

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.1313/Del/2023
निर्धारणवर्ष/Assessment Year: 2018-19

DS Realty & Realtor P. Ltd., SCO No. 310, Third Floor, Sector-29, Gohana, Haryana. PAN No. AAECD6823D	बनाम Vs.	ACIT Circle-7(1), New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri R.S. Singhvi, CA & Shri Satyajeet Goel, CA
Revenue by	Shri Vivek Kumar Upadhyay, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	28.12.2023
उद्घोषणाकीतारीख/Pronouncement on	13.03.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. CIT(Appeals) - (NFAC), Delhi dated 28.02.2023 for the AY 2018-19.

The assessee in its appeal raised the following grounds: -

- 1 (i) *That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding the action of the assessing officer in disallowing claim of expenditure to the extent of Rs.62,47,234/- on the misconceived ground of non-carrying of business activity during the year under reference.*
- (ii) *That the appellant having commenced its business and the claim of expenditure being of routine nature*

and wholly and exclusively incurred for the purpose of business, the upholding of disallowance by CIT(A) is highly arbitrary and without any basis.

- (iii) That non-earning of revenue per se being not relevant for the purpose of valid claim of expenditure which is otherwise incurred for the purpose of business, the impugned disallowance is illegal and wholly misconceived.*
- (iv) That in absence of any dispute with regard to genuineness and veracity of claim of expenditure, the impugned disallowance is illegal and merely on mechanical basis.*
- (v) That the disallowance of expenditure is contrary to past history and without appreciation of facts of the case and settled legal position.*

2. That the orders passed by lower authorities are not sustainable on facts and are bad in law.

3. That the appellant craves leaves to add, alter, amend, forgo any of the grounds of appeal on or before or at the time of hearing.”

2. The only issue in this appeal of the assessee is as to whether the assessee commenced its business operations during the year under consideration and as to whether the expenditure claimed by the assessee is an allowable expenditure or not.

3. Briefly stated that the facts of the assessee which is engaged in the business of Real Estate filed its return of income on 18.09.2018 declaring Nil income and claimed loss for the year at Rs.64,96,091/-. In the course of assessment proceedings the AO noticed that since there is no revenue generated by the assessee

during the assessment year under consideration the AO was of the view that the assessee has not carried out any business operations during the assessment year and, therefore, the expenses claimed by the assessee are not an allowable expenditure. In the course of assessment proceedings the assessee contended that assessee is engaged in the business of Real Estate it had commenced its business by purchasing land which was duly registered in the assessee's name and the same was shown as inventory in the balance sheet and, therefore, the business loss claimed by the assessee cannot be disallowed. However, not convinced with the submissions the AO disallowed the expenditure/loss claimed by the assessee. On appeal the Ld.CIT(Appeals) sustained the view of the AO.

4. Before us, the Id. Counsel for the assessee submits that the appellant company was incorporated in the year 2013 with primary object of dealing in real estate. There is no dispute with regard to genuineness of claim of expenses which is duly supported from documentary evidences and the disallowance is only on technical ground that in absence of any income from business operation, the claim of expenses is not allowable.

4.1 Ld. Counsel submits that the claim of expenses are in the nature of employee cost and general administrative expenses, the details of which are appearing at Page 6 and 7 of the CIT(A). In fact, this is a case of corporate entity and same is required to carry out statutory obligation. The main component of expenses is on account of salary to employees which was paid after deduction of TDS and other expenses are audit fee and administrative expenses. It is not the case of the assessing officer or CIT(A) that these expenses have not been incurred for the purpose of business of the appellant company. It is submitted that the appellant company having duly commenced its business operations, there could be no ground or basis for any disallowance of expenses in absence of any dispute with regard to genuineness or correctness of the same. It is further submitted that the appellant company has been duly set-up and commenced its operations. It may be appreciated that for a company engaged in real estate business, an initial step towards purchase of Immovable property would be sufficient to prove the commencement of business.

4.2 It is submitted that in the present case, the during the year under reference, the appellant company has entered into a transaction of purchase of land from M/s. Hess Hospitality P. Ltd.

for total consideration of Rs.6 crores which is duly supported from audited Balance Sheet where the land as appearing under the inventory (Note No. 8). It is relevant to mention that this very fact is also corroborated from the order of assessing officer and CIT(A), however, the sub-ordinate authorities failed to appreciate the legal position to this effect. Under these circumstances, upon purchase of property for real estate dealing, the appellant assessee has clearly commenced its business and as such there remains no ground or basis for any disallowance of expenses. It is submitted that non-earning of income per se cannot be the ground for disallowing claim of expenses.

5. Ld. Counsel for the Assessee placing reliance on the decision of the Jurisdictional High Court in the case of CIT Vs. Dhoomketu Builders & Development P. Ltd. (368 ITR 680) submits that on identical circumstances the claim for expenses was allowed holding that the business would be treated as commenced upon purchase of land by the assessee who is in the business of real estate.

6. Heard rival submissions, perused the orders of the authorities below. On perusal of the assessment order, we noticed that the only reason for not allowing the expenditure/loss claimed by the assessee is that the assessee did not generate any revenue during

the assessment year under consideration and, therefore, the assessee did not carry out any business operations during the year under consideration. It is not in dispute that the assessee is into real estate business. It is also not in dispute that the assessee has purchased land for its real estate purchases and has shown in the balance sheet as inventories/stock-in-trade. Therefore, in our view once the assessee has purchased the land for its business purposes and shown it as inventory and as stock-in-trade in the balance sheet it cannot be said that the assessee did not commence its business operations during the year under consideration. The Jurisdictional High Court in the case of CIT Vs. Dhoomketu Builders & Development P. Ltd. (supra) on identical facts held that the commencement of real estate business would normally start with the acquisition of land or immovable property. It has been held that once the land is acquired by the assessee it can be said that assessee has actually commenced its business which is development of real estate. While holding so the Hon'ble High Court observed as under: -

“There is a difference between the setting up and commencement of business. When a business is established and is ready to commence business then it can be said of that business that it is set up. But before it is ready to commence business it is not set up. But there may be an interregnum, there may be an interval between a business which is set up and a business which is commenced and all expenses incurred after the

setting up of the business and before the commencement of the business, all expenses during the interregnum, would be permissible deductions. The question as to when a business can be said to have been set up is a question of fact to be ascertained on the facts and circumstances of each case and considering the nature and type of the particular business and no universal test or formula applicable to all types of businesses can be laid down. The commencement of real estate business would normally start with the acquisition of land or immovable property. When an assessee whose business is to develop real estate, is in a position to perform certain acts towards the acquisition of land, that would clearly show that it is ready to commence business and, as a corollary, that it has already been set up. The actual acquisition of land is the result of such efforts put in by the assessee, once the land is acquired the assessee may be said to have actually commenced its business which is that of development of real estate. The actual acquisition of land may be the first step in the commencement of the business but section 3 of the Act does not speak of commencement of the business, it speaks only of setting-up of the business. “

7. Ratio of the decision is squarely applies to the facts of the case. Thus, respectfully following the decision of the Jurisdictional High Court, we hold that the assessee had commenced its business operations during the assessment year under consideration and the expenditure incurred by the assessee is an allowable expenditure. Non generation of any revenue during the assessment year under consideration cannot be the reason for holding that the assessee has not commenced any business operation. Ground no.1 of grounds of appeal of the assessee is allowed.

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

Order pronounced in the open court on 13/03/2024

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 13/03/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi