

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.Nos.5074, 5077 & 5076/Del./2016
Assessment Years 2009-2010, 2010-2011 & 2011-2012

M/s. Aerens Buildwell Ltd., Delhi – 110 016. PAN AACCA3045N C/o. BGJC & Associates, Raj Tower, G-1 Alakhnanda Community Centre, New Delhi – 110 019.	vs.	The ACIT, Central Circle-18, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri I.P. Bansal, Advocate And Shri Vivek Bansal, Advocate
For Revenue :	Shri Satpal Gulati, CIT-DR

Date of Hearing :	10.12.2020
Date of Pronouncement :	16.12.2020

ORDER

PER BENCH :

All the appeals by Assessee are directed against the different Orders of the Ld. CIT(A)-25, New Delhi, Dated 28.06.2016, for the A.Y. 2009-2010, 2010-2011 and 2011-2012.

2. We have heard the Learned Representative of both the parties through video conferencing and perused the material available on record. The appeals are decided as under.

ITA.No.5074/Del./2016 – Assessment Year 2009-2010 :

3. Briefly the facts of the case are that search, seizure and survey operations under section 132/133A of the Income Tax Act, 1961 were conducted on 17.08.2011 in the case of assessee and others. The A.O. issued notice under section 153A of the Act and the assessee in response thereto filed return of income declaring loss of Rs.58,92,431. The A.O. found that auditor has pointed out in admissible deduction under section 40(a) of the I.T. Act and others under section 40A(7) under the Heads "*FBT, Wealth Tax, Interest and Gratuity etc.*". Therefore, these amount totaling to Rs.59,75,028/- will be added to the income of the assessee. The A.O. after considering the explanation of assessee found that in assessment year under appeal assessee has failed to explain share capital

and share premium in a sum of Rs.1.56 crores which was added to the income of assessee under section 68 of the I.T. Act, 1961. In the absence of verification the claimed loss was disallowed and income is taken at NIL.

3.1. The assessee challenged both the additions before the Ld. CIT(A). The Ld. CIT(A) confirmed the addition of share capital/share premium in a sum of Rs.1.56 crores and dismissed this ground of appeal of assessee. The Ld. CIT(A) however, as regards disallowance of business loss / disallowance totaling to Rs.59,75,028/- deleted the addition towards interest amounting to Rs.52,28,934/- and part of the gratuity amount of Rs.1,62,001/- totaling to Rs.53,90,935/- and directed to delete the addition of Rs.53,90,935/-. The appeal of assessee was partly allowed.

4. The assessee in the present appeal has challenged the confirmation of the addition of Rs.1.56 crores under section 68 of the I.T. Act and confirming disallowance of business loss of Rs.58,92,431/-.

4.1. Learned Counsel for the Assessee submitted that the assessee apart from filing the present appeal has also

filed an application under section 154 of the I.T. Act before the authorities below, challenging the addition of Rs.1.56 crores in ITA.No.5075/Del./2016 for the A.Y. 2009-2010 before ITAT, Delhi-A Bench, Delhi, which have been allowed vide Order Dated 21.12.2018. Copy of the Order is filed at pages 1-9 of the PB and M.A. Order at Page 10-16 of the PB. He has submitted that since ITAT, Delhi A-Bench in the case of assessee for the same assessment year deleted the addition of Rs.1.56 crores in appeal arising out of rectification application and the Order of the ITAT has attained finality and appeal effect have been given by the A.O, therefore, this ground of appeal has become infructuous.

4.2. In view of the above submissions of the Learned Counsel for the Assessee and in the light of the Order of the Tribunal dated 21.12.2018 allowing the relief of Rs.1.56 crores in favour of the assessee, this ground has become infructuous in favour of the assessee and is accordingly dismissed.

5. Learned Counsel for the Assessee as regards the addition of Rs.58,92,432/- on account of loss submitted that the Ld. CIT(A) has deleted the addition of Rs.53,90,935/- [Rs.52,28,934/- + Rs.1,62,001/-]. He has submitted that A.O. has passed the Order Dated 30.03.2018 giving effect to the Order of the Ld. CIT(A) and assessable income is assessed at Rs.1,02,91,662/- in place of Rs.1.56 crores as assessed in the assessment order. He has submitted that since ITAT has deleted the addition of Rs.1.56 crores vide Order Dated 21.12.2018, therefore, the losses available to the assessee to be carried forward to subsequent assessment year which are relevant to A.Ys.2010-2011 and 2011-2012. He has submitted that in subsequent A.Ys. 2010-2011 and 2011-2012 under appeal as above as the income has been assessed only on the ground that adjustment of losses on account of addition of Rs.1.56 crores in A.Y. 2009-2010 is not available to the assessee. He has, therefore, submitted that direction may be issued to the A.O. to pass appeal effect order accordingly

allowing carried forward losses to the subsequent assessment year.

6. In view of the above, we find contention of Learned Counsel for the Assessee to be correct that after deletion of the addition of Rs.1.56 crores by the ITAT and the Ld. CIT(A) has allowed relief in a sum of Rs.53,90,935/-, therefore, such loss shall have to be carried forward to the subsequent assessment year as per Law. We, accordingly, direct the A.O. to take care of such situation arise on account of deletion of the substantive addition and shall pass the appeal effect order accordingly in accordance with the Law.

7. In the result, ITA.No.5074/Del./2016 of the Assessee partly allowed for statistical purposes.

ITA.No.5077/Del./2016 – Assessment Year 2010-2011 :

8. In the aforesaid appeal, assessee has challenged the confirmation of disallowance of loss of Rs.34,63,934/- and challenged the Order of Ld. CIT(A) in confirming the

addition made by A.O. to Rs.52,28,934/- which was disallowed in previous year for non-payment of TDS.

9. Learned Counsel for the Assessee submitted that A.O. in para-3 of the assessment order disallowed the claim of losses of Rs.34,63,934/- on the ground that losses brought forward has already set-off in A.Y. 2009-2010. It is, therefore, income assessed at Rs.12,85,553/-. He has submitted that if the aforesaid losses as considered in A.Y. 2009-2010 is considered, then, assessable losses for A.Y. 2010-2011 would be reduced substantially, therefore, A.O. may be directed to do so accordingly. We find claim of assessee to be correct because earlier years losses shall have to be carried forward in subsequent assessment year. The A.O. did not allow benefit of the same because of the substantive assessment was made in A.Y. 2009-2010. A.O. is, therefore, directed to give effect of set-off of the brought forward losses for A.Y. 2009-2010 in assessment year under appeal as per Law.

10. In the result, ITA.No.5077/Del./2016 of the Assessee allowed for statistical purposes.

ITA.No.5076/Del./2016 – Assessment Year 2011-2012 :

11. In the present appeal the assessee has challenged the disallowance of loss of Rs.7,31,553/-.

11.1. Learned Counsel for the Assessee submitted that this issue is same as have been raised in A.Y. 2010-2011 in ITA.No.5077/Del./2016 except the difference in the amount. He has submitted that if the losses of the earlier year i.e., A.Y. 2010-2011 are available, then the same shall have to be given set off of brought forward losses of the earlier year as per Law. The A.O. is accordingly directed to give appeal effect in case of assessee by considering the set off of brought forward losses of the earlier years i.e., A.Ys. 2009-2010 and 2010-2011. Accordingly, appeal of Assessee allowed for statistical purposes.

12. In the result, ITA.No.5076/Del./2016 of the assessee allowed for statistical purposes.

13. To sum-up, assessee's appeal for the A.Y. 2009-2010 partly allowed for statistical purposes and appeals for the A.Ys. 2010-2011 and 2011-2012 are allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 16th December, 2020

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.