IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DLEHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No. 3920/Del/2011
Assessment Year: 2008-09

DCIT	**vs.**	**Ritesh Properties & Industries Ltd.**
Circle – 15(1),		**11/5B, First Floor, Pussa Road,**
C.R. Bldg., I.P. Estate,		**New Delhi.**
New Delhi.		**PAN AAACR1437M**
(Applicant)		(Respondent)

&

Cross Objection No. 329/Del/2011
(In ITA No. 3920/Del/2011)
Assessment Year: 2008-09

Ritesh Properties & Industries Ltd.	**Vs.**	**DCIT**
11/5B, First Floor, Pussa Road,		**Circle 15(1)**
New Delhi.		**C.R. Bldg., I.P. Estate,**
PAN AAACR1437M		**New Delhi.**
(Applicant)		(Respondent)

Appellant by : Sh. Kanv Bali, Sr. DR
Respondent by: Sh. Rohit Jain, Adv.
Ms. Shaily Gupta, Adv.

Date of hearing: 04/01/2021
Date of order :04/01/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

In ITA number 3920/Del/2011 Revenue has challenged the order dated 10/5/2011 in appeal No. 208/10-11 passed by the learned Commissioner of Income Tax (Appeals)-XVIII, New Delhi ("Ld. CIT(A)") directing the learned Assessing Officer to accept the revised return of income filed by the assessee under section 139(5) of the Income-tax Act, 1961 ('the Act'); and to exclude an amount of Rs.16.87 crores from the taxable income (both normal and MAT) on the basis of revised

financial statements; whereas in civil No. 329 /Del/ 2011 the assessee impugned the confirmation of addition of foreign travel expenses amounting to Rs. 7, 02, 655/-out of the total travelling expenses incurred by the assessee.

2. Brief facts of the case are that the assessee is a public limited company engaged, inter alia, in the business of real estate. Assessee was granted permission on 12.04.2006 by Directorate of Industries & Commerce, Punjab for development of Integrated Industrial Park on 40 acres of land at Focal Point, Phase VIII, Ludhiana (Project"). For the assessment year 2008-09, the assessee filed the original return of income on 29.09.2008 declaring income of Rs 9,51,70,507 under normal provisions of the Act. Subsequently, during the course of assessment proceedings, the assessee revised its financial statements and e-filed revised return of income for the year under consideration on after excluding net profit of Rs.16.87 crore, both while computing income under normal provisions and also under section 115JB of the Act. According to the assessee, despite the fact that the permission was hedged with various conditions, including in particular, prohibition on pre-launch of the Project, the assessee, on pre-launch basis, entered into agreement for sale of part of the Project, resulting in recognition of notional amount of Rs.85.24 crores as revenue, which was subsequently cancelled, and in the revised audited financial statements duly approved by the members, the assessee excluded an amount of Rs.85.24 crores erroneously recognized as revenue in the original financial statements, resulting in reduction of profit after tax by Rs. 16.87 crores. Based on the revised audited and approved financial statements, the assessee, in the revised return of income, declared loss of Rs.4,02,77,064 under the normal provisions.

3. Assessment under section 143(3) of the Act was completed by order dated 29/12/2010 at Rs. 13, 41, 86, 242/-by making additions of rupees and 60, 00, 107/-by disallowing foreign travelling expenses, Rs. 3, 27, 71, 165/-by making disallowance under section 2 (22) (e) of the Act and Rs. 2, 44, 463/-by making disallowance under section 14A of the Act read with Rule 8D of the Rules. Learned Assessing Officer, held that the revised audited financial accounts as well as the revised return of income were not acceptable, and income was assessed based on the original return of income.

4. Aggrieved by such findings of the learned Assessing Officer, assessee preferred an appeal before the Ld. CIT(A and the Ld. CIT(A) accepted the revised accounts and consequently, the revised return of income and held that considering that approval given by the State Government did not permit pre-launch sale, the agreement entered into by assessee pursuant to which the assessee had included its share of consideration as revenue of Rs.85.24 crores in the original accounts, was without sanctity in the eyes of the law, and accordingly, it was not proper to take nto cognizance the sale proceeds reported in the original accounts and compute income therefrom; that in accordance revenue recognition principle prescribed in AS-9, which is mandatory for preparing accounts under the Companies Act, a company is not permitted to recognize any amount of revenue, collection whereof is uncertain; that the amount revenue of Rs. 85.24 crores was hypothetical, which ought not have been recognized as 'revenue' in the accounts; that the comments of the auditor were his subjective opinion, which is not binding; that the revised accounts approved in the AGM and filed before the ROC, must be accepted - If at all, the revision of accounts had to be challenged/ disputed, the same could be done by the authority competent under the Companies Act and not by the

learned Assessing Officer and, therefore, for the purpose of computing book profits under section 115JB of the Act, Ld. CIT(A) directed the assessing officer to consider the revised accounts; and that inclusion of revenue Rs. 85.24 and profit thereon of Rs.16.87 crore would, in any case, result in taxation of a hypothetical amount, which is against the settled law that only 'real income' can be brought to tax. While holding so, the Ld. CIT(A) noted the fact that no amount was received against the agreements to sell entered between the assessee and various parties stated supra, which were in fact subsequently cancelled. The CIT(A) also made note of the fact that the Gover ment had later accorded approval to sell the developed area only in May, 2010.Aggrieved such findings of the CIT(A), the Revenue is before us in this appeal.

5. Insofar as the grounds No. 1 and 2 of Revenue's appeal, relating to the action of the learned Assessing Officer in not excluding sales of Rs. 85.24 crores and corresponding profit thereon of Rs. 16.87 crores in computing the total income as per normal provisions as well as under section 115 JB of the Act, Ld. DR, placing reliance on the assessment order justified the same and impugned the order of the Ld. CIT(A); whereas at the outset Ld. AR submitted that the issue stands squarely covered in assessee'sfavour by order dated 24.08.2020 passed by a coordinate Bench of this Tribunal in assessee's own case for the preceding assessment year 2007-08 in ITA No. 3336/Del/2019. He therefore submitted that inasmuch as the facts and the issues for this year are identical to the facts and issues involved in the assessment year 2007-08, there are no reasons to take a different view from the view taken for such year.

6. We have gone through the record in the light of the submissions made on either side. In the order dated 24/8/2020 for the assessment

year 2007-08 in ITA No. 3336 /Del/ 2019 under identical set of facts, a coordinate Bench of this Tribunal upheld the revision of audited accounts of the assessee on the ground that the revenue recorded by the assessee pursuant to the agreement to sell represented artificial and hypothetical income created merely by journal entries, which cannot be brought to tax, and the relevant observations of the Tribunal are to the effect that,-

> *"7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has revised the audited account and has given the relevant documentary evidence before the CIT (A) upon which the Assessing Officer has also commented through the remand report. The Assessing Officer has not pointed out any defects in the audited accounts which are allowed to be revised as per the guidelines issued by the Ministry of Finance and Company Affairs. Thus, the CIT(A) rightly held that the artificial and hypothetical income created by mere general entries which were subsequently rev rse cannot be brought to tax. Besides that the assessee made the statement before us that the income derived from the said project in subsequent Assessment Years has been offered to tax by the assessee. Thus, the Revenue is not at loss at any point of time and hence the treatment given by the CIT(A) by directing the Assessing Officer to allow the claim ofRs. 9,00,00,000/- on account of revision of financial accounts is just and correct. The appeal of the Revenue is dismissed."*

7. Further, there is no denial of the fact that subsequently, after receipt of requisite approvals, the Project was launched and income therefrom has been offered for tax in the return for the subsequent years, and that subsequently, not only the Project was launched, but revenues therefrom are offered for tax both while computing income under the normal provisions and also for the purpose of MAT under section 115JB of the Act.

8. In view of the fact that the issue involved for this assessment year is directly and substantially involved for the assessment year 2007-08 and there is no change is in facts or in law, we find it difficult to take a different view that was taken for the assessment year 2007-08. Ld. CIT(A) dealt with this issue in extenso to reach a conclusion that the starting point for computing of the profits is the audited financial statement as prepared under the Companies Act, which is subject to further additions/deductions in terms of various upward and downward adjustments provided in various clauses of explanation given below subsection (2) of section 115 JB of the Act, and such a finding is well fortified by the findings of the Tribunal in assessee's own case for the assessment year 2007-08.Findings of the Ld. CIT(A), therefore, cannot be found fault with and are to be confirmed. With this view of the matter we do not find any merit in grounds No. 1 and 2 of the Revenue's appeal and those are accordingly dismissed.

9. Insofar as Ground No. 3 of Departmental Appeal is concerned, it relates to the addition under section 2(22)(e) of the Act. During the year under consideration, the assessee had received unsecured loan of Rs.5,99,55,000 from M/s Ritesh Spinning Mills Ltd. ('RSML'), which bears interest of Rs.76,19,342 and was paid by the assessee thereon. Learned Assessing Officer was of the opinion that the loan advanced by RSML to the assessee is liable to tax as deemed dividend under section 2(22)(e) of the Act, on the ground that Mr. Sanjiv Arora is a common shareholder holding substantial interest in both the companies i.e., RSML and the assessee. It was thus concluded by the learned Assessing

Officer that the loan advanced by RSML to the assessee falls within the category of loan advanced by a company in which public is not substantially interested (i.e. RSML) to a concern (i.e. the assessee) in which the shareholder of RSML (i.e. Mr. Sanjiv Arora) has substantial interest, which has to be assessed as deemed dividend in the hands of the assessee to the extent of accumulated profits of RSML, and since accumulated profits of RSML aggregated to Rs.3,27,71,164, loan advanced to the extent of such accumulated profits was treated as deemed divided under section 2(22)(e) of the Act liable to tax in the hands of the assessee.

10. Assessee pleaded before the Ld. CIT(A) that that the action of the learned Assessing Officer in bringing to tax Rs.3,27,71,164 as deemed dividend under section 2(22)(e) of the Act in the hands of the assessee is erroneous and legally unsustainable because the provisions of section 2(22)(e) of the Act are not applicable to the case of assessee inasmuch as neither the assessee company is a shareholder in RSML, nor there is any common shareholder holding the requisite percentage of shares in both companies. Ld. CIT(A) accepted the same. He further observed that the deemed dividend, if any, would otherwise be taxable in the hands of common shareholder in terms of the decision of Hon'ble Delhi High Court in CIT v. Ankitech (P) Ltd in ITA No.462 of 2009 [reported in 340 ITR 14]. Revenue challenges these findings of CIT(A) by way of ground No. 3.

11. Ld. DR placed reliance on the assessment order on this aspect; whereas Ld. AR submits that the assessee was not a concern in which any of the shareholders of RSML had substantial interest, and while

placing reliance on the decision of the Special Bench of the Tribunal in the case of Bhaumik Colour Pvt. Ltd. [2009] 27 SOT 270 (Mum) (SB) he argued that deemed dividend under Section 2(22)(e) is taxable in the hands of the common shareholder. He submitted that the said decision of the Special Bench has been affirmed by the Hon'ble High Court of Bombay in the case of CIT v. Universal Medicare: 324 ITR 263 (Bom)**.** He also placed reliance on the additions reported inCIT vs. Ankitech (P) Ltd: 340 ITR 14 (Del)**,** which was further upheld by the apex Court in the case of CIT vs. Madhur Housing and Development Company 401 ITR 152 (SC), and IT vs. MotherIndia Refrigeration Industries (P) Ltd 155 ITR 711. He also placed reliance on the decision of the Hon'ble Apex Court in the case of ITO vs. MotherIndia Refrigeration Industries (P) Ltd.: 155 ITR 711 also.

12. For proper appreciation of the contentions of the parties on this aspect, we deem it necessary to look into the provisions of section 2(22)(e) of the Act which reads as under: .

> ***"2.*** *Definitions.*
>
> *In this Act, unless the context otherwise requires:- (22) "dividend" includes-*
>
> ( ) *any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advanceor loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent. of the voting power,or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest(hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;*
>
> *Explanation 3. - For the purposes of this clause, -*

> (a) *"concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company;*
> (b) *a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent. of the income of such concern;"*

'Person who has a substantial interest in the company' is defined in section 2(32) of the Act to mean a person who is the beneficial owner of shares carrying not less than 20% of the voting power.

13. In the case on hand, according to the learned Assessing Officer the loan was advanced by RSML, in which Mr. Sanjiv Arora holds more than 10% of voting power, to the assessee in which Mr. Arora holds a substantial interest.Ld. AR submits that the learned Assessing Officer failed to notethat Mr. Arora does not hold substantial interest in the assessee inasmuch as Mr. Arora does not hold shares carrying at least 20% of the voting power in the assesse . He invited our attention to the shareholding pattern of the ssessee during the relevant previous year, a perusal of which reveals that Mr. Arora merely held 1633632 equity shares in the assessee which constitutes merely 14.09 *%* of the total voting power, and therefore, Mr. Arora did not hold 20% of the voting power in the as essee and consequently, the assessee cannot be regarded as a company in which Mr. Arora has substantial interest. We, therefore, find that the relationship as contemplated in section 2(22)(e) of the Act, to apply the mischief of the said section is not at all satisfied in the facts of the present case. Further, there is no denial of the submission made on behalf of the assessee that no other shareholder in the assessee simultaneously held more than 20% of the voting power in the assessee and more than 10% of the voting power in RSML.

14. Hon'ble Supreme Court in the case of CIT vs. MotherIndia RefrigerationIndustries (P) Ltd.: 155 ITR 711**,** held in respect ofthe scope of legal fiction as under:

> *"Having regard to the aforesaid rival contentions, it will be clear that the real issue that arises for our consideration in this case is whether, on a proper construction of the relevant provisions of the concerned enactment, unabsorbed carried forward losses should have preference over current depreciation in the matter of set off or is the position vice versa while computing the total income of an assessee in the concerned assessment year ?And the answer to this question depends on what is thetrue scope and purpose of the legal fiction created under proviso (b) to s. 10(2)(vi)of the 1922 Act or under s. 32(2) of the 1961 Act ....*
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> *It is true that proviso (b) to s. 10(2)(vi) creates a legal fiction and under that fiction, unabsorbed depreciation either with or without current year's depreciation is deemed to be the current year's depreciation but it is well settled, as has been observed by this court in Bengal Immunity company Limited v. State of Bihar [1955] 2 SCR 603 606 ; 6 STC 446, that the legalfictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond that legitimate field.'*

15. In view of this factual and legal position involved in this case, we are of the considered opinion that the provisions of section 2(22)(e) of the A t are not at all attracted in the present case since the assessee was not a concern in which any of the shareholders of RSML had substantial interest. We, accordingly, dismissed the ground No. 3 of the appeal of the Revenue and action of the CIT(A) of deleting the addition made under section 2(22)(e) of the Act is upheld.

16. Ground No. 4 of Departmental Appeal and Ground No. 2(Additional Ground) of Assessee's Cross Objections in CO No. 329/Del/20111 related to the disallowanceunder section 14A of the Act read with Rule 8D of the Income Tax Rules1962 ("the Rules").

According to the assessee,during the relevant previous year, there was no exempt income was actually earned/received by the assessee and no expenditure was actually incurred for making investment, the assessee, in the return of income, did not disallow any expenditure under section 14A of the Act. In the assessment order, the assessing officer, however, disallowed Rs.2,44,463/- under section 14A of the Act, by applying Rule 8D of the Rules.

17. In appeal Ld. CIT(A), while upholding the aforesaid disallowance, directed the assessing officer to re-compute the disallowance after figures as per revised financial statements of the assessee. Revenue disputes in their appeal the said direction of CIT(A) to consider revised financial statements for computing disallowance under section 14A of the Act, whereas the assessee challenges the disallowance upheld by CIT(A) on merits.

18. Ld. AR submits that in terms of section 14A of the Act, no deduction is adm ssible in respect of expenditure, which has proximate nexus with income, which does not form part of total income under the Act or, in other words, exempt income; whereas the Ld. DR, as against the contentions of the assessee, placed reliance on the assessment order.

19. There is no dispute that during the relevant previous year, the assessee did not earn any exemptdividend income from investments held in subsidiaries. When no exempt income is actually earned by an assessee from investments held during the year, no portion of expenses incurred during the year can be disallowed under section 14A of the

Act.

20. Hon'ble Jurisdictional High Court in PCIT vs. IL & FS Energy Development Company Ltd. (2017) 99 CCH 0190 DelHC, (2017) 297 CTR 0452 (Del) decided on 16th August, 2017, after considering a catena of decisions, held the issue in favour of the assessee and observed that,-

> *9. Mr. Zoheb Hossain, learned Senior Standing Counsel for the Revenue, submitted that, in Cheminvest Ltd. (supra), this Court had no occasion to consider the CBDT Circular No. 5/2014 dated 11th February 2014 which clarified that Section 14A would apply even when exempt income was not earned in a particular AY. Accord ng to him, the other decisions of this Court in CIT-IV v. Taikisha Engineering India Pvt. Ltd. [2015] 370 ITR 338 (Del) and CIT-IV v. Holcim India Pvt. Ltd. (2014) 272 CTR (Del) 282 did not actually discuss the above Circular of the CBDT and, therefore, would be distinguishable.*
>
> *10. Mr. Hossain further submitted that there was nothing in Section 14A of the Act which suggested that exempt income had to necessarily be earned in the AY in question for the applicability of the said provision. He submitted that if the interpretation placed on Section 14 A of the Act by the above CBDT Circular was not accepted, the very purpose of Section 14A would be defeated. He referred to the decisions of the ITAT in ACIT v. Ratan Housing Development Ltd. (order dated 23rd May 2008 of ITAT Lucknow) Relaxo Footwear Ltd. v. Addl. CIT [2012] 50 SOT 102 (Del).*
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> *xxx xxx xxx*
> *xxx xxx xxx*
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> *19. In the considered view of the Court, this will be a truncated reading of Section 14 A and Rule 8D particularly when Rule 8D (1) uses the expression 'such previous year'. Further, it does not account for the concept of 'real income'. It does not note that under Section 5 of the Act, the question of taxation of 'notional income' does not arise. As explained in Commissioner of Income Tax v. Walfort Share and Stock Brokers Pvt. Ltd [2010] 326 ITR 1 (SC), the mandate of Section 14A of the Act is to curb the practice of claiming deduction of expenses*

incurred in relation to exempt income being taxable income and at the same time avail of the tax incentives by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. Consequently, the Court is not persuaded that in view of the Circular of the CBDT dated 11th May 2014, the decision of this Court in Cheminvest Ltd. (supra) requires reconsideration.

20. In M/s. Redington (India) Ltd. v. The Additional Commissioner of Income Tax, Company Range – V, Chennai (order dated 23rd December, 2016 of the High Court of Madras in TCA No. 520 of 2016), a similar contention of the Revenue was negated. The Court there declined to apply the CBDT Circular by explaining that Sec ion 14A is "clearly relatable to the earning of the actual income and not notional income or anticipated income." It was further explained that,

> *"The computation of total income in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe thus would be carrying the artifice too far."*

21. The decisions in CIT v. M/s Lakhani Marketing Inc. 2014 SCC Online P&H 20357, CIT v. Winsome Textile Industries Limited [2009] 319 ITR 204 (P&H), CIT v. Shivam Motors (P) Ltd. (2014) 272 CTR (All) 277 have all taken a similar view. The decision in Taikisha Engineering India Pvt. Ltd. (supra) does not specifically deal with this issue.

22 It was suggested by Mr. Hossain that, in the context of Section 57(iii), the Supreme Court in Commissioner Of Income Tax, West v. Rajendra Prasad Moody [1978] 115 ITR 519 (SC) explained that deduction is allowable even where income was not actually earned in the AY in question. This aspect of the matter was dealt with by this Court in M/s Cheminvest Ltd. (supra) where it reversed the decision of the Special Bench of the ITAT by observing as under:

> *"20. Since the Special Bench has relied upon the decision of the Supreme Court in Rajendra Prasad Moody (supra), it is considered necessary to discuss the true purport of the said decision. It is noticed to begin with that the issue before the Supreme Court in the said case was whether the expenditure under Section 57 (iii) of the Act could be allowed as a deduction against dividend income assessable under the head "income*

from other sources". Under Section 57 (iii) of the Act deduction is allowed in respect of any expenditure laid out or expended wholly or exclusively for the purpose of making or earning such income. The Supreme Court explained that the expression "incurred for making or earning such income?, did not mean that any income should in fact have been earned as a condition precedent for claiming the expenditure. The Court explained:

"What s. 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of s. 57(iii) and that purpose must be making or earning of income. s 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of s. 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of s. 57(iii) irresistibly lead to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure."

21. There is merit in the contention of Mr. Vohra that the decision of the Supreme Court in Rajendra Prasad Moody (supra) was rendered in the context of allowability of deduction under Section 57(iii) of the Act, where the expression used is "for the purpose of making or earning such income " Section 14A of the Act on the other hand contains the expression "in relation to income which does not form part of the total ncome " The decision in Rajendra Prasad Moody (supra) cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act."

23. The decisions of the ITAT in ACIT v. Ratan Housing Development Ltd. (supra) and Relaxo Footwear Ltd. v. Addl. CIT (supra), to the extent that they are inconsistent with what has been held hereinbefore do not merit acceptance. Further, the mere fact that in the audit report for the AY in question, the auditors may have suggested that there should be a disallowance cannot be determinative of the legal position. That would not preclude the Assessee from taking a stand that no disallowance under Section 14 A of the Act was called for in the AY in question because no exempt income was earned.

21. In view of the above position of law, we are of the considered opinion that where there is no dispute of fact that no dividend has been earned by the assessee during the year, no disallowance is called for under section 14 A of the Act. Ground No. 4 of the appeal of the Revenue is accordingly dismissed and ground No. 2 of assessee's appeal is allowed.

22. Ground No. 1 of Assessee's Cross Objections relates to the disallowance of foreign travel expenses.Learned Assessing Officer disallowed travelling expenditure to the extent of Rs 60,00,107/-, on the ground that the same was in respect of foreign travel, which were incurred for non-business purposes. According to the assessee during the relevant previous year ending 31.03.2008, the assessee incurred total travelling expenditure amounting to Rs. 75,01,489/-, the details of which are as under:

a)	Travelling expenses	Rs. 12,35,195
b)	Director travelling expenses	Rs. 60,00,107
c)	Director oreign travelling expenses	Rs. 44,100
d)	Fo eign travelling	Rs. 1,21,588
e)	Conveyance	Rs. 1,00,500

23. On the basis of the aforesaid details, the assessing officer held that expenditure of Rs.60,00,107 was towards foreign travel and the same was not incurred for the purpose of business and hence not allowable as deduction. Disallowance to the extent of Rs.7,02,655 was upheld by the CIT(A) on the ground that no details of travel or nexus

with assessee's business was been provided by the assessee during the appellate proceedings and the assessee has failed to discharge its onus of proving admissibility of the aforesaid expenditure under section 37 of the Act. As regards the remaining expenditure of Rs.52,97,452, the issue was set aside to the assessing officer with direction to allow such portion of the same as is proved to be genuine and incurred for the purpose of assessee's business.

24. Though the counsel submits that the aforesaid action of the CIT(A) in upholding the disallowance of Rs.7,02,655/- on the ground that the said expenditure was incurred for foreign travel for personal purposes is without any basis and without appreciation of facts, on a careful consideration of the orders of the authorities below in the light of the submissions made on either side where of the considered opinion that factually the assessee failed to establish the nexus between the travel and the business purpose for this year and, therefore, we do not find any ground to interfere with the findings of the Ld. CIT(A) on this aspect. While upholding the findings of the Ld. CIT(A), we dismiss Ground No. 1 of assessee's appeal.

25.In the result, appeal of the Revenue is dismissed and the appeal of the assessee is allowed in part.

Order pronounced in the open court immediately after the conclusion of the hearing in the Virtual Court on this the 4th day of January, 2021.

Sd/-	Sd/-
(G.S. PANNU)	(K. NARASIMHA CHARY)
VICE PRESIDENT	JUDICIAL MEMBER
Dated: 04/01/2021	

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI