

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No. 8961/Del./2019
Assessment Year: 2016-17

Ms. Aarti Aggarwal, L-1/18, Hauz Khas Enclave, Delhi	Vs.	ACIT, Special Range-11, New Delhi
PAN :ACEPA9904F		
(Appellant)		(Respondent)

Appellant by	Sh. Piyush Jain, CA
Respondent by	Sh. R.K. Gupta, Sr.DR

Date of hearing	08.06.2021
Date of pronouncement	28.06.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 18/09/2019 passed by the Learned Commissioner of Income Tax (Appeals)-11, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2016-17, raising following grounds:

1. *THAT Ld CIT (A) has erred both on facts and in law while disallowing 1/5th of the amount of expenditure incurred on account of advertisement expenses amounting to Rs 2,14,956/-. The addition confirmed by Ld CIT (A) was without any basis and against the principal of natural justice.*

2. *THAT Ld CIT (A) has erred both on facts and in law while adding back the foreign travelling expenses amounting to Rs. 3,84,170/- . The basis of confirming the additions made by the Assessing Officer is not tenable as all the supporting documentary evidence related to foreign traveling travelling were submitted during the assessment proceeding.*
3. *THAT the appellant craves leave to amend, alter, vary, and / or to add to all or any of the grounds of appeal and to raise such additional / fresh ground(s) as may be considered necessary or required at any time thereafter.*
4. *THAT the above grounds are in the alternative and without prejudice to one another.*

2. Briefly stated facts of the case are that the assessee, an individual, filed return of income on 14/10/2016 declaring total income of ₹ 36,26,130/-. During the relevant assessment year, the assessee carried on business activity relating to manufacturing/trading of wooden articles and providing consultancy services relating to designing etc. The assessee also derived income from salary from M/s. Globe Automobile Private Limited, M/s JCBL India Private Limited and M/s JCBL Marrel Tippers Private Limited.

2.1 The return of income filed by the assessee was selected for scrutiny assessment. In the assessment completed under section 143(3) of the Act on 16/12/2018, the Assessing Officer made certain disallowances. On being appeal filed by the assessee, the Ld. CIT(A) allowed part relief. Aggrieved with the addition sustained, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facilities and the assessee filed a paper-book in electronic form.

4. In support of ground No. 1, the learned Counsel of the assessee referred to Annexure -1 of the paper-book and submitted that all the documents in respect of advertisement expenses were already submitted before the Assessing Officer. According to him, Learned CIT(A) is not justified in disallowing part of the advertisement expenses i.e. 1/5th expenses on the ad-hoc basis in terms of section 37(1) of the Act.

5. On the other hand, the learned DR relied on the order of the lower authorities.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessee claimed advertisement expenses of ₹ 10,74,782/- in the year under consideration as against ₹ 5,71,944/- claimed in the immediately preceding year. According to the Assessing Officer, sales of the assessee in the immediately preceding year were higher as compared to the present assessment year, and therefore he disallowed the entire advertisement expenses of ₹ 10,74,782/-. The Ld. CIT(A) has sustained the 1/5th of disallowance observing as under:

“6.1.1 During the course of appellate proceedings, appellant has submitted that all the bills and vouchers related to “advertisement expenses were submitted during the course of assessment proceedings. It is seen that assessee has spent Rs. 10,74,782/- on advertisement of its products and brand through M/s Ogaan Media Pvt. Ltd.,” M/s Conde Nast India and M/s Living Media India Pvt. Ltd. On perusal of the bills and vouchers, it is seen payments have been made for advertisements. Though the bills are there, however, the copy of enclosed advertisements do not establish that all the expenditure was for advertising the brand of appellant. Accordingly, disallowance is restricted to 1/5th of the amount of expenditure incurred on advertisements. Accordingly, disallowance of Rs. Rs.2,14,956/- is sustained and balance amount of Rs.8,59,826/- is deleted. Ground no. 1 is partly allowed.”

6.1 In our opinion, the Ld. CIT(A) has accepted existence of the bills, however, according to him, entire expenditure of advertisement was not for advertisement of the brand of the assessee, and therefore, he made of disallowance of 1/5th of the expenses. The Learned CIT(A) has not pointed out which is the specific expenditure, not related to the brand of the assessee. Without pointing out the specific defects in the bills or vouchers or pointing out that same as not been incurred wholly and exclusively for the purpose of the business, the Ld. CIT(A) is not justified in sustaining the disallowance on ad-hoc basis. Accordingly, we set aside the finding of the Ld. CIT(A) on the issue in dispute and delete the addition sustained by the Learned CIT(A). The ground of the appeal is allowed.

6.2 In support of ground No. 2, the learned Counsel of the assessee referred to Annexure 3 of the paper-book and submitted that foreign travel expenses have been incurred wholly and exclusively for the purpose of the business and all the documents in support including salary certificates of concerned employees were filed before the Assessing Officer. Therefore, the Learned CIT(A) is not justified in sustaining the disallowance. The Learned Counsel of the assessee submitted that Ms. Divya Bajaj and Ms. Anju Chaudhary were employee of the assessee and travelled to Milan (Italy) for attending an Exhibition. The learned Counsel submitted that salary certificates of the two persons were filed before the Assessing Officer and the assessee is willing to file evidence of deduction of tax at source on the salary. The learned Counsel, accordingly, requested to restore the matter back to the file of the Learned Assessing Officer

6.4 On the other hand, Learned DR relied on the order of the lower authorities and submitted that no evidence as to the concerned persons, who travelled to Milan were employee of the assessee, i.e., evidence of tax deducted at source on their salary or their ESI/PF registration etc., were filed by either the Assessing Officer or Ld. CIT(A) and therefore, the Ld. CIT(A) is justified in sustaining the disallowance.

6.5 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The assessee claimed foreign travel expenses of ₹ 3,84,170/- in the profit and loss account, however, on being asked by the Assessing Officer, the assessee failed to substantiate the business expediency of those expenses and therefore, the Assessing Officer disallowed the said expenses. The Ld. CIT(A) sustained the disallowance observing as under:

“6.3.1 It is seen that one Ms Divya Bajaj & Ms Anju Chaudhury have travelled to Milan from 13.04.2015 to 20.04.2015. Appellant claims that it was for attending exhibition. However, no details regarding the exhibition has been submitted.

6.3.2 From perusal of the details submitted, it is seen that tickets have been booked for travel on 13.04.2015 and back on 20.04.2015 from Delhi to Milan and back. However, the copy of tickets and hotel bookings have not been submitted. No letter or evidence regarding invitation to both Ms Divya Bajaj 86 Ms Anju Chaudhury for attending the exhibition at Milan has been submitted. Also, no evidence has been submitted that both Ms Divya Bajaj 85 Ms Anju Chaudhury are employees of appellant. As such, it is seen that there is no invitation, explanation given by appellant is vague and general in nature and no specific details of the event are given. Therefore, in my view there is no direct nexus between the expenditure incurred for attending the exhibition and the business of appellant. As such, the disallowance made by AO is sustained.”

6.6 We find that Ld. CIT(A) has sustained the disallowance on the ground of lack of evidence to support the business expediency. The learned Counsel of the assessee has expressed willingness of the assessee for filing documentary evidence in support of business expediency. In view of the above facts and circumstances and in the interest of substantial justice, we set aside the finding of the Learned CIT(A) on the issue in dispute and restore the matter to the file of the Assessing Officer for deciding afresh with the direction to the assessee to file following documentary evidences in support of claim of business expediency:

- (i) Name of the exhibition participated or visited by the concerned persons and relevancy of said exhibition with the business carried out by the assessee.
- (ii) Any letter from the exhibition management authority or exhibitors to the assessee inviting to the exhibition
- (iii) Evidence in support of tax deducted at source on the salary paid to Ms Divya Bajaj and Ms Anju Choudhary in the TDS return filed by the assessee relevant quarters of the financial year.
- (iv) Designation , Technical qualifications and experience etc of Ms. Divya Bajaj and Ms. Anju Choudhary making them eligible for visiting the exhibition and any report submitted by them after visiting the exhibition
- (v) Evidence in support of the claim of visit by above mentioned two persons being wholly and exclusively necessary for the purpose of the business.

- (vi) Any other evidence which may be called for by the Assessing Officer as deemed fit in the facts and circumstances of the case.

6.7 It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28th June, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 28th June, 2021.

RK/- (DTS)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi