

THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 6371/Mum/2019 (Assessment Year 2013-14)

M/s. Todi & Company C/o. Porwal & Powrwal LLP, 625, Laxmi Plaza, 6 th Floor, Off.New Link Road, Andheri(W), Mumbai-400 053 PAN : AAFT1739P (Appellant)	Vs.	ACIT-21(3) Room No.209, Piramal Chambers Mumbai-400 012 (Respondent)
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Assessee by	None
Department by	Vijay Kumar Menon
Date of Hearing	04.05.2021
Date of Pronouncement	01.07.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-33 dated 22.07.2019 and pertains to Assessment Year 2013-14.

2. The grounds of appeal read as under :

Estimated Disallowance of Rs. 26,40,199 of Revenue Expenditure.

1.01 The learned CIT (A) erred in confirming the addition of Expenditure amounting to Rs. 26,40,199 after allowance of an estimated amount of Rs. 20,00,000 from the total disallowance of Rs. 46,40,199 as Capital Expenditure.

1.02 The learned CIT (A) failed to appreciate the various issues raised in the appeal on this ground and erred in partly allowing this Grounds of Appeal.

3. Brief facts of the case are that the AO observed that assessee during the year had undertaken a major refurbishment of its business premises and expenditure, which was capitalized amounted to Rs.59,22,000/-. Further, he observed that the assessee had debited a sum of Rs.37,01,849/- on account of "repair and maintenance". Therefore, AO directed the assessee to submit along with documentary evidences, the details of addition

to factory premises, nature of repairs & maintenance. Assessee was also directed to furnish the details of labor charges debited under the head "manufacturing expenses" in direct expenses.

From the perusal of the submission, AO observed that during the year assessee had undertaken a major renovation/refurbishment of its factory & office premises and nature of works involved civil work, structural glazing, wood work, false ceiling, waterproofing, plumbing, electrical wiring and fittings, flooring, plastering etc. Some of the bills have been reproduced herewith, which give clear idea of the nature of work done.

4. Thereafter, AO referred to some bills. Further in para 3.9, the AO cut & pasted from some other Ld.CIT(A) order as under:-

3.9 I have carefully considered assessee's submission and found the same not satisfactory, without any supporting documents and hence not acceptable. From the AO's findings and by assessee's own admission it has been established that during FY.2012-13 assessee carried out a major renovation of its premises, which was not in The nature of current repairs, a condition required to be fulfilled in order to claim the Expenses as deduction u/s.30(a)(ii). Instead the expenditure was incurred in order to adapt the premises to a new and different advantage. Indeed, assessee himself has admitted that it had incurred expenditure in order to bring into existence a new asset. What is debated here is the assessee's claim of certain proportion of this expenditure being in the nature of current repair. The issue involved, thus, reduces to as to whether a certain proportion of the expenditure on extensive repairs and renovation could be allowed as towards current repairs even though it was spent in the regular course of the renovation.

5. The AO further observed as under:-

3.11 From the perusal of the ledger of "building repair", it is clear that what assessee has capitalized is merely the cost of concrete and steel (that is also not entirely) while the rest of the expenses have been debited under the head current repair and claimed as revenue expenditure even though they-were incurred for the same renovation wherein the concrete and steel was used.

3.12 Thus as per assessee, the cost of civil work was capitalized while the rest constituted current repair. This explanation is completely misplaced. A premises, it may be appreciated, is constituted not merely by, or only of, civil structure, in-as-much as the same by itself does

not render it functional for the stated purpose of its user. Rather all the ancillary construction, refurbishment subsidiary amenities, services etc are to be as necessary in order to render the premises functional. Therefore, assessee's logic of treating only concrete and steel cost as capital expenditure while other expenditure as revenue is not acceptable for the simple reason that entire expenditure was incurred at once in order to transform the premises.

6. Accordingly, the AO made the following disallowances:-

3.18 Total Disallowance works out to Rs.46,40,99/-. Depreciation !10% being Rs.2,32,010/- is allowed to the assessee. Penalty proceedings u/s 271(1)(c) initiated separately for furnishing inaccurate particulars of income.

7. Upon assessee's appeal Ld. CIT(A) held that AO has not made proper enquiry and sustained adhoc addition, without bringing anything further on record.

8. Ld.CIT(A)'s conclusion is as under:-

16. Considering the entirety of facts. I am of the view that the assessee had incurred a substantial amount on its office and factory premises on works involving civil work, structural glazing, wood work, false ceiling, water-proofing, plumbing, electrical wiring and fittings, flooring, plastering etc. The same was not a routine repair or maintenance. It was done to make the premises usable for a longer duration. There was enhancement in capacity and efficiency of the premises. It was not merely for restoring the premises to its original condition but definitely it had brought new advantage. Therefore, the AO is correct in treating the expenditure incurred for works inside the buildings also as capital expenditure. However, the AO had not examined item wise expenditure to classify the same as capital or revenue expenditure. He has treated the entire expenses under a particular ledger account as capital expenditure. It is also apparent that the expenses related to routine repairs and maintenance are also debited in those ledger accounts which are definitely revenue expenditure and the appellant should get the benefit of the same being revenue expenditure. In view of above, the only method is further estimation of capital and revenue expenditure since item wise adjudication is not possible. Considering the entirety of facts, I am of the view that out of Rs. 46,40,199/- treated by the AO as capital expenditure, Rs.20,00,000/- is estimated to be in the nature of revenue expenditure and balance Rs.26,40,199/- treated as capital expenditure by the AO is hereby sustained. The ground is partly allowed.

9. Against this order assessee is in appeal before us.

10. We have heard the Ld. DR and perused the record. We note that Ld. CIT(A) has given a finding that AO has not made proper enquiry. Hence, Ld.CIT(A) has sustained the disallowances partly on adhoc basis.

11. It is settled law that disallowances cannot be made on surmises and conjectures. The power of Ld.CIT(A) is co-terminus with that of AO. The Ld.CIT(A) has grossly erred in not making the enquiry, which was of the opinion should have been conducted. Moreover, the reasoning that the expenditure incurred on building repair, repair & maintenance and labour charges, in this regard bring about an expenditure of capital nature on an adhoc basis is not sustainable on the basis of material brought on record. This is more so, when assessee has already capitalized Rs.59,22,000/- in this regard.

12. Hence, we set aside the order of authorities below and allow the assessee's ground.

13. In the result, assessee appeal is allowed.

Pronounced in the open court on 01.07.2021

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/07/2021

Sr.PS. Thirumalesh

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai