

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**ITA-131-2021 (O&M)
Decided on 20.02.2023**

Principal Commissioner of Income Tax, FaridabadAppellant

Vs.

M/s. Danone (India) Private LimitedRespondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Ms. Pridhi Jaswinder Sandhu,
Junior Standing Counsel
for the appellant.

Ritu Bahri, J.

CM-11088-CII-2021

Application is allowed and Annexures A-1 and A-2 are taken on record.

ITA-131-2021

The revenue has come up in appeal against the order of the Income Tax Appellate Tribunal dated 30.10.2019 (in short, 'the Tribunal') passed in ITA No. 3433/Del/2016 for the assessment year 2009-10.

The brief facts of the case are that the respondent-assessee is a company engaged in the business of providing technological and personnel support to food processing and dairy industry. The assessee filed its return on 24.09.2008 declaring total income at Rs. Nil after claiming losses. The case was selected for scrutiny and notice under Section 143(2) was served upon the assessee. The total business expenses debited by the assessee to its Profit & Loss account for the year ended on 31.03.2009 was amounting to Rs.10,78,31,182/- which included employees cost, rent, legal expenses,

travelling expenses, communication and other expenses, depreciation and interest expenses. Since the assessee was a legal entity, the normal expenses required as per law for monitoring its corporate entity & existence were allowable. Therefore, the following expenses were treated as revenue expenses:-

Rent paid for registered office	Rs.2348287
Depreciation as per IT Act	Rs.212198
Legal expenses (Statutory audit fees, tax audit fees)	Rs.454627
Misc. expenses	Rs.575283
Communication expenses	<u>Rs.1345389</u>
Total	Rs.49,35,784

The disallowance worked out to Rs.10,28,95,398/- after deducting business expenses of Rs.49,35,784/- from the claim of Rs.10,78,31,182/-. Aggrieved by the assessment order dated 24.10.2011 (Annexure A-1), the assessee had filed an appeal before the Commissioner of Income Tax (Appeals)-1 Gurgaon. The Commissioner held that the assessee company had started deploying skillful personnel and after 07.07.2008 it was fully equipped to mount the operation of the business. It was on this date that Sh. Sanjay Sharma, Sales Head for the assessee-company was recruited which reflected that the company had started its operations. Under these circumstances, the expenses incurred after this date were for business purposes and hence were to be allowed. The appeal was partly allowed on 31.03.2016 (Annexure A-2) and a direction was given to the Assessing Officer to obtain the details of the expenses out of the disallowed amount of Rs.8,66,73,393/- which pertained to the period after setting up of business on 07.07.2008 till 31.03.2009. The Commissioner

further observed that there was a factual error committed by the Assessing Officer as he allowed rent paid for a registered office of Rs.23,48,287/- whereas actual figure was Rs.25,48,324/-. The Assessing Officer was directed to verify the figure of paid rent from Profit & Loss Account and rectify the mistake.

Aggrieved by the order dated 31.03.2016 passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon (Annexure A-2), the revenue went in appeal before the Income Tax Appellate Tribunal, Delhi Bench, New Delhi. The Tribunal, vide order dated 30.10.2019 (Annexure A-3) dismissed the appeal by affirming the findings given by the CIT (A) as the assessee had set up its business on 07.07.2008 and was entitled to claim expenses as a revenue expenditure for the period from 07.07.2008 till 31.03.2009 and directed the Assessing Officer to obtain details of expenses of Rs.8,66,73,393/- out of the expenses disallowed of Rs.10,28,95,398/- for the aforesaid period and allowed the same as deduction in the year under consideration. The Tribunal had recorded another finding of fact that the assessee had earned income of Rs.17.14 million in the subsequent financial year 2009-10 which the revenue was not able to controvert.

Hence, the order dated 31.03.2006 passed by the Income Tax (Appeals)-1, Gurgaon (Annexure A-2) affirmed by the Tribunal vide order dated 30.10.2019 (Annexure A-3) does not require any interference as the same was based on finding of facts that Assessing Officer had to obtain details of expenses of Rs.8,66,73,393/- out of the expenses disallowed of Rs.10,28,95,398/- pertaining to the period from 07.07.2008 till 31.03.2009 and allowed the same as deduction in the year under consideration. The Tribunal further observed that the CIT(A) while allowing claim of the

assessee with certain directions, had relied on the decision of the Coordinate Bench in the case of *Dhoomketu Builders & Development Pvt. Ltd. vs. Additional Commissioner of Income Tax (2012) 17 taxmann.com 36 (ITA Delhi)*, wherein it was held that where the assessee had deployed skillful personnel to carry on his business by providing technological and personnel support then that expenditures have to be allowed as business expenses.

Appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

20.02.2023
Divyanshi

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No