

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

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4654/Del/2014
Assessment Year: 2010-11

M/s. Elel Hotels and Investments Ltd., Mandlik House, Mandlik Road, Colaba, Mumbai	Vs.	DCIT, Central Circle 13, New Delhi
PAN :AAACE2846D		
(Appellant)		(Respondent)

And

ITA No.5058/Del/2015
Assessment Years: 2012-13

M/s. ELEL Hotels and Investments Ltd., R/o. Mandlik House, Mandlik Road, Colaba, Mumbai	Vs.	ACIT, Central Circle-03, Jhandewalan, New Delhi
PAN :AAACE2846D		
(Appellant)		(Respondent)

And

ITA No. 4807/Del/2014
Assessment Years: 2010-11

ACIT, Central Circle-13, New Delhi	Vs.	M/s. ELEL Hotels and Investments Ltd., R/o. Mandlik House, Mandlik Road, Colaba, Mumbai
PAN :AAACE2846D		
(Appellant)		(Respondent)

And

ITA Nos. 5434 & 5435/Del/2015
Assessment Years: 2011-12 & 2012-13

ACIT, Central Circle-03, New Delhi	Vs.	M/s. ELEL Hotels and Investments Ltd., R/o. Mandlik House, Mandlik Road, Colaba, Mumbai
PAN :AAACE2846D		
(Appellant)		(Respondent)

Assessee by	Sh. Rohit Jain, Adv. & Ms. Manisha Sharma, Adv.
Department by	Ms. Ashima Neb, Sr. DR

Date of hearing	28.11.2018
Date of pronouncement	04.12.2018

ORDER

PER O.P. KANT, AM:

Out of the aforementioned appeals, the cross appeals having ITA No. 4807/Del/2014 and ITA No. 4654/Del/2014 are directed against order dated 19/06/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-1, New Delhi [in short "the Ld. CIT(A)"] for assessment year 2010-11; the appeal having ITA No. 5434/Del/2015 is directed against order dated 11/06/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-23, New Delhi [in short "the Ld. CIT(A)"] for assessment year 2011-12; the cross appeals having ITA No. 5435/del/2015 and ITA No. 5058/Del/2015 are directed against order dated 11/06/2015

passed by the Ld. Commissioner of Income-tax (Appeals)-23, New Delhi [in short the Ld. CIT(A)] for assessment year 2012-13. In these appeals, common issues are involved in identical set of circumstances and thus same were heard together and disposed off by way of this consolidated order for convenience.

ITA No.4807/Del/2014 (Revenue's appeal) for AY: 2010-11

ITA No. 4654/Del/2014 (Assessee's appeal) for AY: 2010-11

2. First we take up the cross appeals of the Revenue and the assessee having ITA No.4807/Del/2014 and ITA No. 4654/Del/2014 respectively for assessment year 2010-11. The grounds of the appeal raised by the Revenue are reproduced as under:

1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in restricting the disallowance to Rs.53,00,209/- and allowing a relief of Rs.1,24,65,791/- made by Assessing Officer without appreciating the fact that the assessee company had not received any income from the business activity for the year under consideration.*
3. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

2.1 Grounds of appeal raised by the assessee in ITA No.4654/Del/2014 are reproduced as under:

1. *That the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred on facts and in law in upholding disallowance of expenditure to the extent of Rs.53,00,209, on the ground that the same should be capitalized to the cost of building.*

- 1.1 *That the CIT(A) erred on facts and in law in not providing adequate opportunity of being heard to the appellant before affirming the above disallowance.*
- 1.2 *That the CIT(A) erred on facts and in law in not appreciating that aforesaid expenditure could not be capitalized inasmuch as the same represents the amount paid to consultants whose architectural plans/ concepts were rejected by the appellant.*
2. *That on the facts and circumstances of the case, the CIT(A) erred in not adjudicating the ground relating to action of the assessing officer in not allowing carry forward of unabsorbed depreciation claimed by the appellant on the ground that during the year under consideration, assets were not used for business purposes*

The appellant craves leave to add, alter, amend or vary the above grounds of appeal before or at the time of hearing.”

