

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

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 5222/Del/2019 : Asstt. Year : 2007-08**

Uday Edible Products Ltd., KD-20, Pitampura, New Delhi-110034	Vs.	DCIT, Circle-27(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCK6441P</b>		

**Assessee by : Sh. Ashwani Kumar, CA  
Revenue by : Ms. Sapna Bhatia, CIT-DR**

<b>Date of Hearing: 11.03.2024</b>	<b>Date of Pronouncement: 30.05.2024</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-16, New Delhi dated 29.03.2019.

2. Following grounds have been raised by the assessee:

*"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order without providing the adequate opportunity of being heard in gross violation of principle of natural justice.*

*3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the books of the assessee invoking provision of section 145(3) of the Income Tax Act.*

*4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 3,50,75,638/- made by AO on account of financial expenses by the assessee.*

*(ii) That the disallowance has been confirmed rejecting the explanation and documents submitted by the assessee.*

*(iii) That the disallowance has been confirmed despite the fact that these expenses have been incurred solely and exclusively for the purpose of business activities.*

*5. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 50,73,548/- made by AO on account of manufacturing, administrative and selling expenses.*

*(ii) That the said disallowance has been confirmed despite the fact that the same has been made arbitrarily at the ad-hoc rate of 10% of the total expenses amounting to Rs.5,33,75,070/- without there being any basis for the same.*

*(i) That the disallowance has been confirmed despite the fact that these expenses have been incurred solely and exclusively for the purpose of business activities.*

*6. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 21,99,656/- made by AO on account expenses payable at the year end.*

*(ii) That the disallowance has been confirmed arbitrarily ignoring the fact that such liability having been accrued and being payable to the concerned person the same cannot be disallowed merely because the payment has not been made to such party.*

*7. (1) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 19,89,551/- made by AO on account commission and brokerage invoking the provision of section 40(a)(ia) of the Income Tax Act, 1961.*

*(ii) That the disallowance has been confirmed ignoring the proviso to section 40(a)(ia) whereby deductee having including the income in its return of income the assessee cannot be treated as assessee in default and hence no disallowance can be made under section 40(a)(ia) of the Act.*

*8. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 6,50,038/- made by AO on account professional charges invoking the provision of section 40(a)(ia) of the Income Tax Act, 1961.*

*(ii) That the disallowance has been confirmed ignoring the proviso to section 40(a)(ia) whereby deductee having including the income in its return of income the assessee cannot be*

*treated as assessee in default and hence no disallowance can be made under section 40(a)(ia) of the Act.*

*9. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 5,00,05,297/- made by AO on account purchases made by the assessee.*

*(ii) That the disallowance has been confirmed despite the fact that the same has been made on estimation basis without there being any basis for the same.*

*10. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 82,17,416/- made by AO on account depreciation claimed by the assessee*

*(ii) That the disallowance has been confirmed rejecting the explanation and documents submitted by the assessee*

*11. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the above disallowances by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption."*

3. The company was engaged in the business of extracting, manufacturing, producing, processing, crushing, purchasing, selling, exporting, importing of all kinds of edible oil, hydrogenated edible, vegetable vanaspati refined oil margarine and bakery shortening etc. This appeal is preferred against the order dated 31-03-2016 framed by the AO under section 143(3)/254 of the Income tax Act, 1961.

### **History of the case**

<b>Particulars</b>	<b>Date</b>	<b>Amount/Additions/Outcome</b>
Original return filed	27.10.2007	Nil (Loss of Rs.8,43,46,100/-)
Assessment order passed under section 143(3)/144	29.12.2009	Rs. 1,88,65,040/-
Remand Report	28.11.2011	
Commissioner of Income Tax (Appeals) passed order u/s 250	31.07.2012	Appeal partly allowed
Order passed by the Hon'ble ITAT in ITA No. 5600/DEL/2012	14.03.2014	Set aside to the file of Assessing Officer

Assessment order passed under section 143(3)/254	31.03.2016	Rs. 1,88,65,040/-
Commissioner of Income Tax (Appeals) passed order u/s 250	29.03.2019	Appeal dismissed

### Details of additions sustained

Particulars	Amount
10% of Manufacturing, Administration, selling and other expenses	50,73,548/-
Financial Expenses	3,50,75,638/-
Expenses Payable	21,99,656/-
Commission + Brokerage	19,89,551/-
Professional Charges	6,50,038/-
Purchases - 5% of Total Purchases	5,00,05,297/-
Depreciation	82,17,416/-
<b>Total</b>	<b>10,32,11,144/-</b>

4. The Co-ordinate Bench of ITAT vide order dated 14.03.2014 in ITA No. 5600/Del/2012 has restored the entire Assessment Order for adjudication *de-novo*. The Assessing Officer has given opportunities on 11 occasions and the assessee failed to appear and file required details. Hence, in the absence of details the order has been passed u/s 144 of the Income Tax Act, 1961 making disallowances on account of manufacturing expenses, administrative expenses, selling expenses and others expenses.

5. Aggrieved, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) sustained all the additions made.

6. Aggrieved, the assessee filed appeal before the Tribunal.

7. Heard the arguments of both the parties and perused the material available on record.

8. Ground No. 1 is general in nature.

9. The Id. Counsel for the assessee fairly submitted that Ground No. 2, 4, 5, 6 and 7 are not being pressed as the case is very old and relevant information are not available with the assessee company.

**Ground No. 3:**

**Disallowance -Financial Expenses -Rs. 3,50,75,638/-:**

10. Examined the record before us and the paper book.

11. This ground taken by the assessee is against disallowance of interest and other financial charges paid to bank without appreciating the information available on record. The Id. AR submitted that during the course of assessment proceedings copies of the ledgers, bank statement, and various details were furnished. The assessee could not produce other documents and records as asked by the AO due to the fact that factory was under the possession of the bank and other records were lost for which FIR was lodged in the police station Bhiwadi (Rajasthan). The Assessing Officer did not appreciate that interest and other financial charges were paid to State Bank of India.

12. However, it is a fact on record that the relevant details and bank statement were filed during the assessment proceedings.

13. From the attached details, it is clear that the Appellant paid interest, financial expenses to State Bank of India, Overseas Branch, Parliament Street, New Delhi. These details are available in the bank statement of State Bank of India for

F.Y. 2006-07 submitted at page 27 to 213 of the paper book which was available before the revenue authorities. Since, the payment pertain to interest and other financial expenditure as can be examined from the bank statement of SBI, we hold that the disallowance made by the AO is not justified and therefore, liable to be deleted.

### **Grounds No. 8**

#### **Disallowance - Depreciation - Rs. 82,17,416/-:**

14. This ground taken by the assessee is against disallowance of depreciation claimed by the assessee. Depreciation is an allowance and not an expense. Audited Balance Sheet and Tax Audit Report were furnished during the course of assessment proceedings. Tax audit report reveals claim of the depreciation as certified by the auditor. Even, the AO could have verified the claim of depreciation from the last year's records but he did not prefer do so. The depreciation which was allowed by the revenue authorities in the earlier years on the fixed assets has to be allowed in the current year. No depreciation is allowed on the additions made to the fixed assets, if any, during the year, owing to the absence of basic details.

15. In view of above, claim of depreciation of the assessee is justified.

### **Ground No. 9**

16. Non allowability of credit for brought forward losses/unabsorbed depreciation. It is evident from the various returns filed by the assessee that the company shown brought

forward losses/depreciation from year to year. While calculating tax demand, the AO is directed to allow credit of the same as per the provisions of Income tax Act.

17. To conclude,

<b>Particulars</b>	<b>Amount</b>	<b>Result</b>
10% of Manufacturing, Administration, selling and other expenses	50,73,548/-	Confirmed
Financial Expenses	3,50,75,638/-	Deleted
Expenses Payable	21,99,656/-	Confirmed
Commission + Brokerage	19,89,551/-	Confirmed
Professional Charges	6,50,038/-	Confirmed
Purchases - 5% of Total Purchases	5,00,05,297/-	Confirmed
Depreciation	82,17,416/-	Deleted
<b>Total</b>	<b>10,32,11,144/-</b>	

18. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 30/05/2024.

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**Dated: 30/05/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**