are already explained in earlier years, it is difficult to delete

the addition u/s 69 as unexplained expenditure on land. The same is, hereby, confirmed.”

8. It is the case of the assessee that the ‘assessee had produced all documentary evidence which are on record, but the lower authorities have failed to consider the same, the CIT(A) has also recorded erroneous findings’. Considering the above facts and circumstances in the interest of justice, we remand the issue to the file of the AO for *denovo* adjudication of the ground No.1 with the direction to consider the submissions, documents and the details produced by the Assessee and decide the matter in accordance with law. Accordingly, the concise Ground No.1 of the Assessee is partly allowed for statistical purposes.

9. Ground No.(ii) is regarding addition of Rs.5,85,003/- on account of depreciation on land and building by the Assessing Officer. During the assessment proceedings, the assessee filed computation of income which reflects that the assessee had made an addition to its fixed assets costing at Rs.35,75,000/- on account of land and building opening WDV of which is 33,96,250/- and building of Rs.24,53,783/- acquired during the year. The assessee was asked to furnish the evidence regarding acquisition of the

assets by the A.O. but no such evidence was furnished by the Assessee. In the absence of any such evidences having been furnished by the assessee, the claim of depreciation has been disallowed by the A.O. During the Appellate proceedings, the Ld. CIT(A) deleted the disallowance of Rs.2,28,003/- in following manners.

“8.14 As far as disallowance of depreciation on land and building is concerned, it is confirmed on the unexplained addition of building of Rs.35,75,000/- only and the depreciation @ 10% on the same comes to Rs.3,57,000/-. Remaining disallowance of Rs.2,28,003/- on opening balance is deleted. The appellant gets part relief on this account.”

Considering the fact that the Ld. CIT(A) has not given any reasoning for sustaining the disallowance of Rs.3,57,000/-, and as per the Assessment Order, even the Assessee has not produced the required evidence in support of the contentions of the Assessee before the AO, the issue involved in ground No.(ii) is remand to the file of Ld. AO with direction to consider the sustained addition of Rs.3,57,000/- afresh in accordance with law. Accordingly, the concise Ground No.(ii) of the Assessee is partly allowed for statistical purposes. In the final result, the appeal of the Assessee is allowed for statistical purposes.

10. Since, the appeal of the Assessee has been restored to the file of the AO, the above captioned Stay Application becomes infructuous and the same is dismissed.

Order pronounced in open Court on 6th November, 2023

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 06/11/2023

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI