

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 4192/DEL/2018 (A.Y 2011-12)

(THROUGH VIDEO CONFERENCING)

Carlson Hospitality Marketing (India) Pvt. Ltd. 1 st Floor, Block A, Chimes Building, Plot No. 61, Sector-44, Gurgaon, Haryana AABCC5374K (APPELLANT)	Vs	DCIT Circle-3(1) New Delhi (RESPONDENT)
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Appellant by	Sh. R. K. Kapoor, CA
Respondent by	Dr. Maninder Kaur, Sr. DR

Date of Hearing	09.09.2021
Date of Pronouncement	14.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 19.02.2018 passed by CIT(A)-2 New Delhi for assessment year 2011-12.

2. The grounds of appeal are as under:-

1. *“That the Ld. Commissioner of Income Tax (Appeals)-2 (‘CIT(A)’) have erred in law and on the facts and circumstances of the assessee’s case in confirming the addition of '22,71,911/- made by Ld. AO u/s 68 of the Act in respect of credit balances outstanding as on 31.03.2011 in respect two creditors.*

2. *That the Ld. CIT (A) have grossly erred on facts and circumstances of the assessee’s case and in confirming the disallowance made by the Ld. AO on*

account of exchange rate fluctuation loss amounting to '53,181/- without affording any opportunity to the assessee for explaining their nature and justification for their allowability.

3. That the Ld. AO and consequently the Ld. CIT(A) have grossly erred on facts and circumstances of the assessee's case in charging interest u/s. 234A and 234B of the Act."

3. The assessee is a company incorporated under the Companies Act, 1956 engaged in the business of sales and marketing for Carlson Group of Hotels. The assessee e-filed its return of income on 24/11/2011 for Assessment Year 2011-12 declaring an income of Rs.198,35,504/-. The return was processed u/s 143(1) of the Act and was selected for scrutiny assessment and statutory notices u/s 143(2) of the Act were issued to the assessee. All the data, information, clarifications, details sought by the Assessing Officer was duly filed by the assessee. The assessment order u/s 143 (3) of the Act was passed on 14/3/2014 assessing the total income of the assessee at Rs. 1,67,15,540/- after making certain disallowances and additions, details of which are as under:-

Sr.	Nature of disallowance/addition	Amount (Rs.)
1.	Disallowance of 25% of advertisement & sales promotion exp, treating it as capital in nature	43,20,942/-
2.	Addition u/s 68 of IT Act-Cash credit on account of credit balance outstanding in respect of two creditors	22,71,911/-
3.	Disallowance of bad debts written off	2,34,000/-
4.	Disallowance of loss arising on exchange rate fluctuation	53,181/-
	Total	68,80,034/-

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards Ground No. 1 relating to addition of Rs.22,71,911/- u/s 68 of the Act in respect of credit balance outstanding as on 31/3/2011 in respect of two creditors. The Ld. AR submitted that during the assessment proceedings, the Assessing Officer asked the assessee to file confirmation from all the creditors exceeding outstanding balance of Rs. 5 lacs each as on 31st March, 2011. There were only six such creditors having balance of Rs. 2,21,51,259/- in this category. Out of this, assessee obtain confirmation and filed the said confirmations obtain from four such creditors having balance of Rs. 1,98,79,348/-, which constituted almost 90% of the total outstanding creditors. However, the assessee could not arrange confirmations from two creditors, that are Durga Das Publications Pvt. Ltd. (Rs.13,12,602/-) and Travel Click Incorporation (Rs. 9,59,309/-) as one of the creditors namely Travel Click Intentional was an overseas creditors. The Ld. AR submitted that these two creditors are also dealing in the identical business i.e. Advertisement and Marketing in which the assessee is doing business. The Assessing officer made the addition in respect of these two creditors u/s 68. At the Appellate proceedings before the CIT(A), the assessee filed certain additional evidences in respect of bonafide business relation with these creditors consisting of copy of ledgers of these parties in the books of assessee, copy of TDS Certificates issued to these parties in respect of expenses accounted for, copies of invoices rest by these parties on the assessee to establish that these parties were regular trading parties with the assessee. The Ld. AR submitted that the assessee also explain that payments to these parties have been made in the subsequent years as well. Some further transactions had taken placed with these parties in the subsequent years for which the assessee filed copy of ledgers accounts for Financial Year 2010-11, 2011-12 and 2012-13 all these two parties. Thus, the Ld. AR submitted that provisions of Section 68 are not applicable to these parties because most of the balances in the account of these parties were outstanding and came forward to this year from the earlier years and provisions of Section 68 could not have been invoked for making additions in the hands of the assessee. The CIT(A) called for remand report on

these documents from the Assessing Officer. The Assessing Officer claimed that these documents were not additional evidences and interested upon that only confirmations from these parties perhaps would satisfy additions u/s 68 was correctly made by the Assessing Officer. The Ld. AR submitted that the parties are genuine and regular and the identity and creditworthiness of these parties were placed before the Assessing Officer as well as before the CIT(A) and instead of looking to the additional evidences of the two creditors, the Assessing Officer has not taken cognizance filed by the assessee in support of his submission. The Ld. AR relied upon the decision of the of the Hon'ble Supreme Court in case of Anees Ahmed and Sons Vs. CIT 297 ITR 441 (SC). The Ld. AR further submitted that all these six parties for which the Assessing Officer asked balance confirmation have provided services in the nature of Advertisement & Marketing to the assessee. However, the Assessing Officer accepted the genuineness of the four parties for which confirmation was furnished by the assessee and treated remaining two parties as in genuine and made addition of the closing balance of the said two parties u/s 68 of the Act, merely on the ground that the assessee was not able to furnish the balance confirmations. The Ld. AR pointed out that from the ledger of these parties it can be seen that assessee has booked the invoices for services rendered by these parties in the nature of Advertisement & Marketing and paid these parties from the banking channels. The Ld. AR further relied upon the decision of the Hon'ble High Court in case of CIT Vs. Rice India Exports Pvt. Ltd (I2010-TIOL-583-HC-Del-IT) as well as the decision of the Tribunal in case of Manoj Aggarwal (113 ITD 377 Delhi (SB)). The Ld. AR relied upon the decision of the Hon'ble Allahabad High Court in case of Zazsons Export Ltd. Vs. CIT (2017) 88 Taxman.com 617 and also relied on Hon'ble Delhi High Court's decision in case of CIT Vs. Kishori Lal Construction Ltd. Without prejudice to these submissions, the Ld. AR further submitted that in Financial Year 2013-14, the outstanding balances of both these parties were 9,06,882/- in case of Durga Das Publication Pvt. Ltd. and Rs.5,24,934/- in case of Travel Click International have been returned back by the assessee, being the amounts not

claimed by the said parties. The Ld. AR produced the ledgers and balances wherein return of account for Financial Year 2013-14 was mentioned. The Ld. AR pointed out that the said write back has been offered to tax by the assessee in Financial Assessment Year 2013-14. The Ld. AR submitted that the said write backs have been credited under the head other income in the profit and loss account of the assessee during the year under consideration. Furthermore, the income tax returns of the assessee have been shown that such credit has been in-fact offered for tax during the year under consideration. The above position translates to the facts that outstanding balances added u/s 68 in Assessment year 2011-12 have been already subjected to tax in Assessment Year 2014-15 and if the amount addition is upheld in Assessment Year 2011-12, the same would amount to double tax of the said amount in the above two years.

6. The Ld. DR relied upon the order of the CIT(A) and Assessment Order.

7. We have heard both the parties and perused all the relevant materials available on record. From the perusal of the records and the submissions of the Ld. AR the confirmations and the ledger accounts along with other documentary evidence were produced before the CIT(A) for which the Assessing Officer in his remand report never doubted the genuineness. In-fact, the two parties regarding which the outstanding balances were pending has been written back by the assessee and was offered to tax in Assessment Year 2014-15. The purchases as well as the corresponding sale were also accepted by the Assessing Officer. Therefore, this addition was based only on the assumption and surmises which cannot sustain under the law. Thus, the CIT(A) was not right in confirming the said addition, hence, Ground No. 1 of the assessee's appeal is allowed.

8. As regards Ground No.2 relating to addition of Rs.53,181/- on account of exchange rate fluctuation loss without affording any opportunity to the

assessee for explaining the nature and justification for the allowability. The Ld. AR submitted that the said expenditure was not a capital transaction and, therefore, was not returned under tax audit report & financials. In the return of income, there was no adjustment indicated on account of provisions of Section 43A of the Act which is rightly reported by the tax auditor in Schedule describing depreciation in Form 3CA-CD. The said exchange loss has been recognized on the transaction pertaining to reservation fees, tour and travel/marketing expenses, participation fees and adverse fees which are clearly revenue in nature and the statutory auditor has also reported the above expenditure in foreign currency in notes to financial during the year under consideration in pursuant to Para 4D of Part 2 of Schedule 6 of Companies Act, 1956 and none of the expenditure is in the nature of capital transaction. Foreign exchange fluctuation loss on account of revenue transaction, as is the case of the assessee, is allowable u/s 37 of the Act. The Ld. AR relied upon the decision of CIT Vs. Woodward Governor India Pvt. Ltd. 312 ITR 254 (S.C) as well as Oil and Natural Gas Corporation Ltd. Vs. CIT 332 ITR 180 (S.C). The Ld. AR also relied upon the decision of the Hon'ble Madhya Pradesh High Court in case of MP Financial Corporation Vs. CIT 165 ITR 765.

9. The Ld. DR relied upon the order of the CIT(A) and Assessment Order.

10. We have heard both the parties and perused all the relevant materials available on record. The loss suffered by the assessee on account of the exchange difference on the particular date is indicated in the balance sheet and the same is an item of expenditure u/s 37(1) of the Income Tax Act, 1961. It is an allowable expenditure. In-fact, no adjustment on account of provisions u/s 43A of the Act was reported by the tax auditor in schedule relating to depreciation in Form 3CA-CD. These facts were not disputed by the Revenue authorities and are clearly revenue in nature. Therefore, Ground No. 2 is allowed.

11. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on this 14th Day of September, 2021

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 14/09/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI