

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2709/DEL/2023
(Assessment Year: 2016-17)**

Barmalt (India) P. Ltd.,
F-28/5, Okhla Industrial Area, Phase-II,
Delhi – 110 020.

vs.

ACIT, Circle 4 (2),
New Delhi.

(PAN : AAACB2825M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Praveen Gupta, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

**Date of Hearing : 25.09.2024
Date of Order : 06.12.2024**

ORDER

PER S. RIFAUR RAHMAN, AM:

1. This appeal is filed by the assessee against the order of Id. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to 'Ld. CIT (A)'] dated 27.07.2023 for Assessment Year 2016-17 raising following grounds of appeal :-

“1. That the order passed by the CIT(A) is contrary to the facts and bad in law and passed in a unilateral manner without adequate opportunity being extended to the assessee on matters discussed in the order, is grossly

unjustified, erroneous and unsustainable and therefore the same may please be ordered to be deleted.

2. *That Ld. CIT(A) has erred both on facts and in law to confirm the disallowance of Rs.13,69,002/- claimed as business expenses on a presumed and a misconstrued assumption that since there was no income from business and profession during the year, expenses cannot be allowed. The premise is highly erroneous and contrary to business practices therefore, deserves to be deleted in the interest of justice.*

3. *The Ld CIT(A) has erred in interpretation and applicability of Section 3 of the IT Act, wherein it has been noted that the setting up of the business and profession shall be the date on which the source of income newly comes into existence. The observation is grossly bad in law and facts of the case and it is prayed the addition be deleted in the interest of justice.”*

2. At the time of hearing, ld. AR for the assessee submitted that assessee was incorporated under the Indian Companies Act, 1956 and was engaged in the business of manufacturing of Malt and Malt Extract upto September 2012. The company was demerged into two entities and business of manufacturing was demerged to Barmalt Malting (India) Pvt. Ltd. vide order of Hon’ble High Court dated 13.03.2013 and the assessee company continued to pursue activities related to development of real estate and allied activities. Consequent to the demerger, the assessee earned income from dividend, interest and rent from properties. Further assessee was pursuing the real estate business and in that process involved in obtaining various approvals and

clearances from HUDA for commencement of construction activities on its plot of land during the year under consideration. On the basis of being a going concern, assessee has continued the operation and claimed expenses of Rs.16,74,777/- as under :-

<i>(INR in Rupees)</i>		
	<i>Claimed for AY 2016-17</i>	<i>Disallowed u/s 143(3)</i>
<i>Insurance</i>	29,564	
<i>Rates and Taxes other than taxes on income</i>	37,391	
<i>Payments to statutory auditors – Audit Fee -audit Fee</i>	2,28,000	
<i>Legal & Professional Expenses</i>	7,72,414	7,72,414
<i>Building</i>	41,487	41,487
<i>Others</i>	18,879	18,879
<i>Postage & Telephone</i>	10,820	
<i>Travelling, Conveyance & Vehicle Maintenance</i>	1,26,841	1,26,841
<i>Miscellaneous Expenses</i>	1,27,876	1,27,876
	13,93,272	10,87,497
<i>Depreciation on assets</i>	2,81,505	2,81,505
	16,74,777	13,69,002

3. From the above, Id. AR submitted that the assessee filed return of income and in the assessment proceedings, the Assessing Officer rejected the above expenditure by observing that assessee had not carried out any business activities during the year and he observed that there was no nexus between the business activities and expenditure claimed. Accordingly, he disallowed the same u/s 37 of the Income-tax Act, 1961 (for short 'the Act').
4. Aggrieved, assessee preferred an appeal before the Id. CIT (A) and Id. CIT (A) rejected the submissions of the assessee and sustained the addition by observing as under :-

“6.2.2 It can be seen from the Profit & Loss Account and the computation of income statement submitted by the appellant that it had no income from business and profession during the year. The appellant had total receipts of Rs.13,92,55,105 which has been classified under "other income" and no other income was accrued or received during the year. In the computation of income statement, the appellant has bifurcated the above income as follows:

(i)	Gross Income from House Property	-	Rs. 4,27,20,000
(ii)	Dividend on shares	-	Rs. 73,79,334
(iii)	Interest Income	-	Rs. 8,91,55,771
	Total	-	<u>Rs.13,92,55,105</u>

There is no income reported from Business or Profession. Still the appellant has claimed expenses like Legal & Professional expenses, Repair & Maintenance of Building, Travelling, Conveyance & Vehicle Maintenance, Misc. expenses & Depreciation. These do not pertain to allowable expenses either under income from House Property nor Income from Other Sources as already separate deductions are available for these expenses in the above two heads. The appellant was not correct in claiming these expenses separately under the head Profit & Gains of Business. As for his submission that there is a lull in the business and these expenses are essential to maintain for the sustenance of the company, the appellant has not submitted any details. Move over, it is seen that some of the expenses pertain to the income already disclosed under the heads Property income and Rental income. As per proviso to Section 3 of the Act, the previous year shall be the date of setting up of the business and profession or the case may be the date on which the source of income newly comes into existence and ending with the said financial year. Here the business has not started and hence expenditure, being in the nature of pre commencement expenditure cannot be allowed unless as provided by specific provisions like Section 350.

Hence, above expenses are not allowable and the AO's action of disallowance of expenses is upheld. Ground No.5 of the appeal is dismissed.”

5. Aggrieved, assessee is in appeal before us and ld. AR for the assessee brought to our notice assessment order wherein Assessing Officer has sustained the addition of Rs.13,69,002/- which includes legal, repair & maintenance, travelling expenses, misc. expenditure and depreciation.

He also brought to our notice page 9 of the paper book wherein assessee has submitted details of expenditure submitted before the Assessing Officer and brought to our notice pages 48 & 49 of the paper book which is Balance Sheet of the assessee wherein assessee has not received any revenue from operations and claimed expenses. He brought to our notice that assessee has not declared any revenue from operations in the year ending 31.03.2015 and also in the year ending 31.03.2016 and submitted that assessee is a company and is running the business on the basis of concept of going concern, assessee has to incur certain expenditure. Further he submitted that Assessing Officer has even disallowed the depreciation which is a period cost.

6. On the other hand, ld. DR for the Revenue relied on the orders of the authorities below.
7. Considered the rival submissions and material placed on record. It is a fact on record that assessee is not carrying on any manufacturing activities because of demerger in AY 2013-14. Assessee has brought on record all the materials to show that it is pursuing the business of real estate and is in the process of getting various approvals from HUDA, therefore, assessee has not declared any revenue from operation. However, assessee being a company has to function and it is carrying assets and has to maintain its business. The Revenue authorities are willing to accept the other income and agreed to allow

only related expenditure. Since assessee has not declared any business income, they refrained from allowing any business expenditure. After considering the facts on record, we observed that assessee, being a running concern, has to incur running expenditure to continue with the establishment, therefore, assessee should be allowed for business expenditure. Accordingly, we direct the Assessing Officer to allow the expenditure claimed by the assessee as business expenditure even though assessee has not declared any business income from operation since assessee is in process of establishing real estate business, it may declare business expenditure in the near future. Therefore, the business expenditure claimed by the assessee should be allowed as business expenditure and allowed to be carried forward as business loss or allowed to set off against other income declared by the assessee.

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

Order pronounced in the open court on this 6TH day of December, 2024.

**SD/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**SD/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 06.12.2024
TS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI