

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.997/Bang/2018
(Assessment Year: 2010-11)

Shri Kabadi Sundarsa Manjunath,
No.40, 4th Cross, Swan House, Residency Road,
Bangalore-560 025
PAN ADRPM2173J

....Appellant

Vs.

Assistant Commissioner of Income Tax,
Circle 12(3), Bangalore.

.....Respondent.

Assessee By:	Shri S.V.Ravi Shankar, Advocate.
Revenue By:	Shri Priyadarshi Mishra, JCIT (D.R)

Date of Hearing :	15.12.2020.
Date of Pronouncement :	16.12.2020.

ORDER

PER SHRI CHANDRA POOJARI, A.M. :

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Bangalore dt.05.01.2018 for the Assessment Year 2010-11.

2. The assessee has raised the following grounds :

1. “ The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the appellant are opposed to law, equity and weight of evidence, natural justice, facts and circumstances of the case.
2. The appellant denies himself liable to be assessed to total income of Rs. 50,76,891/- as against the returned income of Rs. 42,26,480/- on the facts and circumstances of the case.
3. The CIT(A) was not justified in confirming the additions of Rs. 1,06,670/- as being a perquisite, when the expenditure was incurred for business purposes, on the facts and circumstances of the case.
4. The CIT(A) was not justified in confirming the additions of Rs. 7,43,741/- as necessary to be added to the income of the appellant, since disallowed in the hands of the company, on the facts and circumstances of the case.
5. The authorities below were not justified in not appreciating that the expenditure incurred by way of credit cards for the company, were not in the nature of perquisites in the hands of the appellant, on the facts and circumstances of the case.
6. The Commissioner of Income Tax (Appeals) failed to appreciate that the credit card expenditure was wholly and exclusively incurred for business purposes of the company in the normal course of operations on the facts and circumstances of the case.
7. The CIT(A) was not justified in law in holding that the amount disallowed in the hands of the company partake the character of income in the hands of the appellant on the facts and circumstances of the case.
8. The CIT(A) was not justified in appreciating that the travel expenditure was not in the nature of a perquisite and no addition ought to have been made in the hands of the appellant, on the facts and circumstances of the case.
9. Without prejudice, the learned CIT (Appeals) failed to appreciate that the impugned expenditure are exempt in the hands of the appellant u/s.10(14) of the Act.
10. The appellant denies the liability to pay interest under section 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with the law and are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.
11. The appellant craves leave of this Hon’ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

12. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”

3. Further the assessee has raised additional grounds as under :

1. “ The Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of Income Tax Act do not permit taxation of hypothetical income.
2. The Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of Sec 2(24)(x) of the Act have no application to the impugned additions on the facts and circumstances of the case.
3. The Commissioner of Income Tax (Appeals) failed to appreciate that the learned Assessing Officer demonstrated lack of application of mind by arbitrarily arriving at 50% as the quantum of disallowance and further distributed the disallowed sums amongst 5 Directors equally when there were 6 Directors for the Company for the impugned year and accordingly the assessment order passed is perverse and needs to be quashed on the facts and circumstances of the case.
4. The Commissioner of Income Tax (Appeals) failed to appreciate that no such estimation could have been made without rejecting the books on the facts and circumstances of the case.
5. The Commissioner of Income Tax (Appeals) failed to appreciate that adding the expenditure disallowed in the books of the company as income in the hands of the appellant amounts to double taxation which is impermissible in law and needs to be deleted in entirety on the facts and circumstances of the case
6. The appellant craves leave of this Hon’ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.
7. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”

4. The assessee pleaded for admission of additional grounds on the reason that the facts relating to the additional grounds are readily available on record and there is no necessity of investigation of facts. More so, these grounds are inadvertently

failed to raise on the earlier occasion and hence he prayed that the above additional grounds are to be admitted. The learned Departmental Representative has no serious objection to the admission of additional grounds. Accordingly, we admit the additional grounds for adjudication by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Ltd. Vs.CIT 229 ITR 383 (SC) wherein it was held that the grounds which does not require any investigation of fresh facts may be admitted.

5. The facts of the case are that the assessee is a Director in the company M/s. Swan Silks Pvt. Ltd. engaged in silk furnishing. In the assessment year under consideration, the Assessing Officer observed that there were drawings made through credit cards on behalf of the company and the purpose for which the drawings were made are in the nature of personal expenses and such expenditure were not considered to be in the business exigency of the company. The amounts spent through their credit card as follows :

a) Shri K.S. Manjunath,Director	Rs.2,13,339.81
b) Shri K.S. Vittal,Director	Rs.4,46,173.60
c) Shri K.S. Gnaneshwar,Director	Rs.80,391.34
d) Shri K.S.Govindsa,Director	Rs.3,70,693.91
e) Shri K.S. Radhusa, Director	<u>Rs.1,91,243.33</u>
	<u>Rs.13,01,841.99</u>

The Assessing Officer observed that the present assessee has incurred expenditure of Rs.2,13,339 through credit card for the company and the Assessing Officer

treated 50% of this as his income. Further the Directors of the company went on foreign tour and incurred an amount of Rs.74,37,409. Out of this, the Assessing Officer observed that 50% is the personal expenditure of the Directors. As such, the Assessing Officer computed 1/5 th of Rs.27,18,705 relating to this assessee worked out to Rs.7,43,741 and treated the income of the assessee. Aggrieved by the assessee, the assessee is in appeal before us. Since the issues in dispute are squarely covered by earlier order of the Tribunal in the case of Co-Director Shri K.S. Ganeswar in ITA No.1512/Bang/2016 dt.1.2.2017, we are inclined to adjudicate the grounds collectively and without going by ground-wise.

6. The learned Authorised Representative submitted that this issue was considered by the co-ordinate Bench of this Tribunal in the case of one of the Directors' Shri K.S. Ganeswar in ITA No.1512/Bang/2016 vide order dt.1.2.2017 remitted the issue to the file of Assessing Officer for fresh consideration. The ld. DR supported the orders of authorities below.

7. We have heard both the parties and perused the material on record. Similar issues were considered by this Tribunal in the case of one of the Directors' Shri K.S. Ganeswar in ITA No.1512/Bang/2016 vide order dt.1.2.2017 wherein the Tribunal remitted to the file of Assessing Officer for fresh consideration to see whether the expenditure incurred was for the purpose of business. After remitting

by the Tribunal, the Assessing Officer allowed the claim of the assessee vide order dt.24.10.2018 by DCIT, Circle 6(1)(2), Bangalore. In our opinion, in this case also the assessee shall prove the incurring of expenditure by the company Swan Silk Pvt. Ltd. for the purpose of business. If it was incurred by the company Swan Silk Pvt. Ltd. for business exigency and the Director incurring the expenditure for the purpose of business of that assessee, these expenses cannot be considered as perquisites in the hands of the assessee. Accordingly, we remit this issue for reconsideration to the file of Assessing Officer.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Dated: 16.12.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore