INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI

BEFORE
DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 6172/Del/2019
Asstt. Year: 2015-16

Zhilmil Electronics Pvt. Ltd. 1066, Baba Nagar, Near Janta Barat Ghar, Old Faridabad, Faridabad Haryana – 121002 PAN AAACZ6171A	Vs.	ITO, Ward-2(5) Faridabad.
(Appellant)		(Respondent)

Assessee by:	Shri Rajiv Saxena, Advocate Shri Shyam Sunder, Advocate
Department by :	Shri Vivek Vardhan, JCIT
Date of Hearing	11.10.2022
Date of pronouncement	16.12.2022

O R D E R

PER YOGESH KUMAR U.S., JM

The present appeal is filed by the assessee against the order dated 29/03/2019 of the ld. Commissioner of Income Tax (Appeals)- Faridabad [hereinafter referred to CIT (Appeals)] for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

1. *"The Ld. CIT(A) has erred in law as well as on facts in confirming the assessment framed by Ld. AO u/s 143(3) of the Income Tax Act' 1961.*
2. *The Ld. CIT(A) has erred in law as well as on facts in confirming the addition of Rs. 49,00,000/- u/s 68 of the Act on account of alleged unexplained share premium and share capital.*

3. *The Ld. CIT(A) has erred in law as well as on facts in confirming the income of appellant assessee of Rs. 25,14,500/- by invoking section 56(2)(viib) of the Act wherein rejecting the valuation method taken by appellant assessee.*
4. *The Ld. CIT(A) has erred in law as well as on facts in enhancing the income of appellant assessee by not issuing valid show cause notice as mandated.*
5. *The Ld. CIT(A) has erred in law as well as on facts in confirming and enhancing the addition without giving cogent reasons and by recording incorrect facts and by disregarding the all the documentary evidences furnished by assesssee.*
6. *The Ld. CIT(A) has erred in law as well as on facts in confirming the addition of Rs. 4,84,407/- on account of disallowance of business expenses.*
7. *That, the appellant craves leave to add, alter, amend or withdraw all or any ground either before or during the hearing of these grounds."*

3. There is a delay of 49 days in filing the above appeal. The assessee has pleaded in the affidavit that the Chartered Accountant was unwell due to highly diabetic condition and was not able to look after the matter and prepare the appeal on time after receiving the copy of the order from Ld. CIT(A). Therefore, the assessee has engaged the service of another Counsel who has preferred the appeal on 22/07/2019 which caused delay of 49 days in filing the appeal. Thus, the delay caused in fling the appeal is unintentional and the same due to bona-fide a mistake, accordingly sought for condoning the delay. For the reasons stated in the application for condonation of delay, the delay of 49 days in filing the appeal is hereby condoned.

4. Brief facts of the case are that the assessee had filed return of income for assessment year 2015-16 declaring an income of Rs. 1,89,480/-, the case was selected for scrutiny, the assessment proceedings have been initiated against the assessee. The representative of the assessee appeared before the Assessing Officer and submitted written submissions along with audit report, balance sheet for the assessment year 2015-16, computation of income and bank statement and also filed written submissions regarding details of share premium received including party's particulars.

5. During the assessment proceedings, it is found that the assessee company has issued 2,35,000 equity shares to four different entities for Rs. 94,00,000/- including share premium of Rs. 70,50,000/-. The assessee has allotted equity shares at Rs. 10 per share at a premium of Rs. 30/- per share totaling to a value of Rs. 40 per share. The details of the share allotted are reproduced hereunder:-

Name of the shareholder	Address	Number of shares	Value of Shares @ Rs. 10 per share	Share Premium
Goodluck Industries Ltd	10715, Andha Mugal, Gali No. 11, Pratap Nagar Delhi-110052	22500	225000	675000
Metalcity Constructions Kovai Pvt Ltd	58, Times Partner, Perambur Barraks Road, Vepary, Chennai Tamilnadu-600007	52500	525000	1575000
Herculese Builders Coimbatore Pvt Ltd	58, Times Partner, Perambur Barraks Road, Vepary, Chennai Tamilnadu-600007	60000	600000	1800000
Cee Aar Decors Pvt Ltd	H-54, 3rd Floor, Phase-1, Ashok Vihar, Delhi-110052	100000	1000000	3000000
Total		235000	2350000	7050000

6. The Ld. Assessing Officer observed that though the assessee has filed list of persons from whom share application money and share premium has been received during the year under consideration, but all the parties are situated outside Faridabad. Further found that the parties have limited funds to invest so much money in the shares. The identity and creditworthiness of the investors are suspicious and needs detailed enquiries. The Ld. Assessing Officer was of the opinion that the submissions made by the assessee are not acceptable in regard with the identity, creditworthiness and genuineness, therefore held that the investors are bogus and not genuine and their creditworthiness and identity are also fake beyond doubt. Accordingly, share capital and share premium amount collected/received by the assessee from the four parties amounting to Rs. 94,00,000/- are not genuine and the same has been treated as unexplained source of income of the assessee and brought to tax under section 68 of the Income Tax Act. Further expenditure of Rs. 4,84,407/- claimed by the assessee has been disallowed. Accordingly, the assessment order came to be passed under section 143(3) of the Act on 29.12.2017.

7. As against the assessment order dated 29.12.2017, the assessee has preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) has partly allowed the appeal filed by the assessee, by confirming the addition of Rs. 49,00,000/- made under section 68 of the Act. Confirmed the income of the assessee of Rs. 25,14,500/- by invoking section 56(2)(viib) of the Act by rejecting the valuation method taken by the assessee and also confirmed the

addition of Rs. 4,84,407/- on account of disallowance of business expenses, accordingly, the Ld. CIT(A) passed the order impugned on 29.03.2019.

8. Aggrieved by the order of the Ld. CIT(A) dated 29.03.3019, the assessee has preferred the present appeal on the grounds mentioned above.

9. We have heard the parties, perused the material on record and gave our thoughtful consideration.

10. The Ground No. 1 is general in nature which requires no adjudication. Ground No. 2 is regarding the addition of Rs. 49,00,000/- made u/s 68 of the Act on account .of unexplained share premium and share capital. As seen from the CIT(A), the Ld. CIT(A) has sustained addition u/s 68 in respect of following parties:-

Name of shareholder	Number of shares	Value of shares @Rs. 10 per share	Share premium @ Rs. 30 Per share
Good luck Industries Ltd.	22500	525000	675000
Cee Aar Decors Pvt. Ltd.	100000	1000000	3000000
TOTAL	**235000**	**2350000**	**7050000**

In total the Ld. CIT(A) sustained addition of Rs. 49,00,000/-. The contention of the Ld. AR that the amount has been received by the banking channel for which the parties have confirmed the investment which are kept on record. In respect of both the parties, they are regularly filing the return of income and the copies of the same are also brought on record. The assessee has also furnished books of accounts details of the parties to prove

the identities of the parties and the creditworthiness of the parties along with genuineness of the transaction as required u/s 68 of the Act. The assessee has filed the following documents before the Lower Authorities which are reproduced before us in the paper book which is as under:-

1. M/s Good luck Industries(P) Ltd.

S.No	Particulars	Page no. of the Paper Book
1.	Copy auditor's report, Balance Sheet and trading and profit & loss account as on 31.3.2015 along with notes to financial statement	94-104
2.	Copy of acknowledgement of return of income for AY 2015-16 along with computation of income	105-106
3.	Copy of confirmation of accounts dated 01.04.2015 from the period of 01.04.2014-31.3.2015 from the assessee company showing the amount of Rs. 9,00,000/- received from the investor company by the assessee company	107
4.	Copy of investor company's bank account statement showing the debit entry of Rs. 9,00,000 to the Bank account of the assessee co. on 23.04.2014 (Rs. 5,00,000) & 04.09.2014 (Rs.	108-109

2. M/s Cee Aar Decors (P) Ltd.

S.No	Particulars	Page no. of the Paper Book
1.	Copy of Certificate of Incorporation, along with MOA & AOA	160-183
2.	Copy auditor's report, Balance Sheet and trading and profit & loss account as on 31.3.2015 along with notes to financial statement	184-194
3.	Copy of acknowledgement of return of income for AY 2015-16 along with computation of income	195-196
4.	Copy of Share Application Form	197
6.	Copy of confirmation of accounts dated 01.04.2015 from the period of 01.04.2014-31.3.2015 from the assessee company showing the amount of Rs. 40,00,000/- received from the investor company by the assessee company	198
7.	Copy of investor company's bank account statement showing the debit entry of Rs. 40,00,000 to the Bank account of the assessee co. on 23.09.2014.	199-200

11. The above details clearly establishes that the assessee has fulfilled the ingredients of Section 68 of the Act by proving the initial burden cast upon him. Once the assessee proves/fulfils the ingredients of Section 68 of the Act, the burden shifts on the revenue. In the present case, the Lower Authorities have not brought anything on record to prove otherwise and in such circumstances, the authorities are precluded from making any other addition on this count in the absence of contrary materials.

12. Further, we placed reliance on the judgment of the Supreme Court in the case of PCIT Vs. Rohtak Chain Co. (P) Ltd. 59 (SC) [2019] 110 taxmann.com wherein the Apex Court held that once the genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on the ground that the shares are issued at excess price. The relevant portion is as under:-

"51. The learned ITAT after due examination of the order of CIT (Appeals) and the documents on record insofar as identity creditworthiness, genuineness of transaction of M/s. Aadhaar ventures (I) Ltd, M/s. Dhanush Technologies Ltd, M/s. Emporis Projects Ltd and M/s. L.N. Industries Ltd (formerly known as L.N. Polyster Ltd) came to the conclusion that the assessee company having receipt share application money through bank channel and furnished complete details of bank statements, copy of accounts and complied with notices issued and the directors of subscriber company also appeared with books of accounts before the appellate authority and confirmed the investment made by them with the assessee company, therefore, the identity and creditworthiness of investor and genuineness of transaction of the share applicant has been proved in the light of the ratio laid down by the M.P. High Court, Delhi High Court and the Hon'ble Supreme Court and were of the opinion that the onus cast upon the assessee as provided under Section 68 of the Act has been duly discharged by the assessee the identity of the share subscriber, creditworthiness and genuineness of the transaction is not to be doubted. The learned ITAT considered the case of the each company in great detail in para 85 to 110 of the impugned order and recorded its finding. The aforesaid finding of fact recorded by the ITAT are based on the material available on record which is a finding based on appreciation of evidence on record.

52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.

53. Once the genuineness, creditworthiness and identity are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case."

By respectfully following the ratio laid down in the case of PCIT Vs. Rohtak (Supra) and considering the facts and circumstances of the case, we find no merit in the argument of the Ld. DR to hold that the assessee has failed to establish the ingredients of Section 68 of the Act.

13. The Hon'ble Supreme Court in the case of CIT Vs. Lovely Export Pvt. Ltd. reported in 319 ITR 5 (ST) observed that even if the share capital money is received by the assessee from alleged bogus share holders, whose names are given to the A.O. The Department is free to proceed to reopen their individual assessment in accordance with law. But cannot regarded undisclosed income of the assessee Company. The present case, the assessee has substantially provided materials to prove the genuineness of the share holders apart from giving the Pan Card, name and ROC details. Therefore, we delete the addition of Rs. 49,00,000/- made u/s 68 of the Act. Accordingly, the Ground No. 2 of the Assessee is allowed.

14. Ground No. 3 is regarding confirming the income of the assessee of Rs. 25,14,500/- by invoking Section 56(2) (viib) of the Act on protective basis on the reasons that the assessee has received a premium of Rs. 25,14,5000/- on issue of shares to various parties. According to the Ld. A.O, the value of the shares issued to the parties are very high in comparison to fair market value of such shares. It is the contention of the Ld. AR that the valuation of the shares has been done as per DCF Method which is prescribed under

Rule 11 UA to Income Tax Rules (2)(b) which has been and also certified by the Assessee's qualified Charted Accountant. In our considered opinion, the Valuation Method adopted by the assessee is one of the Methods accepted under law which cannot be disturbed by the Revenue authorities without bringing any contrary material on record to sow that the method adopted by the assessee is incorrect.

15. Further, the Ld. CIT (A) has rejected the valuation report of the assessee, by relying on decision of the Coordinate Bench of this Tribunal in the case of Agro Portfolio Pvt. Ltd. vs. ITO 2018, 171/ITD/74 DEL. The decision made in Agro Portfolio Pvt. Ltd. (supra) has been considered by the Coordinate bench of this Tribunal in the case of Cinestan Entertainment (P). Ltd. Vs. ITO for AY 2015-16 dated 27/05/2019, wherein it is held that the Assessing Officer cannot examined or substitute its own value in place of valuation arrived by the assessee either DCF Method or NAV Method, the commercial expediency has to be seen from the point view of businessman. Further held that if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method, then the same cannot be rejected because neither the Assessing Officer nor the assessee have been recognized as expert under the law. The relevant portion are hereunder:-

> *"28. Now what we are required to examine whether under these facts and circumstances Assessing Officer after invoking the deeming provision of Section 56(2)(vii) could have determined the fair market value of the premium on shares issued at Nil after rejecting the valuation report given by the Chartered Accountant on one of the prescribed methods under the rules adopted by the Valuer. Before us, learned counsel, Mr. Dinodia, first of all had harped upon the spirit and intention of the Legislature in introducing such a deeming provision and submitted that such a provision cannot be invoked on a normal business transaction of*

issuance of shares unless it has been demonstrated by the Revenue authorities that the entire motive for such issuance of shares on higher premium was for the tax abuse with the objective of tax evasion by laundering its own unaccounted money. His main contention was that, being a deeming fiction, it has to be strictly interpreted and there is no mandate to the Assessing Officer to arbitrarily reject the valuation done by the assessee on his own surmises and whims. We are in tandem with such a reasoning of the ld. Counsel, because the deeming fiction not only has to be applied strictly but also have to be seen in the context in which such deeming provisions are triggered. It is a trite law well settled by the Constitutional Bench of Supreme Court, in the case of Dilip Kumar & Sons (supra) that in the matter of charging section of a taxing statute, strict rule of interpretation is mandatory, and if there are two views possible in the matter of interpretation, then the construction most beneficial to the assessee should be adopted. Viewed from such principle, here is a case where the shares have been subscribed by unrelated independent parties, who are one of the leading industrialists and businessman of the country, after considering the valuation report and future prospect of the company, have chosen to make investment as an equity partners in a 'start-up company' like assessee, then can it be said that there is any kind of tax abuse tactics or laundering of any unaccounted money. It cannot be the unaccounted or black money of investors as it is their tax paid money invested, duly disclosed and confirmed by them; and nothing has been brought on record that it is unaccounted money of assessee company routed through circuitous channel or any other dubious manner through these accredited investors. If such a strict view is adopted on such investment as have been done by the Assessing Officer and by ld. CIT(A), then no investor in the country will invest in a 'start-up

company', because investment can only be lured with the future prospects and projection of these companies.

29. Now, whether under the deeming provision such an investment received by the assessee company be brought to tax. The relevant provision of Section 56 for the sake of ready reference is reproduced hereunder:

"Income from other sources. 56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E. (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :— (i)..... (viib) "where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares: Provided that this clause shall not apply where the consideration for issue of shares is received— (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf Explanation—For the purposes of this clause, — (a) the fair market value of the shares shall be the value - (i) as may be determined in accordance with such method as may be prescribed: or ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks,

licences, franchises or any other business or commercial rights of similar nature, whichever is higher;" Further, as per clause (i) of the Explanation as reproduced above, the FMV is to be determined in accordance with such method as may be prescribed. Clause (ii) admittedly is not applicable on the facts of the Assessee's case. The method to determine the FMV is further provided in Rule 11UA(2). The relevant extract of the applicable rules is reproduced below: "11UA. [(1)] For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,— (2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date. of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:— (b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method."

30. Ergo, the assessee has an option to do the valuation and determine the fair market value either on DCF Method or NAV Method. The assessee being a 'start-up company' having lot of projects in hand had adopted DCF method to value its shares. Under the DCF Method, the fair market value of the share is required to be determined either by the Merchant Banker or by the Chartered Accountant. The valuation of shares based on DCF is basically to see the future year's revenue and profits projected and then discount the same to arrive at the present value of the business……

……

31. .....

32. What is seen here is that, both the authorities have questioned the assessee's commercial wisdom for making the investment of funds raised in 0% compulsorily convertible debentures of group companies. They are trying to suggest that assessee should have made investment in some instrument which could have yielded return/ profit in the revenue projection made at the time of issuance of shares, without understanding that strategic investments and risks are undertaken for appreciation of capital and larger returns and not simply dividend and interest. Any businessman or entrepreneur, visualise the business based on certain future projection and undertakes all kind of risks. It is the risk factor alone which gives a higher return to a businessman and the income tax department or revenue official cannot guide a businessman in which manner risk has to be undertaken. Such an approach of the revenue has been judicially frowned by the Hon'ble Apex Court on several occasions, for instance in the case of SA Builders, 288 ITR 1 (SC) and CIT vs. Panipat Woollen and General Mills Company Ltd., 103 ITR 66 (SC). The Courts have held that Income Tax Department cannot sit in the armchair of businessman to decide what is profitable and how the business should be carried out. Commercial expediency has to be seen from the point of view of businessman. Here in this case if the investment has made keeping assessee's own business objective of projection of films and media entertainment, then such commercial wisdom cannot be questioned. Even the prescribed Rule 11UA (2) does not give any power to the Assessing Officer to examine or substitute his own value in place of the value determined or requires any satisfaction on the part of the Assessing Officer to tinker with such valuation. Here, in this case, Assessing Officer has not

substituted any of his own method or valuation albeit has simply rejected the valuation of the assessee.

33. Section 56(2) (viib) is a deeming provision and one cannot expand the meaning of scope of any word while interpreting such deeming provision. If the statute provides that the valuation has to be done as per the prescribed method and if one of the prescribed methods has been adopted by the assessee, then Assessing Officer has to accept the same and in case he is not satisfied, then we do not we find any express provision under the Act or rules, where Assessing Officer can adopt his own valuation in DCF method or get it valued by some different Valuer. There has to be some enabling provision under the Rule or the Act where Assessing Officer has been given a power to tinker with the valuation report obtained by an independent valuer as per the qualification given in the Rule 11U. Here, in this case, Assessing Officer has tinkered with DCF methodology and rejected by comparing the projections with actual figures. The Rules provide for two valuation methodologies, one is assets based NAV method which is based on actual numbers as per latest audited financials of the assessee company. Whereas in a DCF method, the value is based on estimated future projection. These projections are based on various factors and projections made by the management and the Valuer, like growth of the company, economic/market conditions, business conditions, expected demand and supply, cost of capital and host of other factors. These factors are considered based on some reasonable approach and they cannot be evaluated purely based on arithmetical precision as value is always worked out based on approximation and catena of underline facts and assumptions. Nevertheless, at the time when valuation is made, it is based on reflections of the potential value of business at that particular

time and also keeping in mind underline factors that may change over the period of time and thus, the value which is relevant today may not be relevant after certain period of time. Precisely, these factors have been judicially appreciated in various judgments some of which have been relied upon by the ld. Counsel, for instance: - i) Securities & Exchange Board of India &Ors [2015 ABR 291 - (Bombay HC)] "48.6 Thirdly, it is a well settled position of law with regard to the valuation. that valuation is not an exact science and can never be done with arithmetic precision. The attempt on the part of SEBI to challenge the valuation which is but its very nature based on projections by applying what is essentially a hindsight view that the performance did not match the projection is unknown to the law on valuations. Valuation being an exercise required to be conducted at a particular point of time has of necessity to be carried out on the basis of whatever information is available on the date of the valuation and a projection of future revenue that valuer may fairly make on the basis of such information." ii) Rameshwaram Strong Glass Pvt. Ltd. v. ITO [2018-TIOL1358-ITAT- Jaipur] "4.5.2. Before examining the fairness or reasonableness of valuation report submitted by the assessee we have to bear in mind the DCF Method and is essentially based on the projections (estimates) only and hence these projections cannot be compared with the actual to expect the same figures as were projected. The valuer has to make forecast on the basis of some material but to estimate the exact figure is beyond its control. At the time of making a valuation for the purpose of determination of the fair market value, the past history may or may not be available in a given case and therefore, the other relevant factors may be considered. The projections are affected by various factors hence in the case of company where there is no commencement of production or of the business, does not mean

that its share cannot command any premium. For such cases, the concept of start-up is a good example and as submitted the income-tax Act also recognized and encouraging the start-ups." iii) DQ (International) Ltd. vs. ACIT (ITA 151/Hyd/2015) "10..... In our considered view, for valuation of an intangible asset, only the future projections along can be adopted and such valuation www.taxguru.in I.T.A. No.8113/DEL/2018 42 cannot be reviewed with actual after 3 or 4 years down the line. Accordingly, the grounds raised by the assessee are allowed". The aforesaid ratios clearly endorsed our view as above.

34. In any case, if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method, then the same cannot be rejected because neither the Assessing Officer nor the assessee have been recognized as expert under the law.

16. The Coordinate Bench of the Tribunal while lying down the above ratio has also considered the decision of the Coordinate bench in Agro Portfolio Pvt. Ltd. Vs. ITO which has been relied by the CIT(A). Therefore, we are inclined to follow the ratio laid down in the case of Cinestan Entertainment P. Ltd. Supra and hold that the Ld. A.O and CIT(A) has committed an error in rejected the valuation done by the assessee from prescribed expert as per the prescribed method.

17. In view of the above discussion, we vacate the protective addition made by the Lower Authorities by allowing Ground No. 3 of the assessee.

18. Ground No. 4 & 5 are regarding enhancement of income. The Ld. AR submitted that the Ld.CIT(A) enhanced the income without giving a mandatory notice required u/s 250(1) of the Income Tax Act. It is the case

of the assessee that the income of the assessee was enhanced which has been done in violations of principals of natural justice.

19. In our opinion, when the CIT(A) deem it fit to enhance the assessed income, shall give mandatory notice u/s 250(1) of the Act. In the present case, admittedly no such notice issued to the assessee before enhancing the assessed income. Therefore, the action of the Ld.CIT(A) in enhancing the income of the assessee is found to be erroneous. Therefore, Ground No. 4 & 5 of the assessee requires to be allowed.

20. Ground No. 6 is regarding disallowance of business expenditure of Rs. 4,84,407/-. The Ld. Counsel for the assessee submitted that the assessee has been running its business since the date it came into existence i.e. on 21/09/2012. During the year under consideration, due to fall in business activities, the assessee could not carry out the business activities. The assessee has shown interest income of Rs. 6,73,890/- from "income from other sources". The Ld. A.O as well as CIT(A) has only allowed expenses to an extent of Rs. 1,89,483/- and disallowed the expenses of Rs. 4,84,407/- on the reasons that assessee has not carried on business in the year under consideration. The contention of the Ld. AR that the assessee has already set up his business and the same was in operation, the expenditure claimed u/s 37 of the Act. Further submitted that, to claim the business expenditure, the assessee has to be set up the business and it is not mandatory that there should be actual income generated from the business. In our opinion, once the business of the assessee is set up and the expenditure incurred thereafter deserves to be allowed as business

expenditure u/s 30 to 38 of the Act. There is no requirement of generation of income from such business activities. The business activity is a continuous process and it cannot be said that as soon as setting up of the business, the income will be generated and should yield income in all years. Being so, we find merit in the argument of the Ld. AR. Therefore, we inclined to allow the Ground No. 6 of the assessee.

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

Order pronounced in the open court on : 16th December, **2022.**

Sd/-	Sd/-
(DR. BRR KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 16/12/2022

Veena/ R.N, Sr. PS

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi