

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 1546/De/2017
(Assessment Year: 2012-13)

Rajesh Kumar Prop, N. W. Overseas, 42,Devi Murti Coloy, Panipat	Vs.	ACIT, Panipat Circle, Haryana
(Appellant)		(Respondent)

Assessee by :	Shri Rakesh Jain, Adv Shri Gurjeet Singh, CA
Revenue by:	Shri Ramesh Kumar, SR. DR
Date of Hearing	24/11/2020
Date of pronouncement	02/12/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the ld CIT(A), Karnal [the ld CIT (A)] dated 17.01.2017 for the Assessment Year 2012-13 wherein appeal filed by the assessee against the order passed by the Asst Commissioner of income tax, Panipat Circle Panipat [The ld AO] u/s 143 (3) of The Income Tax Act 1961 (The Act) dated 30 March 2015 assessing the total income of the assessee at Rs 1,77,77,567/- against the returned income of the assessee at ₹ 5,296,930/- making disallowance of Rs 1,24,80,637/- was reduced to 50% of the disallowance partly allowing the appeal.
2. The assessee has raised the following grounds of appeal:-
 - “1. *Because the action for making disallowance of commission expenses for Rs. 41,19,626/- (50% of Rs 82,39,253/-), is being challenged on facts & law alongwith the challenge to percentage of disallowance.*
 2. *Because the action for disallowance of installation charges Rs. 2,75,375/- (25% of Rs. 11,01,500/-) is being challenged on facts & law alongwith the challenge to percentage of disallowance.*
 3. *Because the action for declining the benefit of deduction is being challenged on facts & law for non deduction of TDS on the amount of Rs. 1,12,768/- u/s 40(a)(ia) r.w 194C.*

4. *Because the action for declining the claim of interest expenses of ? 1,00,000/- is being challenged on facts & law.*
5. *Because the action for upholding the disallowance of payment of interest of Rs. 2,85,600/- (12% of 23,80,000/-) u/s 36(l)(iii) is being challenged on facts & law pursuant to the principle of commercial expediency and business exigency.*
6. *Because the action for total disallowances of Rs. 14,54,692/- on under mentioned expenses are being challenged on facts & law alongwith percentage of disallowances:-*
 - *Expenses of Diwali Rs. 64,141 /- (10% of 6,41,415/-)*
 - *Business promotion Rs. 76,058/- (10% of 7,60,576/-)*
 - *Conference charges Rs. 1,83,654/- (10% of 18,36,544/-)*
 - *Conveyance Rs. 1,03,578/- (10% of 10,35,775/-)*
 - *Entertainment Rs. 31,955/- (10% of 3,19,550/-)*
 - *Travelling Rs. 9,95,007/- (10% of 99,50,068/-)*
7. *Because the action for total disallowances of Rs. 50,275Jf- (Rs. 2,55,953/-1/10th of expenses less 1/12th already disallowed by assessee amounting Rs. 2,05,678/-) relating to Car & Scooter maintenance expenses, Car Depreciation, Car Insurance & Telephone expenses.”*
3. Brief facts of the case shows that assessee is an individual who filed his return of income at ₹ 2,355,800 on 30 September 2012. The assessee revised his return on 22/8/2013 declaring a total income of ₹ 5,296,930. The reason for revision of the return was that the assessee since tax liability of ₹ 3,091,133/- was not paid to the date of filing of the income tax return and therefore applying the provisions of Section 43B of the income tax act the above disallowance was made in the revised return filed by the assessee.
4. The assessee is engaged in the business of dealing in surgical equipments and accessories, linen etc in the name of his proprietary concern N W overseas. He is dealing with the government department as well as private hospital and also carrying on liaison of work for their principle in India and abroad. It is also providing services for maintenance of the equipments and the proprietary concern is purely a trading concerned. For the year assessee has shown a gross profit of ₹ 51,998,524/- on total sales of ₹ 156,343,839/-. Against the above assessee has shown Net profit of ₹ 2,266,569 only. The assessee has also shown the income as service charges of ₹ 2,702,553, AMC

charges of ₹ 78,142, commission of ₹ 680,198, and interest on fixed deposit receipt of ₹ 276,660, interest income of ₹ 28,158 and miscellaneous income of ₹ 7544. Assessee has also shown professional charges of ₹ 24 lakhs in the profit and loss account. Thus according to Id AO assessee has shown loss in the business. SO Id AO examined various expenses claimed by the assessee. The learned assessing officer noted that assessee has claimed commission on sales of ₹ 8,239,253 for the year against ₹ 958,802 in the preceding assessment year. On examination of the month wise details for commission on sale AO noted that the claim of huge commission expenditure in the month of March 2012 raises a serious doubt about the genuineness of the claim. The learned assessing officer examines this claim. The assessee submitted the detailed of the commission paid with the name of the party, permanent account number, address and the date of the credit of the commission expenditure as well as the amount of commission paid. The learned assessing officer noted that assessee has not furnished details as to services rendered by each such party however assessee submitted the confirmation of all those parties. The learned assessing officer noted that the gross profit rate for the year under consideration has declined from 35.74% in the immediately preceding previous year to 33.25% for the year under consideration and not satisfied by the submission of the assessee he held that commission expenditure of ₹ 8,239,253 is held to be bogus and therefore he disallowed the same. He further examined the details of the interest expenditure of ₹ 3,409,650 unsecured loan rates from the family members. He noted that assessee has paid interest at the rate of 18% to these parties which are covered u/s 40A (2) (b) of the income tax act when the funds from the banks are available at much lower rate. He noted that assessee is also paying interest at the rate of 15% to 2 different parties. Accordingly he held that in the normal circumstances the funds are available from banks at the rate of 12% and therefore the interest paid to the above related parties is allowed to the extent of ₹ 12 percent which works out to ₹ 2,312,981 and therefore the excessive interest paid of ₹ 1,096,669 was disallowed.

AO also asked about the details of payment made to person covered u/s 40A (2) (b) of the income tax act and found that assessee has paid salary to the relatives. Assessee submitted the details of the amount of salary paid to all these persons. The learned assessing officer noted that all these persons are doing their independent business activity and they would not be able to give their full time to this employer and that the same time no employer allows employees to carry on with his independent business activity also unless the employee is a part-time employee or a consultant. Therefore the payment of salary to these relatives is held to be excessive by the learned assessing officer and not justified therefore he disallowed 50% of the salary paid to these parties holding them to be excessive and disallowed ₹ 420,000. Assessee has also debited a sum of ₹ 1,101,500 in his trading account under the head installation charges. The assessee was asked to furnish the details. Assessee furnished such details to these parties stating that those expenses are incurred for rendering professional services to Kirloskar technology private limited and for installation of other machines with different departments. As the assessee did not furnish the details of the address and permanent account number of these parties except in some of the cases, the learned assessing officer disallowed 50% of such expenses amounting to ₹ 550,750/-. The learned assessing officer further disallowed out of freight and cartage expenses claimed of ₹ 847,601/-, that ₹ 112,678 are paid to Blue Dart as courier charges which is not transportation charges and therefore he disallowed the same. The learned assessing officer further disallowed a sum of ₹ 1 lakh out of the other expenditure incurred by the assessee of ₹ 278,738 in absence of proper detail. AO further noted that assessee has given interest free loans of ₹ 2,380,000 to certain parties on which interest has not been charged and therefore he calculated interest the rate of 12% on the above-mentioned advances and made an addition of ₹ 285,600 disallowing the interest expenditure claimed in the profit and loss account. He found that assessee has further debited business promotion expenditure, Conveyance expenses, entertainment expenses, conference expenses

and conveyance expenses totaling in to ₹ 4,596,860 and disallowed 1/10 of the above expenses of ₹ 459,686 for personal expenses. The AO further disallowed a sum of ₹ 995,007 out of travelling expenditure of ₹ 9,950,068/- being 10% of such expenses since the assessee is an individual and possibility of personal/non business element cannot be ruled out. He further noted that assessee has debited Rs 25,59,539 on account of car and Scooter maintenance expenditure, car depreciation, car insurance and telephone expenditure. He disallowed 1/6 of the total expenditure of eight ₹ 426,590 out of that on account of personal expenditure. Assessee has already disallowed of ₹ 205,679 in the computation of the total income and therefore he made an act disallowance of ₹ 220,912 out of the same. Accordingly the total disallowance of expenditure of Rs 1, 24,80,637 was made and the returned income of ₹ 5,296,930 was assessed at Rs 1, 77,77,567 by passing an order u/s 143 (3) of the act on 30 March 2015.

5. Assessee being aggrieved with the order of the learned assessing officer preferred an appeal of the learned CIT – A. The learned CIT-A restricted the disallowance of commission expenditure of ₹ 8,239,253 to ₹ 4,119,626. He further restricted the disallowance out of the installation charges of ₹ 1,101,502 to ₹ 275,375. With respect to the non-deduction of tax at source on various installation charges paid by the assessee he restricted/confirmed disallowance of ₹ 112,678. He further confirmed the disallowance of ₹ 1 lakh out of the interest expenditure. The learned CIT – A also confirmed the disallowance of ₹ 285,600 u/s 36 (1) (iii) of the act on the advances given to the various parties. With respect to the disallowances out of the business promotion expenditure conference charges, conveyance expenses entertainment expenses and travelling expenses, he restricted disallowance to ₹ 4,054,692. Out of the car maintenance and Scooter maintenance expenditure for which the disallowance of ₹ 255,953 was made by the learned assessing officer, he confirmed the disallowance of ₹ 50,275. In nutshell, the learned CIT – A restricted the

disallowance made by the learned assessing officer. Assessee being aggrieved with the above order has preferred this appeal.

6. The learned authorised representative and the learned senior departmental representative were heard on the various aspects of the issue involved in the appeal.
7. We have heard the rival contentions, perused the orders of the lower authorities and the paper book submitted by the assessee. The claim of the assessee is that he has submitted the requisite details before the learned assessing officer and therefore the disallowance made by the learned assessing officer cannot be sustained. He referred to page number [1] of assessment order where the learned assessing officer has maintained that the authorised representative of the representative of the assessee produced the books of accounts including Ledger, cash book, purchase bill, since built, bank statement before the assessing officer. All these expenditure are debited in the books of accounts and therefore supported by the bills and vouchers place therein. He stated that the learned assessing officer has made the disallowance merely because some of the bills and vouchers could not be produced before him. The assessee submitted that these are the disallowances made by the learned assessing officer and confirmed by the learned CIT – A for the first time in the case of the assessee for the reason of lower net profit. He submitted a detailed chart from assessment year 2007 – 08 to assessment year 2013 – 14 wherein the assessee has been assessed in most of the cases u/s 143 (3) of the income tax act. He further submitted that in none of these cases such disallowance has been made. He further stated that the disallowance made in the assessment for this year are merely for the reason of the fact that the assessee's net profit and the gross profit rate has gone down in the current year. He submitted a detailed chart wherein the details of the gross profit and the net profit has been provided since AY 2007 – 08 till A Y 2013 – 14. Such chart was produced by the assessee. On careful analysis of the facts it is noted that for assessment year 2012 – 13 the assessee has clocked the turnover of ₹ 156,343,839 and

gross profit of ₹ 51,998,524 resulting into the gross profit rate of 33.26%. This gross profit compared to the previous year assessment year 2011 – 12 was found to be at 35.74%. Further the net profit for the year assessment year 2010 – 11 was found to be 1.77 percent whereas for the current year the net profit rate was only 1.45%. It is also the fact that the learned assessing officer has made the disallowances only because of the reason that in the current year the assessee has shown less net profit compared to earlier years. Therefore it is necessary to look into the past assessment history of the assessee as well as for the subsequent year to the impugned assessment year. Profitability chart of the assessee for all those years is as Under:-

Assessment Year	Turnover	Gross Profit Rate	Net Profit Rate	whether assessed u/s 143 (3) of the act on the date of order
2007 – 08	2,85,91,943	30.06%	2.99%	N A
2008 – 09	5,84,80,077	24.99%	1.48%	Assessment dated 1/12/2010
2009 – 10	4,11,27,844	29.82%	2.16%	N A
2010 – 11	8,55,83,487	33.40%	1.82%	Assessment order dated 4/12/2012
2011 – 12	9,15,81,879	35.74%	1.77%	N A
2012 – 13	15,63,43,839	33.26%	1.45%	Impugned assessment year in the appeal
2013 – 14	11,53,50,490	28.20%	1.34%	assessment order passed on 31

				December 2015
2014 – 15	14,61,19,917	24.86%	1.69%	Pending

It is also the fact that in most of the cases the assessee has been assessed u/s 143 (3) of the income tax act and no such disallowances as has been made in the current year are made in those years. It is also the fact that the learned assessing officer has not disallowed any of the expenditure on the basis of the individual instances of such expenditure and holding that those are not incurred for the purposes of the business and therefore same are not allowable to the assessee u/s 37 (1) of the income tax act as they are not fully and exclusively incurred for the purposes of the business. In most of the disallowances the learned assessing officer has made ad hoc disallowance is out of those expenditure. Therefore, in the interest of justice it would be proper and just if the net profit ratio of the assessee is assessed at certain percentage which will also take care of the lower net profit shown by the assessee. It is also required to be appreciated that for the impugned assessment year the assessee's turnover has clocked at more than ₹ 15 crores, which is the highest among all those years stipulated above. If the average of the net profit as computed for all these 8 years, such net profit percentage would be 1.83 percentage of the total turnover. Further it is also the fact that the learned assessing officer was not shown all the bills and vouchers of expenses incurred by the assessee. Therefore it is not the case of the assessee that all those expenditure incurred by the assessee are wholly and exclusively incurred by the assessee, as without production of them it would not be possible for the learned assessing officer test this expenditure on those criteria. Further, it is also not the case of the learned assessing officer that assessee has not produced details before him. The learned AO has completely verified the books of accounts, sales bills, purchase bills, bank statements et cetera during the course of the assessment proceedings and did not find any defect in them. Furthermore the learned assessing officer has

made certain disallowance holding them to be excessive and unreasonable by applying the provisions of Section 40 A (2) of the act without finding that to what extent they are unreasonable or excessive having regard to the market price of such services. In any case, if the learned assessing officer would have rejected the books of accounts then naturally he would have as the assessee at the net profit rate. In view of this, we direct the learned assessing officer to restrict the net income of the assessee at 1.90 percentage of the total turnover of 15.63 crores which would be ₹ 2,970,532 compared to the net profit shown by the assessee of ₹ 23,55,800/-. The AO is directed to assess the total income of the assessee at ₹ 2,970,532 plus a sum of ₹ 3,091,133/- [43B disallowance] totaling to Rs 6,061,665/-. In view of this, all the grounds raised by the assessee are disposed of accordingly.

8. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 02/12/2020.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 02/12/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi