

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C', NEW DELHI)**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

I.T.A. No.4488/Del/2010

(Assessment Year 2002-03)

DCIT, Circle 11(1),
New Delhi

Vs. Ikea Trading India (P) Ltd.,
F-4, Puspanjali Farms,
Indian Oil Road, Bijwasan,
New Delhi.

GIR / PAN :AAACI1483Q
(Appellant)

(Respondent)

Appellant by :Shri Amit Lal, Sr. DR

Respondent by :Shri Salil Kapoor, Adv.

Ms. Ananya Kapoor, Adv.,

Mr. Sunil Lalchandani, Adv.

Date of hearing: 24.08.2016

Date of Pronouncement: 24.08.2016

ORDER

PER BEENA A. PILLAI, JM:

The present appeal has been preferred by the revenue against order dated 26/08/2010 passed by Ld. CIT (A) 13 for assessment year 2002-03 on the following grounds of appeal:-

“1. The order of Ld. CIT(A) is wrong, perverse, illegal and against the provisions of law, liable to be set aside.

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the disallowance of Rs. 33,65,886/- on account of advance and deposits written off.

3. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the

disallowance of Rs.36,26,768/- on account of demurrage charges.”

2. The brief facts of the case are as under:

2.1 The assessee is a company engaged in the business of trading of home furnishing products. The assessee purchases different types of home furnishing products like carpets, textile and metal etc from various suppliers in India and exports them. The assessee filed its return of income on 31/10/2002 declaring a total income of Rs.12,94,36,140/-. The return was processed under section 143 (1) of the act, which was picked for scrutiny.

2.2 Assessment was completed wide order dated 24/03/2005 at an income of Rs.13,00,24,260/-. Aggrieved by the assessment order the assessee preferred an appeal before the Ld. CIT (A) who allowed the appeal filed by the assessee. The assessee thereafter receive the notice under section 263 of the Act challenging the assessment order dated 24/03/2005 passed under section 143 (3) of the act to be erroneous and prejudicial to the interest of the revenue. The Ld. CIT alleged that following two mistakes crept in the assessment order:

- a) an amount of Rs. 33.66 Lacs debited as advances and deposits written off in the profit and loss account was not disallowed.

- b) an amount of Rs. 36.27 Lacs on account of payment of them the rage debited in the profit and loss account was not disallowed.

2.3 The Ld. AO was directed to make fresh adjudication on the 2 issues alleged by the Ld.CIT. Aggrieved by the order under section 263 of the act passed by Ld.CIT, the assessee filed an appeal before this Tribunal. This tribunal in ITA No. 2747/del/2007 wide order dated 20/03/2007 upheld the action of Ld. CIT in respect of deduction amounting to Rs. 33.66 Lacs debited as advances and deposits written off however in respect of payment made for them their rage amounting to Rs. 36.27 Lacs this Tribunal held that there were sufficient material on record for the Ld. AO to verify and allow the claim made by the assessee. Aggrieved by the order of this Tribunal the revenue preferred an appeal before Hon'ble Delhi High Court. Hon'ble court by order dated 30/11/2009 in ITA No. 1264/2009 observed as under:

“Rs.36.27 lacs on account of “payment for demurrage” debited in the Profit & Loss account was also to be disallowed by the A.O.

The assessee preferred appeal against this order before the Tribunal. In so far as the first purported mistake is concerned, the order of the CIT(A) has been upheld. However in respect of payment of demurrage, the Tribunal has held that these were fumigation expenses and were incidental to business incurred in the normal course of business and, therefore, rightly allowed by the Assessing Officer. We find that the view taken by the ITAT is correct in law, in support

whereof the Tribunal has referred to various judgements of the Supreme Court and High Courts.”

2.4 At the outset the Ld. AR submitted that in lieu of the findings of this Tribunal being upheld by Hon'ble Delhi High Court, ground No. 3 raised by the revenue in its appeal is not maintainable. He submitted that as far as ground No. 2 is concerned, an amount of Rs.10,70,000/- has been disallowed by the Ld. CIT (A) against which the assessee is in appeal. The net amount that would be actually disputed by the revenue would come to Rs.22,95,886/-. He thus submitted that tax effect or the such amount, disputed by the revenue in its appeal would be below Rs. 10 Lacs. He submitted that as per circular no. 21/2015 dated 10/12/2015 the appeal filed by the Department may be dismissed.

3. During the course of hearing, the ld. D.R., although supported the order of the Assessing Officer, could not controvert this fact that tax effect in this appeal is less than Rs.10,00,000/-.

4. We have perused the submissions made by both the parties, records and paper book placed before us. It is observed from the orders passed by the Hon'ble High Court that the issue raised by the revenue in ground No. 3 stands settled. In respect of ground No. 2 the Ld. CIT (A) has given the breakup of the amount alleged by the revenue before us. For the sake of convenience the same is reproduced hereunder:

S.No.	Particulars	Amount (Rs.)
1	Advance rent/security deposit paid to landlord for leased premises.	2,218,076
2	Deposits paid to Sprint RPG Mail & Co.	10,000
3	Amounts recoverable from employee written off	235,603
4	Unutilised quota written off	899,054
5	Miscellaneous balances written off	3,135
	Total	3,365,886

The break-up of the advance rent and security deposit is as under:

Particulars	Amount (Rs.)
Advance rent paid to the landlord not refunded	9,50,000
Security deposit paid to landlord no refunded	1,070,000
Security deposits paid to the landlord for Pune office not refunded	183,576
Advance paid to landlord for employee's residence not refunded	6,500
Security deposit paid to landlord for employee's residence not refunded	8,000
Total	2,218,076

4.1 From the above table it is observed that the breakup of advance rent and security deposit includes an amount of Rs. 10,70,000/- which has been disallowed by the Ld. CIT (A). The findings in respect of the same are found at page 26 of his order. Thus the amount of Rs. 33.65 Lacs stands reduced by Rs.10,70,000/-.

4.2 We are thus in agreement with the contention of the Ld. AR that tax on addition alleged by the revenue is below 10 Lacs.

4.3 Keeping in view the CBDT Circular No.21 of 2015 dated 10.12.2015 and also the provisions of Section 268A of Income Tax Act, 1961, we are of the view that the Revenue should not have filed the instant appeal before the Tribunal.

5. In view of the above, without going into merits of the case, we dismiss the appeal filed by the department.

Order pronounced in the open court on 24th Aug., 2016.

Sd./-
(N. K. SAINI)
ACCOUNTANT MEMBER
Date:24.08.2016

Sd./-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sp.

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi)

S.No.	Details	Date	Initials	Designation
1	Draft dictated on			Sr. PS/PS
2	Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	24/8/16		Sr. PS/PS
6	Kept for pronouncement	24/8		Sr. PS/PS
7	File sent to Bench Clerk	26/8		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			