

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'SMC-3' : NEW DELHI)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 6784/Del/2015
Assessment Year: 2012-13**

M/S PEAREY LAL & SONS (P) Ltd., Vs. DCIT, CIRCLE 14(1)
PEAREY LAL BUILDING, NEW DELHI
42, JANPATH,
NEW DELHI – 110 001
(PAN: AAACP0003B)
(APPELLANT) **(RESPONDENT)**

AND

**ITA NO. 6863/Del/2015
Assessment Year: 2012-13**

DCIT, CIRCLE 19(2), VS. M/S PEARLEY LAL & SONS PVT. LTD.
NEW DELHI PEAREY LAL BUILDING, 42, JANPATH
ROOM NO. 221, 2ND FLOOR, NEW DELHI – 110 001
CR BUILDING, IP ESTATE,
NEW DELHI
(APPELLANT) **(RESPONDENT)**

Department by : SH. R..M. MEHTA, CA
Respondent by : SH. ANIL KUMAR SHARMA, SR. DR

ORDER

The Assessee and Department has filed the Cross Appeals which is emanate from the Order dated 27.10.2015 of the Ld. CIT(A)-7, New Delhi pertaining to assessment year 2012-13. The grounds raised in the Assessee's appeal reads as under:-

- “1. That the Ld. CIT(A) erred both on facts and in law in treating as capital expenditure a sum of Rs.11,18,840/- being the routine repair expense incurred on leased premises used for business purposes and which did not bring into existence any asset of any enduring nature.
 2. That the appellant reserves to itself, the right to add, alter, amend, substitute, withdraw and / or any ground(s) of appeal on or before the date of hearing.
2. The grounds raised by the Revenue in its Appeal read as under:-
- “1. On the facts and in the circumstances of the case, the erred in deleting disallowance of Rs. 4,31,517/- made by the AO on account of expenses claimed in the profit and loss account under the head repair and maintenance by ignoring the fact the expenses were not incurred wholly and exclusively for the business purposes of the assessee.
 2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of Rs. 10,65,560/- made by the AO on account of expenses claimed in the profit and loss account under the head repair and maintenance for Mussorie Guest House treating it as capital in nature by not appreciating the fact that the expenditure resulted in an in enduring nature.
 3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the part

disallowance of Rs. 24,66,305/- out of Rs. 32,26,630/- made by the AO on account of expenses claimed in the profit and loss account under the head "repair and maintenance" treating it as capital in nature by not appreciating the fact that the expenditure resulted in an enduring nature.

4. The appellant craves to be allowed to add any fresh ground(s) of appeal and / or delete or amend any of the ground(s) of appeal.

3. The brief facts of the case are that the assessee company filed e-return of income on 26.9.2012 for AY 2012-13 at a loss of Rs. 13,99,754/- after setting of income from house property of Rs. 1,23,25,742/- and income from other sources of Rs. 78,09,874/- from the current year business loss of Rs. 2,15,35,372/-. The case of the assessee was selected for "scrutiny assessment" under CASS and statutory notice u/s. 143(2) of the I.T. Act, 1961 was issued on 6.8.2013. In compliance of the notice, copy of ITR alongwith all financial details were filed. Subsequently, notice u/s. 142(1) of the Act alongwith questionnaire was issued and information in support of its claim was called for. In response thereto, the assessee's AR attended the proceedings from time to time and filed the details/information. During the period, the assessee company is stated to be engaged in the business of retail distribution of petrol, LPG and related products, fast food business and letting of properties. AO observed that in the absence of evidences or proper

vouching by the assessee, he made the various additions and assessed the income of the assessee at Rs. 33,23,951/- u/s. 143(3) of the I.T. Act, 1961 vide his order dated 14.11.2014.

4. Aggrieved with the aforesaid order of the AO, the assessee filed appeal before the Ld. CIT(A) who vide impugned order dated 16.5.2014 deleted some of the additions and sustained the addition of Rs. 11,18,840/- vide his order dated 27.10.2015 and partly allowed the appeal of the assessee.

5. Against the order of the learned CIT(A) the Assessee & Revenue are in Cross appeals before the Tribunal.

6. Ld. Counsel of the assessee has stated that action of the Ld. CIT(A) in treating a sum of Rs. 11,18,840/- as capital expenditure being the routine repair expenses incurred on leased premises used for business purposes and which did not bring into existence any asset of an enduring nature. Therefore, the same may be deleted.

7. On the other hand, Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

8. First I take up the Revenue's Appeal as under:-

8.1 I have heard both the parties and perused the relevant records available with us especially the order of the Ld. CIT(A). With regard to ground no. 1 relating to deletion of addition of Rs. 4,31,517/- is concerned, we find that this disallowance is made from expenses pertaining to guest house maintenance and repair maintenance on the ground that it relates to cash payment which the assessee did not provide vouchers/bills. The AO has however stated

that ledger account and bills/vouchers for the impugned expenditure were furnished by the assessee vide letter 10.11.2014. The assessee had also stated before the AO that the expenses incurred were normal routine business expenses. The AO however, was of the view that in the absence of proper vouching, the claim of expenses is not entirely correct. He therefore, disallowed 50% of the claim of cash expenses i.e. Rs.93,397/- & Rs.3,38,120/-under the respective heads. It is evident that the disallowance made is completely ad-hoc without specific finding as to how the expenditure incurred is not for business purpose. It is not the case of the AO that the expenditure claimed is not genuine. Since all bills/vouchers and ledger accounts were before the AO, it would have been appropriate that specific vouchers etc. were identified before the disallowance was made. The assessee had incurred the expenditure on a lease property used as holiday home for the employees of the company. The expenses incurred in cash or through DD are towards electricity, water, house tax charges etc. and are for business purposes. Similar is the nature of expenses claimed under repairs and maintenance. Therefore, I am of the view that Ld. CIT(A) has rightly held that there is no justification for making an ad-hoc disallowance when all bills/vouchers etc. were produced before the AO, hence, the disallowance of Rs. 4,31,517/- was therefore rightly deleted which does not need any interference on our part, hence, I uphold the

same and accordingly dismiss the ground no. 1 raised by the Revenue.

8.2 With regard to ground no. 2 relating to deletion of addition of Rs. 10,65,560/- on account of repair and maintenance is concerned, I find that the AO, from the perusal of ledger account and details of bills/vouchers of repair and maintenance for Mussoorie Guest House disallowed Rs.11,83,955/- by holding the same to be expenditure of capital nature. I find that Ld. CIT(A) has perused the bills/vouchers produced before the AO and noted that expenditure incurred is purely on repair and maintenance of the roof and outer areas and cannot be treated as capital expenditure providing benefit of enduring nature or leading to creation of capital asset. Therefore, Ld. CIT(A) has rightly held that the disallowance of the impugned expenditure by treating the same as capital in nature was not in order and was therefore rightly deleted which does not need any interference on our part, hence, I uphold the same and accordingly, the ground no. 2 raised by the Revenue is dismissed.

8.3 With regard to ground no. 3 relating to deletion of addition of Rs. 24,66,305/- on account of repair and maintenance raised in Revenue is concerned, the AO has disallowed expenses of Rs.35,85,145/- incurred on repair and maintenance for maintenance of leased property at 42, Janpath used by the assessee as its office by treating it as capital expenditure. I find that Ld. CIT(A) has observed that the expenditure has been incurred on painting, polishing, repair of false ceiling, water proofing treatment, tile work,

dismantling of roof and other miscellaneous repairs. On careful examination of the bills/vouchers, it was noted that sum of RS.11,18,840/- is incurred for dismantling and grading of roof. It appears that entire roof has been recast. I further note that Ld. CIT(A) has treated a sum of Rs.24,66,305/- as revenue in nature and therefore the disallowance made by the AO was rightly directed to be deleted which does not need any interference on our part, hence, I uphold the action of the Ld. CIT(A) on this issue and dismiss the ground no. 3 raised by the Revenue.

ASSESSEE'S CROSS APPEAL (ITA NO. 6784/DEL/2015) AY-2012-13

9. With regard to ground no. 1 raised by the Assessee relating to treating the sum of Rs. 11,18,840/- as capital expenditure being the routine repair expenses incurred on leased premises used or business purpose is concerned, I find that Ld. CIT(A) while deleting the addition of Rs. 24,66,305/- on the same account has observed that on careful examination of the bills / vouchers, a sum of Rs. 11,18,840/- as incurred for dismantling and grading of roof appears that the entire roof has been recast. Ld. CIT(A) has further observed that nature of this expenditure cannot be categorized as revenue as it cannot be said that it has been incurred for repair and maintenance but is for dismantling and casting a new roof. However, I note that Ld. CIT(A) observed that on perusal of the details of the impugned expenditure the expenditure has been incurred on painting, polishing, repair of false ceiling, water proofing treatment, tile work, dismantling of roof and other miscellaneous repairs and nowhere it is mentioned that casting a new roof. These items like painting, polishing, repair of false ceiling, water proofing treatment, tile work, dismantling of roof

and other miscellaneous repairs works comes under the category of repair and maintenance. Hence, the Ld. CIT(A) has wrongly held that the expenditure of Rs. 11,18,840/- as capital in nature and therefore, not allowable. In view of the above, the addition of Rs. 11,18,840/- is hereby deleted, because the work of dismantling of roof is come under the category of repair and maintenance and is a revenue expenditure. Accordingly, the ground raised no. 1 raised by the assessee is allowed.

10. In the result, the Revenue's Appeal stands dismissed and Assessee's Appeal stands allowed.

Order pronounced in Open Court on this 09-01-2017.

SD/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated : 09-01-2017

Dragon NS
SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI