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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 148/2020**

THE PR. COMMISSIONER OF INCOME TAX -3..... Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing  
Counsel for Revenue with Ms.  
Mansie Jain, Advocate.

versus

DIAGEO DISTILLERIES PVT. LTD. .... Respondent

Through: None.

% Date of Decision: 07<sup>th</sup> September, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. Present Income Tax Appeal has been filed challenging the order dated 23<sup>rd</sup> September, 2019 passed by Income Tax Appellate Tribunal ('ITAT') in ITA No. 5502/DEL/2016 for the Assessment Year 2012-13.
2. The learned counsel for the Appellant states that the ITAT erred in upholding the order of Commissioner Income Tax (Appeals) ['CIT(A)'] and deleted the disallowance of interest expenditure, amounting to Rs.2,79,11,315/- made by the Assessing Officer ('AO'), without considering the correct factual position that the borrowed funds advanced by the Assessee to the Contract Bottling Units ('CBUs') were not used by the Assessee for the purposes of business since no revenue was disclosed from



such activities. He further states that the ITAT failed to consider that the CBUs are separate and distinct entities and therefore, the Assessee had failed to prove a direct nexus of the said interest expenses for its business purposes as stipulated under Sections 36 and 37 of the Income Tax Act, 1961 ('The Act').

3. The learned counsel for the Appellant states that ITAT also erred in upholding the CIT(A)'s order and deleted the disallowance of Rs.44,74,729/- made by the AO on account of legal and professional fee expenses without considering that there was no business activity during the financial year. He further states that the ITAT also erred in upholding the CIT(A)'s order and deleted the disallowance of Rs.25,27,483/- made by the AO on account of warehousing and demurrage expenses, without appreciating that there was no stock of goods or purchases and sales made by the Assessee in the relevant financial year.

4. A perusal of the orders reveals that with respect to the interest amount on loan paid by the Assessee, the CIT(A) has returned a finding of fact that the working capital loan taken by the Assessee for its business purposes was provided to the CBUs as per the terms and conditions of its agreement. The said working capital provided to the CBUs was taken into account by the parties while fixing the bottling charges payable under the agreement. The CIT(A) therefore, concluded that the working capital loan availed by the Assessee from the Standard Chartered Bank had been used wholly and exclusively for the business purposes and therefore, deleted the addition of Rs.2,79,11,315/- on account of interest payment on loan made by the AO. The ITAT concurred with the aforesaid finding of the CIT(A) and in this regard held as follows:-



*“7. We have heard the Ld. DR and perused all the relevant material available on record. As regards to Ground No. 1, from the perusal of the records it can be seen that the loan procured was utilized by the assessee wholly and exclusively for its business as per clause 14 of the arrangement between third party contract bottling units (CBUs). The working capital is advanced to these CBUs so as to enable them to procure material, undertake manufacturing and maintain stocks and debtors for the assessee. The assessee's profit earning source is the arrangement with the CBUs wherein the assessee provides working capital to these CBUs to enable them to procure materials and carry out large scale manufacturing of alcoholic beverages and deliver the same to the assessee's customers on its behalf. Thus, from this it is clear that working capital loan was taken by the assessee for its business purpose and use for business purposes only. Therefore, the CIT(A) was right in deleting this disallowance. Ground No. 1 of the Revenue's appeal is dismissed...”*

5. With respect to the expenses of legal and professional fees as well as the warehousing and demurrage charges, debited to the profit and loss account, the CIT(A) held that since the AO has not alleged that these expenses are bogus or of a personal nature the same do not warrant any disallowance. The CIT(A) held that the said expenses have been incurred wholly and exclusively for the business purposes and therefore, deleted the disallowances.

6. The ITAT upheld the aforesaid finding of the CIT(A) after observing that the said expenses have been incurred by the Assessee on the maintenance of its business establishment during the relevant year. In this regard, the finding of the ITAT reads as under:-

*“7..As regards to Ground Nos. 2 and 3, it can be seen that it is an admitted position that during the year*



*there was no business activity, but during the said period the assessee incurred expenses on the maintenance of its business establishment. During the said year, the Assessing Officer has not pointed out any bogus or expenditure of personal nature, which will warrant any disallowance. The CIT(A) rightly held that by simply mentioning that the expenditures are not commensurate with the turnover, will not automatically prove that they have not been incurred wholly and exclusively for business purposes. Thus, there is no need to interfere with the findings of the CIT(A) Ground Nos. 2 and 3 are dismissed.”*

7. The ITAT and CIT(A), both fact finding authorities have concurrently held that the expenses claimed by the assessee were duly incurred in the course of business. In the present appeal, the appellant has not placed any material on record to contradict the aforesaid concurrent finding of facts returned by the ITAT and CIT(A), while reversing the disallowances made by the AO. The appellant has failed to point out any error of law in the findings of the ITAT. In this view of the matter, no substantial questions of law arise for consideration and accordingly, the appeal is dismissed.

**MANMEET PRITAM SINGH ARORA, J**

**MANMOHAN, J**

**SEPTEMBER 07, 2022**

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