

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 3052/Del/2023
Asstt. Year: 2021-22

Rhine Energy LLP Flat No. 4, 3 rd Floor, Mahalaxmi Market, Bhagirath Palace, Delhi - 110 006 PAN AATFR6490A	Vs.	Assessment Unit, Income Tax Department, NFAC Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Ved Jain, Advocate Ms Uma Upadhaya , CA
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	15.04.2024
Date of pronouncement:	24.04.2024

ORDER

PER VIMAL KUMAR, JM

The appeal is against order dated 30.08.2023 of the Learned Commissioner of Income Tax (Appeals) through which appeal was partly allowed by upholding disallowance of Rs. 18,73,722/- and Rs. 1,04,318/- by the Learned Assessing Officer vide order dated 28.12.2022.

2. Brief facts of the case are that on 21.01.2022, the assessee had filed return of income for the assessment year 2021-22 declaring total income of Rs. 56,19,600/-. The case was selected for scrutiny under CASS and accordingly statutory notices under section 143((2) and 142(1) of the Income Tax Act, 1961 were issued. During the course of assessment proceedings, it was noticed that assessee claimed an amount of Rs. 21,04,875/- towards business expenditure which was not related to the business of appellant. The assessee contended that the amount was business expenditure. The Learned AO added back to the returned income. The assessee contended that the nature of expenditure had got commercial expediency and was incurred in connection with the business. The contention held as not acceptable. Expenditure made towards consumption of liquor to the extent of Rs. 20,00,557/- is disallowed under section 37 of Income Tax Act, 1961 and brought to tax as the assessee's business income under the head "Profit and gains of business or profession". Simultaneously, the penalty under section 270A is initiated separately for under reporting of income in consequence of misreporting thereof for the assessment year 2021-22. It was found that an amount of Rs. 1,04,318/- was paid to DLF, Golf Resorts was also incurred for liquor and food and further the bill was in name of partner of the firm Shri Sanjay Surana was mentioned. The expenditure was purely personal in nature. Show cause notice to the assessee dated 16.12.2022 was issued. Assessee replied vide letter dated 20.12.2022. The assessee claimed that amount of Rs. 1,04,318/- towards business promotion paid to DLF Gold Resorts Ltd. was incurred included

liquor and food for business meetings in the DLF club Gurgaon. The location of the place is near residence of partner and it saved times of commuting to any other place for business meeting. The expenses incurred were exclusively and completely were related to business meeting only. Learned AO vide order dated 28.12.2022 re-computed total income of the assessee as under:-

Sl. No.	Description	Amount (in INR)
1.	Income as per Return of Income filed	56,19,600
2.	Income as computed u/s143(1)(a)	56,19,600
3.	No Variation vide para 6 - Rs 20,00,557/- Para 11-Rs. 1,04,318/- Total - Rs.21,04,875/-	21,04,875
4.	Total Income determined as per the above proposal	77,24,475

3. Appellant preferred an appeal mentioning that addition of Rs. 20,00,557/- and Rs. 1,04,318/- under section 37 of the business promotion expenses were spent to Taj Mahal Hotel, New Delhi including Buffet dinner Rs. 9,00,000/- liquor Rs. 7,52,901/- and Government taxes to DLF Resort for promotion of business. Learned AO initiated penalty proceedings under section 270A of the Act. Learned CIT(A) through order dated 30.08.2023 partly allowed confirming disallowance of Rs. 18,73,722/- and Rs. 1,04,318/-.

4. Being aggrieved assessee preferred an appeal. In appeal assessee submitted that disallowance of Rs. 18,73,722/- and Rs.

1,04,318/- were in connection with business promotion expenses claimed under section 37(1) of the Income Tax Act, 1961. Learned CIT(A) and Learned AO both erred in confirming disallowance of Rs. 18,73,722/- and Rs. 1,04,318/- on account of business and promotion expenses claimed by assessee under section 37(1) of the Act.

5. We have heard the rival submissions and perused the record. It is evident that assessee had arranged a party at Taj Mahal Hotel and paid hotel bill of Rs. 20,00,557/- consisting of cost of Buffet dinner, liquor and Government taxes etc.. The appellant claimed expenditure as revenue exclusively for purpose of business liable under section 37(1) of the Act. Learned AO held that Government is discouraging consumption of alcohol. The assessee claimed Rs. 1,04,318/- on account of payment to DLF Golf Resorts Limited which included expenses for food, liquor for business meeting under section 37(1) of Act. Assessee claimed that all the expenses were incurred during the previous year relevant to assessment year 2021-22 and accounted for properly and fully audited also. None of the expenses were of personal in nature. All the expenditure were incurred for purpose of business. Hon'ble Supreme Court of India in the case of CIT v/s Madras Auto Services (P) Ltd. (1998) 233 ITR 468 SC summarised the general principles applicable in determining whether a particular expenditure is capital or revenue as follows:

- i) Outlay is deemed to be capital when it is made for the intimation of a business, for extension of a business, or for a substantial replacement of equipment.
- ii) Expenditure may be treated as property attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade.
- iii) It is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital.
- iv) It is not the size of the expenditure, but its nature, which determines the character or such expenditure.

Under section 37(1), expenses which are not specifically allowed as deduction, can be claimed as deduction provided certain condition are fulfilled. For example, expenditure incurred in organizing a foot ball tournament has been held as allowable deduction under section 37 while computing income of the assessee (Delhi Cloth and General Mills Co. Ltd. Vs. CIT (1999) 240 ITR 9 Del. In other words, as per section 37(1) of the Act, an expenditure can be claimed as a deduction while computing income from "business or profession" if the following condition are fulfilled.

- (1) Expenditure is not of the nature as described in sections 30 to 36 of the Act;
- (ii) Expenditure is of revenue in nature not of capital in nature;
- (iii) Expenditure is not personal expense of the assessee;
- (iv) Expenditure has been laid down or expended wholly and exclusively for the purposes of business or profession of the assessee;

- (v) Expenditure has not been incurred for any purpose which is an offence or which is prohibited by law.

6. It is material fact that the assessee had business agreement with Adlec/Novateur Electrical & Digital System Pvt. Ltd. The expenditure was incurred for gaining advantage to assessee's business by serving dinner and liquor to employees of its principal Adlec/Novateur. Learned CIT(A) by reference to relation between income and expenditure opined the possibility of the income earning activity and expenditure and granted allowance had been reached to 6.34% of Rs. 20,00,000/- which comes to Rs. 1,26,835/-. Earning of income is not sine qua non for allowing deduction under section 37(1) of the Act. Learned CIT(A) wrongly relied on judgment in Swadeshi Cotton Mills Company vs. Commissioner of Income Tax (1967) 63 ITR 65 relating to capital expenditure. In present, the expenditure incurred is revenue in nature and hence the same is fully allowable. The reasoning is not just fair and reasonable. Since the matter was regarding launch of new medium food product and promote a new line of business. Therefore the assessee was entitled to get allowable expenses of Rs. 20,00,557/-. Likewise the assessee had spent Rs. 1,04,318/- to Golf Club for food and liquor business meeting in DLF Club Gurgaon. The assessee was entitled to get deduction of Rs. 1,04,318/-. In view of abovesaid material facts and well settled principle of law the order of Learned AO is liable to be set aside and order of the Learned CIT(A) is modified by holding that the assessee is entitled to get allowable expenses of Rs. 20,00,557/- and Rs. 1,04,318/-.

7. In the result appeal of the assessee is allowed. Impugned assessment order dated 28.12.2022 is set aside and order of Learned CIT(A) dated 30.08.2023 is modified by holding that the assessee is entitled to get allowable expenses of Rs. 20,00,557/- and Rs. 1,04,318/-.

Order pronounced in the open court on 24th April, 2024.

sd/-

**(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 24/04/2024

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
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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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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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