3. Briefly stated facts of the case are that the assessee company filed return of income for year under consideration on 13/10/2010 declaring total loss of Rs.2,03,89,879/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short ‘the Act’) was issued and complied with. The assessee company claimed that it was engaged in the business of running hotels and restaurant and owned a hotel, namely, “SeaRock” in the Bandra, Mumbai. The Assessing Officer observed that assessee shown receipt from interest on deposit of Rs. 8000 and miscellaneous income of Rs. 19,000, totaling to Rs. 27,000/-and against the said receipt expenses of Rs.50,33,40,000/-had been claimed in the profit and loss account. In view of the observation, the Assessing Officer was of

the opinion that entire receipt represented 'income from other sources' and no business activity has been carried out by the assessee. Accordingly, he called upon the assessee as why the expenses claimed by the assessee and corresponding business loss may not be disallowed. The assessee contended that there was a temporary suspension of the business with the object of tiding over the crisis conditions and the expenses such as rent, security expense, repair and maintenance, electricity, insurance etc were incurred to maintain the corporate structure and preserve and maintain the assets/infrastructure as the company had to maintain all the licenses for operation of the Hotel. The assessee submitted that all the expenses were incurred wholly and exclusively for the purpose of the business, which are allowable as deduction. The assessee submitted that expenditure incurred to maintain and preserve the corporate structure is in allowable deduction in view of the following precedents:

- (i) *CIT Vs. Rampur Timber Company Limited, 129 ITR 58(Allahabad HC)*
- (ii) *Nakodar Bus Services Private Ltd., 179 ITR 506 (Punjab HC)*
- (iii) *Chinai & Co. Private Ltd. Vs. CIT, 206 ITR 616 (Bom HC)*
- (iv) *Hindustan Chemicals Works Ltd. Vs. CIT, 124 ITR 561*
- (v) *Birla Cotton Spinning and Weaving Mills Ltd. Vs. CIT, 64 ITR 568, 584 (Cal.)*

3.1 The Assessing Officer, however, noted that in earlier assessment years 2005-06 to 2009-10 also similar situation was observed. In view of the Assessing Officer, the assessee had no

income at all from operations of the Hotel business and whatever income by way of interest was shown under the head 'income from other sources'. According to the Assessing Officer only the government dues paid as rates and taxes amounting to Rs. 26, 51,000/-are allowable as the same were incurred for keeping the company in existence. The Ld. that Assessing Officer noted that depreciation of Rs.48,29,23,000/-was already disallowed and headed back to the income by the assessee thus the balance amount of expenditure computed as Rs.1,77,66,000/-was held as disallowable. The Assessing Officer also denied carry forward of the unobserved depreciation in absence of any business activity and assets not being used for the purpose of the business. Aggrieved with the finding of the Assessing Officer, the assessee filed appeal before the Ld. CIT(A) and reiterated its claim that the business of Hotel activity was suspended temporarily and various expenses were incurred to maintain the corporate structure, preserve and maintain the assets, the infrastructure and maintain all the licenses for the operation of the Hotel and thus expenses were incurred wholly and exclusively for the purpose of the business. The assessee relied on number of decisions. The assessee submitted that all the conditions of section 37(1) of the Act, were duly complied with by the assessee and thus all the expenses claimed should be allowed to it.

3.2 The Ld. CIT(A) after considering the submissions assessee observed as under:

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Facts are that the Appellant company owns hotel ‘Searock’ in Mumbai. The said hotel was destroyed a few years ago, and the appellant company along with the hotel property was sold by its earlier owners. The hotel business has not yet restarted as the structure requires comprehensive repairs and refurbishing, and necessary government approvals are still being taken. From the details filed, I find that expenses claimed by the appellant include certain items of expenditure which are essential for running day to day operations of the company and others which are to be capitalized:

Sl.	Description	Amount (Rs.)	Allowable
1	Lease rent paid to Government of Maharashtra in respect of the land on which the hotel structure is located	6,875,198	6,875,198
2	Consultancy charges for various works relating to the hotel and for representation before different authorities	6,316,372	1,016,163
3	Auditors remuneration	386,000	386,000
4	Personnel expenses	914,000	914,000
5	Security expenses	1,462,000	1,462,000
6	Power, fuel and water	859,000	859,000
7	Communication expenses	260,000	260,000
8	Travelling expenses	245,000	245,000
9	Insurance	162,000	162,000
10	Repairs and maintenance	62,000	62,000
11	Miscellaneous expenses	233,919	233,919
	TOTAL	17,775,489	12,475,280

3.3 Out of the list of the expenses of Rs.1,77,75,489/- the Ld. CIT(A) held the expenses amounting to Rs.53,00,209/- paid to consultants as disallowable under section 37(1) of the Act being capital expenditure and the balance expenses of Rs.1,24,65,791/- were allowed as business expenditure for preservation of business and protection of assets and property observing as under:

“3.3 Of the above items, expenses on lease rent, auditors remuneration, personnel expenses, expenses on security of the property of the company, expenditure on power and water, travelling and communication, insurance and expenses on repairs and other incidentals are also essential for preserving and maintaining the hotel property owned by the appellant company are also bare minimum expenses required for maintaining the company and its assets. It was held in Birla Cotton Spinning & Weaving Mills Ltd. vs. CIT [64 ITR 568, 584 (Cal.)] that business includes day-to-day running of the business, preservation of business and protection of its assets and property from expropriation, coercive process or hostile title, payment of statutory dues and taxes and things incidental to carrying on business and expenses relating thereto were allowable business expenses. This ruling was affirmed by the Hon’ble Supreme Court [82 ITR 166], I am also of the view that these expenses on security, electricity and water are outright consumables and cannot be capitalized as these expenses do not add any value to the capital asset.

3.4 However, from the details filed I find that amount totaling Rs.53,00,209/- was paid to consultants for planning and concept design, architectural services, designing of AC & ventilation system and basement work relating to the hotel structure. As the hotel structure is yet to be completed and the business is yet to commence, these expenses directly relating to the hotel building are to be capitalized towards the cost of building. In these facts and circumstances of the case, the expenses claimed by the appellant are disallowed to the extent of Rs.53,00,209/-, which shall be added to the capital cost of the hotel building.

3.4 Aggrieved with the order of the Ld. CIT(A), both the Revenue and the assessee are in the appeal before the Tribunal, raising the grounds as reproduced above.

4. The ground Nos. 1 and 3 of the appeal of the Revenue are general in nature and thus, we are not required to adjudicate upon specifically.

4.1 The ground No.2 of the appeal of the Revenue relates to relief of Rs.1,24,65,791/- allowed out of addition of Rs.1,77,66,000/- by the Ld. CIT(A) holding the expenses as

business expenditure. The ground No. 1 to 1.2 of the appeal of the assessee relate to amount to Rs.53,00,209/- sustained by the Ld. CIT(A) out of the addition of Rs.1,77,66,000/-. Both the grounds are connected with the same addition in dispute.

4.2 On the issue of relief allowed by the Ld. CIT(A), the Ld. DR relying on the order of the Assessing Officer submitted that for last many years the assessee has not carried out the activity of the Hotel operations and only earned income by way of interest, which has been offered under the head 'income from other sources' and thus expenditure other than the government dues should not be allowed to the assessee.

4.3 On the other hand, the Ld. counsel of the assessee submitted a paper-book containing pages 1 to 54 and , reiterated the submissions made before the lower authorities . He submitted that Hotel property owned by the assessee was damaged in bomb blast and it was in the process of reconstruction/renovation and the expenses have been incurred for consultancy in respect of reconstruction/renovation and maintenance of the building as well as retaining of various licenses issued to the hotel. According to him, it was only a temporary suspension of the business of the running of the Hotel and the expenses were incurred to preserve the assets of the business. He submitted that in the assessment year 2008-09, similar disallowance was made by the Assessing Officer, which has been deleted by the Ld. CIT(A) and on further appeal, the Tribunal dismissed the appeal of the Department holding that the expenditure incurred by the assessee was wholly exclusively for the purpose of the business though there was a

temporary lull in the business. The Ld. counsel further submitted that in subsequent assessment years 2013-14 and 2014-15 no disallowance has been made by the Assessing Officer himself. In support of the contention that expenditure incurred for the purpose of the business is on allowable deduction even though same does not result in the running of the income, the Ld. counsel relied on the decisions of Hon'ble Supreme Court in the case of CIT versus Malayalam Plantation Ltd 53 ITR 140 and CIT versus Birla cotton spinning and weaving Mills Ltd 82 ITR 166. In support of the contention that expenses incurred by the assessee during temporary suspension of business are allowable deduction, the Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of CIT versus Vikram cotton Mills Ltd 169 ITR 597 and decision of the coordinator bench of the Tribunal in the case of Lodhi Property Company Limited versus DCIT in ITA No. 4851/del/2011.

4.4 On the issue of expenditure of Rs.53,00,209/-sustained by the Ld. CIT(A) the Ld. counsel of the assessee submitted that the amount incurred represented the amount paid to consultant whose architectural plans/concepts were rejected by the assessee and thus it was in the nature of revenue expenditure and allowable to the assessee.

4.5 On the contrary, the Ld. DR submitted that no evidences to substantiate the claim that expenditure represented the amount paid to consultant whose architectural plans/conceptual rejected by the assessee, were submitted either before the lower

authorities or before the Tribunal and thus this argument of the assessee cannot be considered for deciding the issue in dispute.

4.6 We have heard the rival submissions and perused the relevant material on record. The assessee company is owner of a Hotel property, which is not in operation for last few years. The assessee company has incurred expenses totaling Rs.1,77,75,489/- on Lease rent to government of Maharashtra in respect of land on which hotel structure is located, consultancy charges for works related to hotel and for representation before different authorities, auditor remuneration Personnel expenses, security expenses, power fuel and water, communication expenses, travelling expenses, insurance expenses, repair and maintenance expenses etc. The amount of each expenditure has been mentioned in the finding of the Ld. CIT(A), which we have reproduced in earlier Paras of this order . The contention of the assessee is that these expenses are being incurred for preserving and maintaining the hotel property owned by the assessee company and therefore allowable as business expenditure in terms of section 37(1) of the Act. The Ld. CIT(A) has allowed the business expenditure except the amount of Rs.53,00,209/- paid to consultant for planning and concept design, architecture services, designing AC and ventilation system and basement work-related total structure, which are held as capital expenditure. The assessee is contesting that the expenditure of Rs.53,00,209/- is also in the nature of Revenue expenditure. The Revenue is contesting that no business activity has been carried out by the assessee for past many years and therefore the

expenditure is not allowable as business expenditure. We find that the assessee has filed details of expenses ledgers in books of accounts along with vouchers of expenses. On page 30 of the paper book we find that detail of consultancy expenses is summarized. We find that the Ld. CIT(A) has held following amounts totaling to Rs.53,00,209/- as capital expenditure:

- 1. Planning and concept design in 3-D expenses for Project Island at lands End Bandra amounting to Rs.31,93,926/- paid to a Stackins International Ltd.*
- 2. Architectural services expenses amounting to Rs.19,11,058/- paid to HN Portman and associate., Inc.*
- 3. Designing and ventilation system expenses amounting to Rs.1,12,500/-paid to Bagati Enterprises.*
- 4. Expenses on Advice on basement work at SeaRock Hotel amounting to Rs.82,725/- paid to Hapan.*

4.7 The only argument which has been advanced by the learner counsel of assessee before us that above architectural plan/concept provided by above mentioned parties were not executed, however no documentary evidence have been filed before us or before the lower authorities to substantiate the above claim. In our opinion, the finding of the Ld. CIT(A) of holding the expenses as capital expenditure is well reasoned in view of the evidences is available on record. Evidently all these expenses are towards creation of a new asset or for enhancing the capacity of the existing asset and thus same are in the nature of capital expenditure. We do not find any error in the finding of the Ld. CIT(A) on this issue.

4.8 Similarly on the issue of holding the remaining expenses of Rs.1,24,65,791/-, the Ld. CIT(A) has analysed all the expenses and found that same have been incurred essentially for preserving and maintaining the hotel property owned by the assessee. The lease rent expenses paid to government of Maharashtra are in respect of the land on which hotel is located, which is one of the essential expenditure to preserve the assets of the company. Similarly the expenses on Auditor's remuneration, personnel expenses, security expenses, power and fuel and water expenses are all expenses necessary for maintenance of the hotel property. The Tribunal in assessment year 2008-09 in the case of the assessee itself, in ITA No. 1080/Del/2014 has allowed the similar expenses as business expenditure of observing as under:

"8. We have heard the rival submissions and perused the material available on record. A perusal of the same would show that before the Assessing Officer, the assessee vide its letter dated 15.11.2010 has submitted that the expenditure incurred is for maintaining its corporate structure in existence and preserving the assets/infrastructure. The said explanation has been extracted in para 22 of the assessment order. It has also been submitted that the assessee company has claimed that it has maintained all necessary licenses etc. required for the operation of a hotel. We pause here and find on going through the material available on record and considering the arguments of the Ld. Sr. DR. that nothing has been brought on record by the Revenue to show that the facts as narrated by the assessee before the Assessing Officer and not disputed by the Revenue are no longer true or have all along been an incorrect assertion of facts. We further find that referring to the details of the expenditure which have been extracted in the earlier part of this order the assessee has submitted that the expenses were bonafide and were necessary government dues which statutorily are required to be paid and have been necessarily incurred for keeping its business alive. We fail to comprehend the relevance of the facts reference to which has been made by the AO namely in the proceedings under section 153A read with section 143(3) in 2005-06 AY. The Revenue has submitted that business still

has not commenced even today an argument unsupported by any fact. The Id.AR also responded again without any evidence that the assessee was on the look out for a partner and/or for a take over/amalgamation options as the costs of renovation are prohibitive and the assessee is managing to keep and protect its corporate entity alive and carrying out whatever renovations the financial position permits. We find that all these arguments based on probabilities and possibilities are of no relevance. What is relevant is that all necessary licenses etc. required to keep the hotel business alive are being maintained by the assessee. The Assessing Officer himself was convinced that "the government dues" being the minimum statutory expenses were allowable and as a result thereof he has allowed "duties and taxes", "insurance of assets", "license fees" and "MVAT expenses". Considering the nature of expenses which have been allowed by the AO, we find no good reason why "water expenses" and "electricity expenses" can be disallowed. We also find no good reason why security charges paid to secure the assets of the assessee can be disallowed as maintenance of physical assets and securing the property from vandals, trespassers etc. is the bare minimum expenditure necessarily required to be incurred. Similarly, salary of one Accountant and one office boy can hardly be said to be an expenditure which was not incurred wholly and exclusively for the business of the assessee. "

8.1. While arriving at the conclusion, we have taken into consideration the decision relied upon by the Ld. Sr. DR that is CIT(A) vs PIEM Hotel Private Limited (cited supra). On a perusal of the same, it is seen that the issue before the Hon'ble Bombay High Court was whether the business could have been said to have been "set up" or not. The business being hotel business. Considering the fact that only a banquet Hall which had been completed at the relevant point of time which had been let out the claim of the assessee that income was from hotel business was not allowed. The Hon'ble Court came to the conclusion that the hotel business could not be said to have been set up simply because a banquet hall was let out because unless the hotel building was completed the Hon'ble Court held that the gamut of activities which a hotel is required to undertake cannot be said to have been ready for use and thus merely because the banquet Hall was ready in the incomplete hotel building the hotel business it was held could not have been set up. We find on consideration of the principle laid down therein, on the facts available and the issue under consideration by the Court it is seen that it has no bearing on the facts of the present case.

8.2. Accordingly considering the judicial precedents relied upon and the facts and circumstances of the case, we find that the decision arrived at in the peculiar facts and circumstances of the case fully

supports the impugned order. A temporary lull at a point of time in the business of the assessee in the absence of any fact or evidence to the contrary cannot lead to the conclusion in the peculiar facts and circumstances of the case that the business has permanently closed especially in view of the fact that as per the assertions of the assessee before the Assessing Officer that its licenses etc are being maintained and kept intact ensuring that the hotel is ready for operation. A fact which has not been disputed as license fees have been allowed by the AO himself.”

4.9 We also note that in assessment year 2013 -14 and 2014-15, the assessee claimed similar expenses as business expenditure and same have been allowed by the Assessing Officer in assessment order passed under section 143(3) of the Act.

4.10 In view of the aforesaid discussion and respectfully following the decision of the Tribunal (supra), we uphold the finding of the Ld. CIT(A) in holding the expenses of Rs.1,24,65,791/- as business expenditure.

4.11 The ground No 2 of the appeal of the Revenue as well as Ground Nos. 1 to 1 2 of the appeal of the assessee are accordingly dismissed.

5. In ground No. 2 of the appeal, the assessee has raised the issue that Ld. CIT(A) has not adjudicated the ground of the appeal of the assessee against not allowing carry forward of the unabsorbed depreciation claimed by the assessee.

5.1 On perusal of the assessment order, we find that depreciation in the year under consideration was added back by the assessee in the computation of the income and thus we do not understand how the assessee is claiming carry forward of the said depreciation as unabsorbed depreciation. On perusal of the grounds of appeal raised before the Ld. CIT(A), we find that the

issue of disallowing carry forward of unabsorbed depreciation was raised in ground No. 2. The Ld. CIT(A) has also reproduced the submission of the assessee in the impugned order, where the assessee itself has not pressed for adjudication of the ground No. 2. Thus it is evident that Ld. CIT(A) has not adjudicated the ground in view of the ground not pressed by the assessee. In the circumstances, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we dismiss the ground No. 2 of the appeal of the assessee.

6. In the result, the appeals of the assessee and the Revenue for assessment year 2010-11 are dismissed.

ITA No. 5434/Del/2015 (Revenue's appeal) for AY: 2011-12

7. In assessment year 2011 12, the Revenue has filed appeal against the order of the Ld. CIT(A), which has been entered at ITA No. 5434/del/2015. The grounds of appeal are reproduced as under:

1. *The order of Ld. CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case the Ld. CIT (A) has erred in law in deleting the addition of Rs. 1,31,93,000/- on account of disallowance of expense - claimed by the assessee company in the P & L A/c for the year under consideration in the absence of any business activity. The essential feature that the expenses should not only be incidental or necessary, but it should be "wholly and exclusively" for the purpose of business, has not been satisfactorily brought out by the assessee company.*
3. *That the department has not accepted the order of CIT(A) in A.Y. 2010-11 and department has preferred an appeal before Hon'ble ITAT on the issue.*

4. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

8. The ground No. 1 and 4 of the appeal are general in nature and therefore we are not required to adjudicate upon.

9. The issue raised in ground Nos. 2 and 3 of the appeal is identical to the ground No. 2 of the appeal of the Revenue in assessment year 2010-11 except amount involved. Accordingly, to have consistency in our decision, following our finding on the issue in earlier Paras of this order, the ground numbers 2 and 3 of the appeal are dismissed.

10. In the result, the appeal of the Revenue for assessment year 2011-12 is dismissed.

ITA No.5435/Del/2015(Revenues' appeal) for AY:2012-13

ITA No.5058/Del/2015(Assessee's appeal) for AY: 2012-13

11. In assessment year 2012-13, both the Revenue and the assessee have filed appeals, having ITA No. 5435/Del/2015 and 5058/Del/2015 respectively. The grounds of appeal of the Revenue are reproduced as under:

1. *The order of Ld. CIT (A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case the Ld. CIT (A) has erred in law in deleting the addition of Rs. 15,84,54,621/- on account of disallowance of expense-claimed by the assessee company in the P & L A/c for the year under consideration in the absence of any business activity. The essential feature that the expenses should not only be incidental or necessary, but it should be "wholly*

and exclusively" for the purpose of business, has not been satisfactorily brought out by the assessee company.

3. *That the department has not accepted the order of CIT(A) in A.Y. 2010-11 and department has preferred an appeal before Hon'ble ITAT on the issue.*
4. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

11.1 The grounds of appeal of the assessee in ITA No.5058/Del/2015 are reproduced as under:

1. *On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of Rs.13,23,600/- paid to Sunil Ambre & Associates.*
2. *The Appellant Craves to add, alter, or amend, the above Grounds of appeal before or during the course of hearing of the appeal.*

12. We find that the grounds of appeal raised by the Revenue are identical to the ground raised in assessment year 2011-12, except change of amount involved, accordingly, following our finding in assessment 2011-12, we dismiss the grounds of appeal of the Revenue.

13. The assessee in its appeal has raised the issue of disallowance of Rs.13,23,600/- paid to Sunil Ambre and Associates. The Ld. CIT(A) has held the said expenditure is in the nature of capital expenditure. The identical issue was raised by the assessee in ground No. 1 for assessment year 2010-11, which has been dismissed by us. To have consistency in our decision,

following our finding in assessment year 2010-11, this ground of the appeal is also dismissed.

14. In the result, the appeal of Revenue and the assessee for assessment year 2012-13 are dismissed.

15. To sum up, the appeals of the Revenue for assessment years 2010-11, 2011-12 and 2012-13 are dismissed and appeal of the assessee for assessment years 2010-11 and 2012-13 are also dismissed.

Order is pronounced in the open court on 4th December, 2018.

**Sd/-
H.S. SIDHU
JUDICIAL MEMBER**

**Sd/-
O.P. KANT
ACCOUNTANT MEMBER**

Dated: 4th December, 2018.

RK/-(D.T.D.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi