

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: F: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.7824/Del/2018
Assessment Year: 2012-13

DCIT, Central Circle-14, New Delhi Room No. 354, E-2, ARA Centre, Jhandewalan Ext., New Delhi55.	vs .	MDLR Airlines Pvt. Ltd. Flat No. 4, R. R. apartment, 3-4, Mehglapuri, Mehruli, Civil Lines, New Delhi-110030. (PAN: AAECM5231C)
(Appellant)		(Respondent)

For Assessee:	Shri Gautam Jain, Adv.
For Revenue :	Ms Suneeta Verma, CIT, DR

Date of Hearing :	12.09.2023
Date of Pronouncement :	19.10.2023

ORDER

PER GIRISH AGRAWAL, Accountant Member:

This appeal filed by the revenue is against the order of Ld. CIT(A)XXVI, New Delhi dated 14.09.2018 against the assessment order passed by ACIT, Central Circle-14, New Delhi u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AY 2012-13 dated 31.03.2015.

2. Grounds of appeal taken by the revenue are in respect of two issues – (i) involving addition of Rs.4,30,78,000/- on account of share application money u/s. 68 of the Act and the (ii) relating to addition of Rs.3,99,18,595/- on account of disallowance of expenditure owing to

suspension of business operations by the assessee since year 2009, both of which were deleted by the Ld. CIT(A).

3. Brief facts of the case are that assessee was incorporated on 07.09.2005 to carry out business of transportation of goods and passengers by Air. Assessee filed its return of income on 31.03.2014, reporting a loss of Rs.13,28,53,176/- on account of unabsorbed depreciation. Ld. AO completed the assessment u/s. 143(3), of the Act assessing the total income at Rs.4,98,56,581/-. On the first issue relating to addition made towards share application money, Ld. AO noted that assessee had received an amount of Rs.4,30,78,000/- from Shree Gopal Kumar Goyal during the year, for which assessee filed only a confirmation letter. Since bank statement was not furnished, Ld. AO added the same in the hands of the assessee. On the second issue, Ld. AO disallowed the claim of expenses by taking a view that no activity was carried out by the assessee as the operations of the assessee had been suspended in October, 2009 and there is no intention of the assessee to revive the operations. In this respect, assessee had submitted that it had claimed the expenses on the principle of 'going concern' and are, therefore, allowable. However, Ld. AO disallowed the same.
4. Before us, Ld. Counsel for the assessee has placed a paper book containing 413 pages and also a supplementary paper book containing 33 pages which are on record.
5. Ld. CIT, DR supported the order of Ld. AO on the first issue. She asserted that since assessee had not furnished bank statement of the investor, Ld. AO has rightfully added the amount in the hands of the assessee. On the second issue relating to disallowance of expenses, she supported the view taken by the Ld. AO as assessee has submitted that its business operations were suspended since the year 2009. According to her, since there is no business activity, there cannot be any claim of expenses by the assessee.

6. Per contra, Ld. Counsel for the assessee strongly supported the observations and findings given by the Ld. CIT(A). While giving relief to the assessee on the first issue relating to addition on account of share application money invested by Shri Gopal Kumar Goyal, Ld. Counsel pointed to the various submissions and details furnished in the course of assessment proceedings . He referred to submission dated 07.10.2014 placed at page 57 of the paper book which is acknowledged by the seal of the office of Ld. AO through which bank statements were placed on record. He further referred to submission dated 17.10.2014 which is also acknowledged by the seal of office of Ld. AO wherein at point no. 17, details relating to share application money along with confirmations were placed before the Ld. AO. Copy of confirmation letter from the investor Shri Gopal Kumar Goyal was also referred by the Ld. Counsel giving details of the amount invested by him through banking channel.

6.1. Ld. Counsel strongly asserted that the share applicant, Shri Gopal Kumar Goyal has been assessed by the same incumbent Ld. AO as in the present case of the assessee u/s. 143(3) of the Act for the same assessment year i.e. AY 2012-13 vide order dated 25.03.2015. Copy of the said assessment order is placed in the paper book at page 379. From the said assessment order, Ld Counsel demonstrated that total income of Rs. 20,24,940/- reported by the investor applicant was assessed as such after taking into consideration details furnished by him as called for from time to time by the Ld. AO and examination thereon. He pointed to an important fact that impugned assessment order in the case of assessee is dated 31.03.2015 which has been passed subsequent to the assessment completed by the same Ld. AO on 25.03.2015 for the share applicant.

6.2. He further referred to various evidences furnished in the case of share applicant Shri Gopal Kumar Goyal which is tabulated as under:

Sr. No.	Name of the share applicant	Amount (in Rs.)	Evidence (pages of paper book)
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1.	<p>Sh. Gopal Kumar Goyal Address: 436/16, Civil Lines, Gurgaon, Haryana PAN No. AEFPG8370J</p>	4,30,78,000/-	<p>i) Copy of return of income of Sh. Gopal Kumar Goyal (376-378) ii) Copy of order of assessment of Shri Gopal Kumar Goyal for assessment year 201213 where investment stands accepted (379) and income assessed at Rs.20,24,940/- iii) Copy of audited financial statement of the appellant company (34) iv) Copy of bank statement of the appellant company (58 to 88) v) Copy of confirmation (118) vi) Copy of ledger account of Sh. Gopal Kumar Goyal in the books of appellant company for the period of 01.04.2011 to 31.03.2015 (382-388) vii) Copy of bank statement of sh. Gopal Kmar Goyal (389-391)</p>
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6.3. From the furnishing of these evidences of the share applicant, ld. Counsel asserted that all of these were before the Ld. AO, both at the time of the assessment of the assessee as well as at the time of assessment of the share applicant. These have been duly accepted by the Ld. AO while completing the assessment of the share applicant.

6.4. He also pointed to an important fact that assessee had made receipt and payment of share application money from the same applicant Shri Gopal Kumar

Goyal, both in the preceding as well as in subsequent years which have not been doubted. To summarize the transactions of the assessee with the share applicant, following chart was submitted:

Sr. No.	Assessment Year	Opening Balance	Receipt during the year (Rs.)	Repayment during the year (Rs.)	Closing Balance (Rs.)	Additon made if any (Rs.)	Assessme nt of appellant company u/s (Page No.)	Assessme nt of Sh. Gopal Kumar Goyal u/s (Page No.)
1	2011-12	--	14,53,60,000	--	14,53,60,000	Nil	147 r.w.s. 148 (245)	147 r.w.s. 148 (392)
2	2012-13	14,53,60,000	4,36,78,000	6,00,000	18,84,38,000	4,30,78,000	143(3)	143(3) (381)
3	2013-14	18,84,38,000	--	--	18,84,38,000	Nil	143(3) (247)	143(3) (395)
4	2014-15	18,84,38,000	2,60,00,000	2,24,13,000	19,20,25,000	Nil	143(3) (249)	143(3) (397-398)
5	2015-16	19,20,25,000	--	19,20,25,000	--	Nil	143(3) (403)	143(3) (401)

6.5. To support his contentions on this issue, Id. Counsel placed reliance on the decision of Hon'ble jurisdictional High Court of Delhi in the case of PCIT Vs. Satkar Infrastructure Pvt. Ltd. in ITA 386/2022 dated 10.10.2020. From the said decision, he referred to para 5 which is reproduced as under:

“5. However, a perusal of the paper book reveals that both the appellate authorities below have recorded concurrent findings of facts that as many as eight out of nineteen investor companies were assessed under Section 143(3) of the Act in the same Assessment Year and the concerned Assessing Officers had verified their

investment, while calculating the disallowance under section 14A on the basis of 0.5% of the average investments. The appellate authorities below have also recorded that the entire amount had been received by the assessee company by account payee cheques or demand drafts and that nothing has been brought on record by the Revenue that these orders under Section 143(3) passed by the investor companies are subject to proceedings under Section 147 or Section 263 of the Act.”

7. We have carefully gone through the rival submissions made by both the parties. Admittedly, it is a fact on record that Id. AO is common to both, the assessee as well as the share applicant i.e. Sri Gopal Kumar Goyal, who have been assessed for the same AY 2012-13 u/s. 143(3), share applicant vide order dated 25.03.2015 and assessee vide order dated 31.03.2015. The sole basis for making the addition by the Ld. AO as noted in the impugned assessment order is that assessee did not furnish bank statement of the share applicant. However, Ld. Counsel has evidently demonstrated from various submissions which have been duly acknowledged by the seal of the office of the Ld. AO that all the necessary and relevant evidences were placed before the Ld. AO. All these documents have been placed before us also, forming part of the paper book.

7.1. We have gone through the assessment order passed in the case of share applicant, Shri Gopal Kumar Goyal, perusal of the same reveals that Ld. AO has accepted the submissions and claims made by him in his return. We also take note of the fact that the share applicant has made investments, both in the preceding as well as succeeding years, details of which has already been tabulated above. Thus, it is not a sole transaction with the assessee in this year only. We do find force in the submission made by the Ld. Counsel and have no reason to interfere with the findings given by the Ld. CIT(A) in deleting the addition of Rs.4,30,78,000/-. While holding so, we draw force from the decision of Hon'ble jurisdictional High Court of Delhi in the case of Satkar Infrastructure Pvt. Ltd. (supra). Accordingly, ground no. 1, taken by the revenue in this respect is dismissed.

