

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : B : NEW DELHI  
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.3433/Del/2016  
Assessment Year: 2009-10

ACIT,  
Circle 1(1),  
Gurgaon.

Vs Danone (India) Pvt. Ltd.,  
Building No.8, Tower-C,  
11<sup>th</sup> Floor, DLF Cyber City,  
DLF Phase II,  
Gurgaon.

PAN: AAACD5049B

(Appellant)

(Respondent)

Assessee by	:	Shri S.K. Aggarwal, CA
Revenue by	:	Ms Nidhi Srivastava, CIT, DR
Date of Hearing	:	21.08.2019
Date of Pronouncement	:	30.10.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 31<sup>st</sup> March, 2016 of the CIT(A)-1, Gurgaon, relating to assessment year 2009-10.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of providing technological and personnel support to food processing and dairy industry. It filed its return of income on 24<sup>th</sup> September, 2008, declaring the total income at nil, after claiming losses. The Assessing Officer, during the course of assessment proceedings, observed that the assessee company has declared a

business loss of Rs8,79,74,695/-. On verification of the Profit & Loss Account, he noted that no commercial/business activities were carried out by the assessee company during the year under consideration. The only incomes shown by the assessee during the year are as under:-

i) Profit on sale of investments	-	Rs.1,43,246/-
ii) Interest on bank deposit	-	Rs.11,58,065/-
iii) Dividend income exempt u/s 10(34)	-	Rs.38,51,264/-

3. He observed that the total business expenses debited by the assessee in its Profit & Loss Account amounting to Rs.10,78,31,182/- includes employee cost and the legal expenses, travelling expenses, communication and other expenses, depreciation and interest expenses. He, therefore, asked the assessee to explain as to why the entire expenses claimed should not be disallowed in the absence of no business activity carried out by it. The assessee, in its response, submitted that although it has not secured any order during the relevant period for which there was no income, however, the assessee had to still incur normal administrative and operative expenses to continue business activities. It was submitted that the assessee is providing technical and personnel support services to different food processing and dairy industry vertically and the efforts of the assessee in the year under consideration have translated into revenue in the subsequent years. Since the assessee company has not done any business activity during the year under consideration and the assessee could not furnish any substantial evidence to show

that the travel expenses were incurred for travelling made for business purposes and the assessee's business has not yet started due to litigation, the Assessing Officer restricted the expenses to only those expenses which are normal expenses required as per law for monitoring its corporate entity and existence amounting to Rs.49,35,784/- and disallowed an amount of Rs.10,28,95,398/- being the difference between the actual claim of Rs.10,78,31,182/- and Rs.49,35,784/-.

4. Before the CIT(A), it was argued that the facts of the year under consideration is different from the earlier years because in the current year the business was set up since senior employees for the operations were taken on employment which includes sales head. These employees were sent on training with a view that the main purpose of the assessee company of providing technological support to food processing and dairy industry is met. It was further submitted that during the impugned assessment year, the assessee had key management personnel at its pay roll to carry out its business activities. The assessee has appointed Mr. Anuj Mehta, Senior Manager, Quality and Mr. Sanjay Sharma, National Sales Head. During the year, it had employed a strong management team to carry out its business. Thus, the business of the assessee was, in fact, set up during the assessment year. It was submitted that various key personnel including the Managing Director, Finance Director, Sales & Distribution Director, Marketing Manager, Legal & Company Secretary, Finance Manager, were already on the assessee's pay roll during the subject assessment year. It was

further argued that the assessee, during the impugned assessment year undertook various activities to fulfill its key objectives such as promotion of and participating in the promotion of subsidiary, act as an investment company and acquire share, stocks debentures, etc., provide personnel support services to its group companies, etc. Sample vouchers evidencing such travel were also furnished before the CIT(A). Relying on various decisions, it was argued that since the assessee during the impugned assessment year has set up its business, the Assessing Officer was not justified in disallowing the business expenses debited in the Profit & Loss Account.

5. Based on the arguments advanced by the assessee and relying on the decision of the Delhi Bench of the Tribunal in the case of *Dhoomketu Builders & Development Pvt. Ltd. vs. Additional Commissioner of Income Tax (2012) 17 taxmann.com 36*, the ld.CIT(A) deleted the disallowance made by the Assessing Officer with certain directions. While doing so, he noted that the assessee has started deploying the skilful personnel and has covered the last mile of its preparedness which is sufficient to conclude that the assessee during the year after 07.07.2008 was fully equipped to mount the operation of business. It was on this date that Shri Sanjay Sharma, Sales head for the assessee was recruited which reflects that the assessee has started its operations. He, therefore, held that the expenses incurred after this date are for business purposes and, hence, are to be allowed. He accordingly directed the Assessing Officer to obtain the details of the

expenses out of the disallowed amount of Rs.8,66,73,393/- which pertained to the period after the setting up of the business on 07.07.2008 till 31.03.2009 and allow the same in the year under consideration.

6. Aggrieved with such order of the CIT(A) the Revenue is in appeal by raising the following grounds:-

“1. The Ld CIT(A) has erred on facts and in law in holding that the assessee has started its business operation on the date of recruitment of sales head on 07.07.2008, whereas the assessee had not furnished any evidences during assessment proceedings that business was set up and carried out during the year.

2. The Ld. CIT(A) has erred on facts and in law in directing the Assessing Officer to obtain details of expenses of Rs.8,66,73,393/- out of the expenses disallowed of Rs. 10,28,95,398/- pertaining to the period from 07.07.2008 to 31.03.2009 and allow the same as deduction for the year under consideration.

3. That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.”

7. The ld. DR strongly challenged the order of the CIT(A). She submitted that the assessee has not explained what are the actual dates of the recruitment of the persons nor filed copies of the agreement. Therefore, the various submissions made by the assessee cannot be relied upon. She submitted that the Assessing Officer has given justifiable reasons why the expenses should not be allowed since the assessee has not started its business and has not received any income from its business activities. She accordingly submitted that the grounds raised by the Revenue should be allowed and the order of the CIT(A) be set aside and that of the Assessing Officer be restored.

8. The ld. counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). He submitted that when the assessee had appointed its sales head, it was the last recruitment. Referring to copy of the letter addressed to the Assessing Officer on 6<sup>th</sup> September, 2011, copy of which is placed at pages 106 to 109 of the paper book, the ld counsel submitted a brief chart outlining the roles and responsibilities performed by the main managerial persons being the Directors and Sr. Managers during the year under consideration as well as new persons recruited during the year were filed before the Assessing Officer. It was explained that the activities carried out by these personnel are normal and ordinary business activities required for running and managing the business. It was further explained before the Assessing Officer that as a result of the business efforts made by the assessee during the relevant assessment year, service income of Rs.17.14 million was generated in the subsequent F.Y. 2009-10 by way of rendering services to its group companies. He submitted that the various expenses incurred by the assessee were not doubted. He accordingly submitted that since the business has been set up during the year, therefore, the order of the CIT(A) allowing the expenses incurred after the date of set up i.e., 07.07.2008 till 31.03.2009 is justified. He also relied on the decision of the coordinate Bench of the Tribunal in the case of *Dhoomketu Builders & Development Pvt. Ltd. vs. Additional Commissioner of Income Tax (supra)* which has been relied upon by the CIT(A).

9. We have considered the rival arguments advanced by both the sides and perused the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. We have also gone through the various decisions cited before us. We find the Assessing Officer in the instant case, disallowed an amount of Rs.10,28,95,398/- being the various expenses debited by the assessee in the Profit & Loss Account on the ground that no business activity was conducted during the year under consideration and the assessee company has not furnished any substantial evidence to show that the travel expenses were actually incurred for travelling made for business purposes and the business of the assessee has not yet started due to litigation. Further, the rent expenses are incurred for residence of Managing Director and Director and, hence, they are not allowable as revenue expenses in the absence of business activity as similar to that of salary expenses. We find the Id.CIT(A) held that when the assessee has appointed skilful personnel and has covered the last mile of its preparedness on 07.07.2008, therefore, the business of the assessee has been set up on 07.07.2008 and, therefore, the assessee is entitled to claim the various expenses pertaining to the period after setting up the business on 07.07.2008 till 31.03.2009. Relying on the decision of the coordinate Bench in the case of *Dhoomketu Builders & Development Pvt. Ltd. vs. Additional Commissioner of Income Tax (supra)*, the Id.CIT(A) directed the Assessing Officer to allow the expenses for the period from 07.07.2008 till 31.03.2009 amounting to Rs.8,66,73,393/- after obtaining the details of expenses. We do not find any infirmity in the order of the CIT(A). We find, the Id.CIT(A) while allowing the

claim of the assessee with certain directions has relied on the decision of the coordinate Bench in the case of *Dhoomketu Builders & Development Pvt. Ltd. vs. Additional Commissioner of Income Tax (supra)*, where it has been held as under:-

“The sole issue is whether the assessee is able to demonstrate that its business in respect of real estate development was set up during the relevant accounting period and, therefore, it is entitled for carry forward of net business loss suffered in the year.

Section 2(13) provides the definition of expression ‘Business’ according to which business includes any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce or manufacture. In various authoritative pronouncements of the Supreme Court and the High Court, meaning and scope of expression, business has been propounded it is not necessary to recite and recapitulate of those decisions but on the strength of them, it would be suffice to say that word ‘business’ has a wide import and it means an activity carried on continuously and systematically by a person by the application of his labour and skill with a view to earn an income Section 3 defines ‘previous year’. Previous means the financial year immediately preceding the assessment year. The proviso appended to this section further contemplates that in case of a business newly set up in the said financial year, the previous year shall be the period beginning with the date of set up of the business. The expression ‘set up’ has not been defined anywhere in the Act but it is understood in the common parlance and has been explained in a large number of decisions. According to the meaning expounded in the authoritative pronouncements, if an assessee is in a position to deliver the goods, it means that the business is set up. Actual delivery is immaterial. For example, if a person wants to carry on the business of transportation, the moment he purchased the vehicle for transporting the goods and arranged the space then it would indicate that business has been set up, it is immaterial whether he was able to actually transported the goods or not.”

10. Since the assessee in the instant case has started deploying the skillful personnel and has covered the last mile of its preparedness on 07.07.2008 when the sales head Shri Sanjay Sharma was appointed, therefore, we do not find any infirmity in the order of the CIT(A) in holding that the assessee has set up its business on 07.07.2008 and, therefore, is entitled to claim the expenses as a



revenue expenditure for the period from 07.07.2008 till 31.03.2009 subject to verification of the details by the Assessing Officer. Further, the submission of the ld. counsel that the assessee has earned income of Rs.17.14 million in the subsequent F.Y. 2009-10 could not be controverted by the ld. DR. Under these circumstances, we do not find any infirmity in the order of the CIT(A) in holding that the assessee has started its business operation on the date of recruitment of sales head on 07.07.2008 and directing the Assessing Officer to obtain the details of expenses of Rs.8,66,73,393/- out of the expenses disallowed of Rs.10,28,95,398/- pertaining to the period from 07.07.2008 till 31.03.2009 and allow the same as deduction in the year under consideration. The grounds raised by the Revenue are accordingly dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 30.10.2019.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 30<sup>th</sup> October, 2019

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi