

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "E" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND**

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 7387/DEL/2019 (A.Y 2016-17)

Pallav Pandey C/o. Kashyap & Co. 114/214, Citi Centre, Begum Bridge Road, Meerut PAN No. ALIPP9654J (APPELLANT)	Vs.	ACIT Circle-43(1) Civic Centre, Minto Road, New Delhi (RESPONDENT)
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Assessee by	Sh. P. S. Kashyap, FCA
Department by	Shri Sanjay Nargas, Sr. D. R.;

Date of Hearing	30.11.2022
Date of Pronouncement	13.12.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals) -15, Laxmi Nagar [hereinafter referred to CIT (Appeals) dated 18/06/2019 for assessment year 2016-17.

2. The assessee has raised the following grounds of appeal:-

“1. That the Ld. A.O has erred in law as well as on facts in not allowing expenses of Rs. 25,92,818/- incurred in relation to earning long term capital gains. The said expenses was paid for seeking management consultancy but Ld. AO simple disallowed expenses on the basis that these management consultancy expenses cannot be considered to be allowable transfer expenses as per section 48 of the Income Tax Act,1961. Therefore, the view taken by the Ld. AO without bringing any material on record to disallowed management consultancy expenses is totally wrong and unjustified.

3. Brief facts of the case are that, the assessee filed return for the Assessment Year 2016-17 declaring an income of Rs. 29,92,980/- wherein claimed transfer expenses of Rs. 25,92,818/- against the sale consideration of Rs. 13,75,84,941/-. The case of the assessee was selected for scrutiny under CASS. The assessment proceedings came to be initiated, during the assessment proceedings, the assessee contended that expenses of Rs. 25,92,818/- were incurred wholly and exclusively for transfer of shares and such expenses are eligible as per Section 48 of the Income Tax Act 1961 ('Act' for Short).

4. The assessment order came to be passed on 09/12/2018 wherein the Ld. A.O. has disallowed transfer expenses on the basis that the said transfer expenses of Rs. 25,92,818/- claimed by the assessee in the nature of fees for advisory service and management consulting. Therefore, the same cannot be considered to be allowable transfer expenses as per Section 48 of the Tax Act.

5. Aggrieved by the assessment order dated 09/12/2018, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) has allowed the transfer expenses to the extent of Rs. 1,50,000/- (being 0.1% of the transaction cost)

and balance disallowance of Rs. 24,42,818/- has been confirmed vide order dated 18/06/2019.

6. As against the order of the Ld.CIT (A) dated 18/06/2019, the assessee has preferred the present appeal on the grounds mentioned above.

7. The Ld. Counsel for the assessee submitted at the Ld. A.O. and the CIT(A) have erred in not allowing the entire expenses of Rs. 25,92,818/- incurred in relation to earning long term capital gains. The said expenses was paid for seeking management consultancy from M/s. Signal Hill in respect of transfer of shares valued at Rs. 13,75,84,941/-, but the same has been disallowed on the basis that the said management, consultancy expenses cannot be considered to be eligible transfer expense as per Section 48 of the Act, without bringing any material on record. Further submitted that though the Ld. CIT(A) has not doubted the service received by the Assessee, committed an error in restricting in allowing the expenses only to 0.1% of the transaction cost. The Ld. Counsel for the assessee has taken us through the paper book and also the synopsis filed in support of the oral submission.

8. Per contra, the Ld. DR has relied on the orders of the Lower Authorities and submitted that, The order of the Ld. CIT(A) in restricting the expenses to 0.1% of the transaction is reasonable, which requires no interference by the Tribunal.

9. We have heard the parties perused the material on record and gave our thoughtful consideration.

10. The assessee had entered into an agreement with M/s Signal Hill on 23/01/2014 which is placed on page 16 to 18 of the paper book wherein M/s Single Hill have agreed for certain duties and responsibilities. The relevant

portions of the said Agreement are as under:-

“Signal Hill India’s duties and responsibilities shall be limited to those expressly set out in this Agreement. Signal shall:

- a. Provide Client with assistance to identify buyer of shares held in Knowlarity Communications Pvt .Ltd (India) and Knowlarity Communications Holdings Pte. Ltd (Singapore).*
- b. Conduct negotiations with buyer and get the share purchase agreement signed.*
- c. Provide Client with accounting, legal, tax and other specialist advice related to transaction.”*

11. Further, in turn, the assessee has agreed pay the service fee to M/s. Signal Hills for such services at 1.83% of the transaction amount as per Section 2 of the Agreement, which reads as follows:

“Section 2. Fees. On Signal Hill India providing the Services contemplated pursuant to this Agreement, the Client shall pay signal Hill India for its Services hereunder a fee (“Service Fees”) equivalent to 1.83% of the transaction value. The payment of the Service Fees is also an acknowledgment by the Client that it has received from Signal Hill India all Services contemplated by this Agreement and that Signal Hill India has no further obligations pursuant to this Agreement.”

12. It is also found that the above said agreed payment has been made from regular bank account of the Assessee to M/s. Signal Hill, which placed at Page No. 20 of the paper book which is reproduced as under:-

From : OURSELF To : SIGNALHILL Statement of account

Date	Particulars	Chq/Ref No.	Value	Withdrawal Amt.	Deposit Amt.	Closing Balance
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000040000011	04/07/15	10,000.00		6,02,071.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000040000007	04/07/15	12,700.00		6,07,891.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15	1,819,800.00		1,19,091.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15			
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15	10,000.00		1,13,091.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15	400.00		1,13,691.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15			
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15	1,00,000.00		1,13,691.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15		70,000.00	1,13,691.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15	1,00,000.00		1,13,691.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15	5,000.00		1,12,191.36
04/07/15	ICICI BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000000	04/07/15			
04/07/15	TATA BANK FOR BANK OF INDIA FOR TWO COUNTRIES	000000000012	04/07/15	140.00		1,11,791.36

13. The said payment has been made as against the invoices raised by the M/s Signal Hill which is reproduced as under:-

Signal Hill
Signal Hill Capital Advisory India Pvt. Ltd.
CIN:U74992KA2012PTC062363
Reg. Office: 40, Vittal Mallya Road,
Bangalore 560 003.
Tel: +91 80 3969 4702 | Fax: +91 80 3969 4720
www.signalhill.com

Copy

Invoice

To: Mr. Pallav Pandey
Flat 1006, Plot 4, Sector 10, Dwarka, New Delhi - 110075

Invoice No. 15-18 / 00M / 18 Date: 12-Aug-15

S.N.	Particulars	Amount in INR
01.	Transaction Fees payable as per the terms of the Client Agreement dated 23rd January 2014, for the sale of shares held in: Knowlarity Communications Holdings Pvt. Ltd. Knowlarity Communications Pvt. Ltd.	6,495 2,519,049
	Sub-Total (A)	2,525,544
	Add: Service Tax @34% on (A)	858,577
	Total (A+B+C+D)	3,384,121

E & OE
Amount in Words: Rupees Two Million Eight Hundred and Seventy Nine Thousand One Hundred and Twenty One Only

Due Date: Immediate
Nature of Services: Management Consulting
Service Tax Code: AAQCS9318B0202

for Signal Hill Capital Advisory India Pvt. Ltd.
[Signature]
Authorized Signatory
email: gs@traper@signalhill.in

14. Thus, the above said payment of Rs. 28,79,121/- has been made as per the agreement dated 23/01/2014 entered into between assessee and M/s Signal Hill against the invoice dated 12/08/2015 in banking channel. The Ld. CIT (A) has not doubted the genuineness of the transaction at any point of time, on the other hand accepted the transaction, but allowed the expenses claimed under Section 48 of the Act by restricting only to 0.1% of the total transaction.

15. As per Section 48 of the Act:-

The income chargeable under the head "Capital Gains" shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts namely :-

- i) *Expenditure incurred wholly and exclusively in connection with such transfer,*
- ii) *The cost of acquisition of the asset and cost of any improvement thereto;*

16. The Hon'ble jurisdictional Delhi High Court in the case of Kausaiya Devi Vs CIT ITA No 600/2004 had held that once the amount is spent and paid, the authorities cannot decide commercial expediency by putting themselves in the arm chair of the assessee to examine and consider whether they would have or the assessee should have incurred the said expenditure including the quantum having regard to the circumstances. The relevant portions of the Judgment are hereunder:-

"The words "wholly and exclusively" require and mandate that the expenditure should be genuine and the expression "in connection with the transfer" require and mandate that the expenditure should be connected and for the purpose of transfer. Expenditure, which is

not genuine or sham, is not to be allowed as a deduction. This, however, does not mean that the authorities, Tribunal or the Court can go into the question of subjective commercial expediency or apply subjective standard of reasonableness to disallow the expenditure on the ground that it should not have been incurred or was unreasonably large. In the absence of any statutory provision, on these aspects discretion exercised by the assessee who has incurred the said expenditure must be respected, for interference on subjective basis will lead to unpalatable and absurd results. As in the case of Section 37 of the Act, jurisdiction of the authorities, Tribunal or Court is confined to investigate and decide as to whether the expenditure was actually incurred, i.e., the expenditure was genuine and was factually expended and paid to the third party. Secondly, the authorities, Tribunal and Court can examine whether the said expenditure was "wholly and exclusively" connected with the transfer, but once the amount was spent and paid, the authorities, Tribunal and Courts cannot decide commercial expediency by putting themselves in the arm chair of the assessee to examine and consider whether they would have or the assessee should have incurred the said expenditure including the quantum having regard to the circumstances. Excessive expenditure cannot be disallowed when it is "wholly and exclusively" in connection with the transfer, on the ground that prudence did not require the assessee to incur the expenditure. Disallowance on such grounds must be specified and provided by the statute."

17. In the present case, the service of M/s Signal Hills has been utilized for sale of shares of private limited company shares exclusively; further the payment has been made by banking channel as against the invoice raised by M/s Signal hills. There is nothing on record to suggest or no material brought on record by the A.O. to suggest that that transfer expenses were not

incurred wholly & exclusively for the purpose of transfer of shares held by the Assessee in companies M/s. Knowlarity Communications Pvt. Ltd. (Singapore) & M/s. Knowlarity Communications Pvt. Ltd. (India). On the other hand the Ld. CIT(A) has partly agreed with the Assessee by not doubting the transaction per se.

18. In view of the above discussion, by following the ratio laid down by the Jurisdiction High Court in the case of Kausalya Devi (Supra), we are of the opinion that, the expenses of Rs. 25,92,818/- incurred by the Assessee is allowable transfer expenses as per Section 48 of the Act and both the Lower authorities have committed an error in disallowing the expenses of Rs. 25,92,818/- incurred by the Assessee.

19. Accordingly, the Ground No. 1 of the assessee is allowed. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on : 13th December, 2022.

**Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 13/12/2022

R. N, SR. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI