

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DELHI  
BEFORE Mr. R.S. SYAL, VICE PRESIDENT  
AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 6133/Del/2014  
Assessment Year: 2009-10**

DCIT Circle -10(1) New Delhi	<b>Vs.</b>	Dia Vikas Capital Pvt. Ltd. 531, 5 <sup>th</sup> Floor, Spazedege, Tower Sector-47, Sohna road, Gurgaon-122018  <b>PAN : AAACB2876J</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Ms. Ashima Neb, Sr. DR
Respondent by	Sh. S.K. Aggarwal, CA
Date of hearing	26-03-2018
Date of pronouncement	27 -3-2018

**ORDER**

**PER R.S.SYAL, V.P.:**

This appeal by the Revenue arises out of the order passed by the CIT(A) on 13.8.2014 in relation to the A.Y. 2009-10. The only issue raised in this appeal is against the deletion of disallowance of Rs. 2,09,58,170/-, being, expenses claimed to have been incurred by the assessee.

2. Briefly stated that the facts of the case are that the assessee is engaged in the business of investments. Deduction of Rs. 2,09,58,170/- was claimed under the head of Program and consultancy expenses. On being called

upon to give detail of such expenses, it was stated that these were incurred for due diligence and program consultancy. The assessee furnished a copy of ledger account giving date-wise payments of expenditure and nature of expenditure, some of which have been tabulated on page 5 of the assessment order. The Assessing Officer observed that the assessee did not explain as to why these expenses were relatable to interest income earned by it. Treating such amount as capital expenditure, the AO disallowed Rs. 2,09,58,170/-. The learned CIT(A) overturned the assessment order on this score by deleting the addition, against which the Revenue has come up in appeal before the Tribunal.

3. We have heard the rival submissions and perused the material on record. It is an undisputed fact that assessee is a Non-banking finance company engaged in the business of investments. The assessee incurred the expenditure under the head `Program and consultancy` to carry out due diligence of prospective borrowers and making investments in equity of MTIS and other legal matters. Since the object of the assessee is to carry out the business of financial services particularly through Micro Finance, the expenses incurred on carrying out due diligence of prospective borrowers cannot be considered as a capital expenditure. We, therefore, approve the

view taken by the learned CIT(A) in treating the amount as a revenue expenditure.

4. A perusal of the details of the expenses, tabulated on page 5 of the assessment order, is as under:-

<i>Date</i>	<i>Particulars</i>	<i>Amount</i>
<i>03.06.2008</i>	<i>Towards consultancy fees related to takeover of the company</i>	<i>9,65,687/-</i>
<i>10.11.2008</i>	<i>Towards consultancy services AGM board meeting</i>	<i>2,24,720/-</i>
<i>31.12.2008</i>	<i>Provision made again consultancy fee</i>	<i>80,00,000/-</i>
<i>31.12.2008</i>	<i>Provisions for consultancy fees</i>	<i>84,50,000/-</i>

5. On going through the above details from the assessee's ledger account, it is seen that sum of Rs. 80,00,000/- is a provision made on 31.12.2008 against the consultancy fees. Similarly there is another item of Rs. 84,50,000/- which is again a provision for consultancy fee. This transaction is also dated 31.12.2008. There can be no doubt about the allowing of deduction in respect of expenses actually incurred for due diligence. If there is only a provision not backed by any actual expenditure, then such a provision cannot be allowed as deduction. If on the other hand, the services are actually received and utilized but because of the non-availability of the invoice value, a provision is created for the reasonable amount of such expenditure, then such a provision has to be allowed. Since necessary details

of provisions of Rs. 1,64,50,000/- (Rs. 80,00,000/- plus 84,50,000/-) are not available on record, we set aside the impugned order to this extent and remit the matter to the file of the AO for examining the details of the provisions and then consider the deductibility or otherwise of such expenses in light of the above discussion. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in such fresh proceedings.

6. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

(Order pronounced in the open court on 27.03.2018.)

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-

**(R.S. SYAL)**  
**VICE PRESIDENT**

*Dt. 27.3.2018*

*SH*

Copy forwarded to:

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

ASSISTANT REGISTRAR,  
ITAT NEW DELHI

		Date	
1.	Draft dictated on		PS
2.	Draft placed before author	26.3..2018	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	27.3..2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

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