IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

I.T.A. Nos. 918 & 919/Kol/2013
Assessment Years: 2009-10 & 2010-11

Deputy Commissioner of Income-tax Central Circle-XX, Kolkata.	Vs.	M/s. Arjun Associates (P) Ltd. (PAN: AABCA9223F)
(Appellant)		(Respondent)

&

I.T.A Nos.550 & 551/Kol/2013
Assessment Years: 2009-10 & 2010-11

M/s. Arjun Associates (P) Ltd.	Vs.	Joint Commissioner of Income-tax(OSD) Centtral Circle-XX, Kolkata.
(Appellant)		(Respondent)

Date of hearing: 18.11.2015
Date of pronouncement: 18.12.2015

For the Appellant: Shri Ravi Tulsiyan, FCA
For the Respondent: Shri D. Naskar, JCIT

ORDER

Per Bench:

Both these appeals by revenue and assessee i.e. ITA Nos. 919 & 551/K/2013 are arising out of common order of CIT(A), Central-III, Kolkata in Appeal No. 102/CC-XX/CIT(A)C-III/11-12/Kol dated 24.12.2012. And both the appeals by revenue and assessee i.e. ITA No.918 & 550/K/2013 are arising out of common order of CIT(A), Central-III, Kolkata in appeal No. 101/CC-XX/CIT(A)C-III/11-12/Kol dated 24.12.2012. Assessments were framed separately by JCIT(OSD), CC-XX, Kolkata u/s. 143(3)/153A of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AYs 2009-10 and 2010-11 vide its order, both, dated 22.12.2011.

2. The first common issue in these appeals of revenue is against the order of CIT(A) in deleting the addition on account of short credit in rental income. The issue in both appeals of revenue is identical and facts are also identical. Hence, we will take the facts from AY 2009-10 and decide the issue. For this, revenue has raised following ground no. 1:

> *"1. On the facts and circumstances of the case ld. CIT(A) erred in deleting the addition of Rs.2,70,880/- on account of short credit of income as the assessee had failed to substantiate the claim of related expenditure by producing written agreement for car parking space and maintenance."*

3. Briefly stated facts are that the AO in his remand report before the CIT(A) explained that the assessee's submissions are correct but he qualified the addition for an amount of Rs.2,70,880/- being reimbursement from Naresh Kr. & Co. Pvt. Ltd. of expenses incurred on their behalf for use of car space at 9B, Wood Street, Kolkata and for maintenance charges paid to Middleton Mansion Management Committee. According to AO, this addition should be confirmed only for the reason that the assessee could not produce any agreement for car parking space and maintenance charges in support of reimbursement of the same. We find that in the remand report for the year under consideration the AO suggested the addition of this amount claimed by the assessee to have been received from Naresh Kr. & Co. Pvt. Ltd. Naresh Kr. & Co. on account of reimbursement of expenses for uses of car parking space by those persons and maintenance charges paid to Middleton Mansion Management Committee on their behalf be confirmed for the reason that the assessee could not produce any agreement for car parking space and maintenance in support of such reimbursement. But the AO in his remand report for AY 2010-11 admitted that the assessee has produced a reimbursement agreement for car parking space and maintenance in support of such reimbursement. The CIT(A) in view of these reasons deleted this addition. We find no infirmity in the order of CIT(A) and accordingly, the same is confirmed. Similar is the addition in AY 2010-11, hence, the same is also deleted. This common issue of both years of revenue's appeal is dismissed.

4. The next common issue in both the appeals of revenue is against the order of CIT(A) in deleting the disallowance of Rs. 9,45,589/- for AY 2009-10 and Rs.8,19,998/- for AY 2010-11 made on account of depreciation on house property although it was established that the property was not put to use during the year. For this, revenue has raised following ground no.2 in AY 2009-10:

> *"2. On the facts and circumstances of the case Ld. CIT(A) erred in deleting the disallowance of Rs. 9,45,589/- made on account of depreciation on house property although it was established that the property was not put to use during the year."*

5. At the outset, Ld. Counsel for the assessee stated that this issue is covered by Tribunal decision in assessee's own case for AY 2006-07 and 2007-08, wherein Tribunal has adjudicated the issue and allowed in favour of assessee by observing as under:

"11. We have heard rival submissions and gone through facts and circumstances of the case. We find that admittedly, the AO has noted the fact that unlike in earlier years the assessee has not earned any income from coordination activity or handling of coal etc. it means that the AO has admitted in earlier years there was business activity of handling of coal etc. by the assessee. From the accounts of the assessee also it is revealed that it is in continuing business and assessee has earned income from service charges and coordination charges and coal handling charges. Even the assessee has filed accounts for the year ending 31.03.2005, which also reveals that the assessee company is engaged in the business activity of coordination activity of coal handling. Even this flat No. 4 at 9/1, Middleton Street was used by Director of the assessee company and this particular flat is kept as business asset by the assessee company in its accounts. Now before us, during the course of hearing, Ld. Sr. DR could not controvert the above fact that the assessee company is not engaged in the business in earlier years.

12. Another aspect of this issue argued by Ld Counsel for the assessee is that this asset is part of block of assets and even on this premise the assessee is entitled for depreciation because there cannot be disallowance of depreciation in case the asset is part of block of assets. Before us it was explained that the mode of computation of depreciation allowable under the Act had been shifted to 'Block of assets' concept, whereby the identity of an individual asset is completely lost. Now all assets having same classification and rate of depreciation would be clubbed together and the depreciation is to be computed on the entire block without distinguishing the same with reference to actual use, It may so happen that the asset may be in use but the value may be 'NIL' for reason that it's WDV is adjusted against the sale proceeds. Thus there is no provision in the Act which discriminates the allowability of depreciation on fixed assets on the basis of its use or any restriction had been provided in the statute as in the case of section 37(4); which has been deleted. Accordingly, we are of the view that the depreciation cannot be disallowed. For this proposition we are relying on the judgment of Hon'ble Delhi High court in the case of CIT Vs. 1. Oswal Agro Mills Ltd. 2. Oswal Chemicals & Fertilizers Ltd. (2012) 341 ITR 467 (Del.) wherein it has held that –

> *29. As per amended Section 32, deduction is to be allowed - "In the case of any block of assets, such percentage on the written down value thereof as may be prescribed". Thus, the depreciation is allowed on block of assets, and the Revenue cannot segregate a particular asset therefrom on the ground that it was not put to use.*
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> *30. With the aforesaid amendment, the depreciation is now to be allowed on the written down value of the „block of assets" at such percentage as may be prescribed. With this amendment, individual assets have lost their identity and concept of „block of assets" has been introduced, which is relevant for calculating the deprecation. It would be of benefit to take note of the Circular issued by the Revenue itself explaining the purpose behind the amended provision. The same is contained in CBDT Circular No.469 dated 23.09.1986, wherein the rationale behind the aforesaid amendment is described as under:*
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> > *"6.3 As mentioned by the Economic Administration Reforms Commission (Report No. 12, para 20), the existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the Assessing Officer is time consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc., the more disaggregated has to be the record- keeping. Moreover, the practice of granting the terminal allowance as persection 32(1)(iii) or taxing the balancing charge as per section 41(2) of the Income-tax Act necessitate the keeping of records*

of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture."

31. It becomes manifest from the reading of the aforesaid Circular that the Legislature felt that keeping the details with regard to each and every depreciable assets was time consuming both for the assessee and the Assessing Officer. Therefore, they amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of asset falling within the same class of assets.

In view of the above proposition of law laid down by Hon'ble Delhi High Court and the facts of the case that this asset forms part of block of assets, the depreciation cannot be disallowed. Once this is a fact, the assessee is entitled for depreciation and CIT(A) has rightly allowed the claim of the assessee. This issue of both the revenue's appeals is dismissed."

6. We have heard rival submissions and gone through facts and circumstances of the case. We find that the issue is covered in favour of assessee by decision of Tribunal in assessee's own case for AY 2006-07 and 2007-08, supra. Hence, following the decision cited, supra, this issue of revenue's appeal is dismissed. Similar is the addition in AY 2010-11, hence, the same is also deleted. This common issue of both years of revenue's appeal is dismissed.

7. The next common issue in both the appeals of assessee is as regards to the order of CIT(A) confirming the disallowance of 50% of overhead establishment charges on ad hoc basis. The facts and circumstances are exactly identical in both the years, hence, we will take the facts from AY 2009-10 and decide the issue. For this issue, the assessee has raised following ground no.2:

"2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the order of the AO in making arbitrary estimated disallowance of Rs.3,40,000/- @ 50% of the overhead establishment charges on the alleged ground of the expenses actually incurred and claimed in the assessment to be excessive simply because of temporary lull in the business."

8. We have heard rival submissions and gone through facts and circumstances of the case. We find that the AO has purely made this disallowance on ad hoc basis by observing as under:

"Under such circumstances, establishment expenses of Rs.6,81,687/- definitely appears to be on the higher side. Especially, as noted above, in absence of any justification regarding such expenses from the assessee's end, Rs.3,40,000/-, being 50% of the impugned expenses, is added back, on estimate, as excess claim of expenses."

The CIT(A) simply confirmed the action of AO. Before us, Ld. Counsel for the assessee stated that there is no basis for making this disallowance. We find that this is purely an ad hoc disallowance and that also without any basis. Accordingly, this same is deleted. This issue of both the appeals of assessee is allowed.

9. The next common issue in these two appeals of assessee is as regards to the order of CIT(A) in failing to allow the benefit of brought forward long term capital gain. This issue raised by assessee in both the years by identically worded grounds, have same facts and circumstances.

10. At the outset, ld. Counsel for the assessee stated that the CIT(A) has notadjudicated this issue in both the years, hence he requested for setting aside of this issue to his file so that issue can be deliberated there. Ld. DR has not objected to the proposal. Accordingly, this common issue of assessee's both the appeals are set aside and allowed for statistical purposes.

11. The next issue in this appeal of assessee, in ITA No. 550/K/2013 for AY 2009-10 is as regards to the order of CIT(A) confirming the disallowance of expenses relatable exempted income by invoking the provisions of section 14A of the Act read with rule 8D of the I. T. Rules, 1962. For this assessee has raised following ground no.3:

> *"3. On the facts and in the circumstances of the case, the Ld. CIT(a) erred in upholding the disallowance of Rs.3,00,750/- made u/s. 14A of the Income-tax Act, 1961, read with Rule 8D of the Income Tax Rules, 1962, in spite of the fact that the appellant did not derive any exempt income during the year and also that its share holdings had been acquired by the appellant companies out of its own fund.*

12. We have heard rival submissions and gone through facts and circumstances of the case. Ld. Counsel for the assessee before us stated that during the relevant year the assessee has not earned any exempt income. We have gone through the assessment order as well as the order of CIT(A) and found that there is no exempt income claimed by the assessee. Once this is the position, the issue is squarely covered in favour of the assessee and against revenue by the decision of Hon'ble Allahabad High court in the case of CIGT Vs. Shivam Motors Pvt. Ltd. in ITA No. 88 of 2014 dated 05.05.2014 wherein it is held as under:

> *"As regards the second question, Section 14A of the Act provides that for the purposes of computing the total income under the Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Hence, what Section 14A provides is that if there is any income*

which does not form part of the income under the Act, the expenditure which is incurred for earning the income is not an allowable deduction. For the year in question, the finding of fact is that the assessee had not earned any tax free income. Hence, in the absence of any tax free income, the corresponding expenditure could not be worked out for disallowance. The view of the CIT (A), which has been affirmed by the Tribunal, hence does not give rise to any substantial question of law."

Respectfully following the aforesaid decision, cited supra, we allow this issue of assessee's appeal.

13. In the result, appeals of revenue are dismissed and assessee's appeals are partly allowed for statistical purposes.

14. Order is pronounced in the open court on 18.12.2015

Sd/-	Sd/-
(M. Balaganesh)	(Mahavir Singh)
Accountant Member	Judicial Member

Dated : 18th December, 2015

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT – DCIT, Central Circle-XX, Kolkata.
2. Respondent – M/s. Arjun Associates (P) Ltd., 9/1, Middleton Street, Kolkata-700 071.
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Asstt. Registrar.