8. On the second issue relating to disallowance of expenditure incurred by the assessee, Ld. Counsel for the assessee referred to the statement of P & L Account, Note No. 26 & 27 containing details of employee benefit expenses, operational expenses and administrative expenses incurred by the assessee, totaling to Rs.3,99,18,595/-. The same is extracted below for ease of reference:

MDLR AIRLINES PRIVATE LIMITED

Regd. Office : Flat no.4, R.R. Apartment, 3 & 4, Manglapuri, Mehrauli, New Delhi-110030

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NOTE-26

EMPLOYEE BENEFITS EXPENSE		31st March 2012 (in `)	31st March 2011 (in `)
SALARY AND WAGES			
<i>Office Staff Salary</i>		24,678,123.00	35,790,096.00
CONTRIBUTION TO PROVIDENT AND OTHER FUNDS			
<i>Contribution To Provident Fund</i>		333,952.00	372,560.00
<i>Contribution To Employees State Ins.Fund</i>		123,286.00	194,010.00
OTHER EXPENSES			
<i>Workers And Staff Welfare</i>		45,700.00	41,490.00
		25,181,061.00	36,398,156.00

NOTE-27

OTHER EXPENSES		31st March 2012 (in `)	31st March 2011 (in `)
A OPERATIONAL EXPENSE :			
<i>Aircraft Repair & Technical Charges</i>		2,635,906.50	46,360,750.00
<i>Airport Authority Charges</i>		1,348,678.00	3,002,570.00
<i>Helicopter Insurance Charges</i>		-	1,060,719.00
<i>DGCA Approval Fees</i>		189,000.00	463,194.00
<i>Custom Duty Charges</i>		781,871.00	933,099.00
		4,955,455.50	51,820,332.00
B ADMINISTARTIVE EXPENSE			
<i>Advertisement Expenses</i>		-	894,373.00
<i>Audit Fees</i>		50,000.00	50,000.00
<i>AMC Charges</i>		71,980.00	20,000.00
<i>Books & Periodicals</i>		198,540.00	191,452.15
<i>Charity & Donation</i>		-	100,000.00
<i>Custom Clearing Charges</i>		170,752.00	641,709.65
<i>Computer Repair & Maint.</i>		53,181.00	164,687.00
<i>Electricity Expenses</i>		84,551.00	268,581.19
<i>Fees & Taxes</i>		2,000.00	29,125.00
<i>Hotel Lodging & Boarding Exp.</i>		-	75,076.00
<i>Generator/GPU Running & Maint.</i>		6,548.00	14,141.00
<i>Insurance Charges</i>		315,112.00	230,958.00
<i>Internet & Broadband charges</i>		45,197.00	-
<i>Misc. Expenses</i>		207,932.54	608,549.60
<i>Office Repair & Maint. Exp.</i>		1,390.00	675,961.00
<i>Passanger Exp.</i>		75,706.00	69,969.00
<i>Photostat Expenses</i>		30,119.00	58,447.00
<i>Printing & Stationery Exp.</i>		54,120.00	788,138.00
<i>Professional/Consultancy Charges</i>		2,523,250.00	1,861,267.00
<i>Rent Expenses</i>		2,726,952.84	3,526,895.37
<i>Security Charges</i>		58,737.00	475,363.00
<i>Travelling & Conveyance</i>		2,404,236.00	1,077,672.00
<i>Telephone & Mobile Exp.</i>		675,871.21	736,112.00
<i>Car & Zeep Runing & Maint.</i>		25,903.00	584,350.00
<i>Water & Sewarage Charges</i>		-	18,670.00
		9,782,078.59	13,161,496.96
GRAND TOTAL		14,737,534.09	64,981,828.96

8.1. Ld. Counsel submitted that assessee was incurring losses which led to suspension of its airline operations. However, all the assets of the company were ready to put to use during the year. According to him, mere fact that there are no operation during the year does not mean that there is no business. He further submitted that findings of Ld. AO that there was no intention of the assessee to revive the operations is not based on any material and hence, disallowance made on this basis is not on correct appreciation of facts and circumstances of the case.

8.2. Assessee had incurred these expenses which are mandatory in nature for making various statutory and legal compliances and to continue the company in existence even if the business of the assessee is not in operation during the year. From the above Note 26 & 27 extracted from the financial statement of the assessee, Ld. Counsel pointed out that these include expenses like statutory custom duty charges, DGCA approval fees, Airport Authority charges, legal and professional and consultancy charges, payment to auditors, electricity expenses, airline repair and technical charges, insurance charges, secretarial expenses.

Thus, such expenses cannot be disallowed on the premise taken by the Ld. AO.

8.3. He further submitted that similar expenses have been allowed both in the preceding as well as subsequent years and the Rule of Consistency demands that this should be allowed in the year under consideration also. He referred to a table giving details of similar expenses allowed in the preceding and subsequent year, which is reproduced below:

Sr. No.	Assessment Year	Head of expenses			Disallowance if any (Page of Paper Book)	Assessment u/s
		Operational expenses	Administrative expenses	Total		
1.	2010-11	30,00,51,077	19,81,76,013	49,82,27,090	Nil	144
2.	2011-12	5,18,20,232	5,93,75,920	11,11,96,152	Nil	147 r.w.s 148
3.	2012-13	49,55,455	3,49,63,140	3,99,18,595	3,99,18,595	143(3)
4.	2013-14	22,87,008	67,34,146	90,21,154	90,21,154	143(3)
5.	2014-15	--	28,47,985	28,47,985	Nil	143(3)

8.4. To buttress his contention, he placed his reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. Rajendra Prasad Mody 115 ITR 519 (SC), wherein it was held that application under law is "purpose test" and not "fulfillment of purpose test". In the said decision it was also observed that "it is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned". He also resorted to the decision of Hon'ble Supreme Court in the case of S. A. Builders Ltd. Vs. CIT (2007) 288 ITR 1 (SC), wherein it was held as under:

"Expression 'for the purpose of business' occurring in various provisions is wider in scope than the expression 'for the purpose of earning income'. In view of this judgment, the opinion of the Assessing Officer that the assessee was not carrying on any business since there was no activity leading to the earning of income, becomes erroneous and unsustainable. When the assessee-company has been set up with an object of making strategic investment in the shares of companies involved in the cement business, we find that it cannot be held that the assessee is not carrying on any business. We therefore, approve the finding of the learned Commissioner of Income-tax (Appeals) to this extent. "

14. Following the ratio of the above said decision, we are of the opinion that the Assessing Officer has erred in rejecting the business loss of the assessee admitted in the return of income. The Assessing Officer should have appreciated that there was business activity, though there was no revenue during the previous year under consideration. Hence, in our opinion the expenditure is relatable to the business activity and the same is allowable as a deduction. "

9. From the submissions made before us, we note that it is an undisputed fact that airline operations of the assessee are in suspended mode since the year 2009. However, there is no closure of the assessee by way of its liquidation since it is a corporate set up under the Companies Act. We find force in the submissions made by the Ld. Counsel

that assessee being a company set up has to incur expenses irrespective of active business. We find that the sole basis of disallowance of expenses by the Ld. AO is in the backdrop that assessee did not carry out any business activity during the year. To our mind, not carrying on any business activities during a particular period cannot be equated with closure of business since it will lead to a narrow view of the scope of cessation of business. Further, we note that there is nothing on record to show that assessee has completely abandoned or closed the business forever by disposing of its assets and going into liquidation. On the contrary, from the perusal of its audited financial statement, it is revealed that assessee had been meeting various statutory and regulatory expenses. We also take note of the fact that such expenses have been allowed both in the preceding and succeeding assessment years, details of which is already tabulated above. From the perusal of the finding of Ld. CIT(A), we note that relief has been granted by following the principle of consistency. The findings given by the Ld. CIT(A) in this respect is extracted as under:

“It has been consistently decided by the Hon'ble Apex Court and, the Hon'ble High Courts in many cases that claims once allowed in any assessment year must be allowed in succeeding assessment years by following rules of consistency unless and until there is change in the position of law or change in facts of the case. There is neither change in facts of the case and, nor any change in the position of law. Reliance in support of the principles of consistency refer to the judgment of Hon'ble Apex Court in the case of CIT v. Excel Industries Ltd. 358 ITR 295. Just because the income was low does not warrant disallowance of expenditure. Having regard to the above the disallowance of Rs.3,99,18,595/- is deleted. Grounds 4 to 4.1 are therefore allowed.”

9.1. A specific query was posed to the Ld. Counsel whether rule of consistency should be followed as such to which he submitted that “department should be consistent to themselves”. Considering the submissions made by the Ld. Counsel and facts and circumstances of the case, we do not find any reason to interfere with the well reasoned findings given by the Ld. CIT(A). Accordingly, ground nos. 2 and 3 taken by the revenue in this respect are dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 19.10.2023.

Sd/-
(Chandra Mohan Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 19th October, 2023.

JD. Sr. P.S

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A) –XXVI, New Delhi
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi