

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**

Before **Shri A.T.Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1205/Kol/2016
Assessment Year :2012-13

ITO Ward-8(1), P7, Chowringhee Square, 5 th Floor, Kolkata-700 069	V/s.	M/s Arun Electrical Pvt. Ltd., B1-D, 3 rd Floor, White House, 119, Park Street, Kolkata-700 016 [PAN No. AAHCA 9675 K]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Pinaki Mukherjee, JCIT, SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Akkal Dudhwewala, ACA
सुनवाई की तारीख/Date of Hearing	06-12-2016
घोषणा की तारीख/Date of Pronouncement	21-12-2016

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals)-16, Kolkata dated 29.03.2016. Assessment was framed by ITO Ward-8(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 16.01.2015 for assessment year 2012-13.

Shri Pinaki Mukherjee, Ld. Senior Departmental Representative appeared on behalf of Revenue and Shri Akkal Dudhwewala, Ld. Authorized Representative appeared on behalf of assessee.

2. The issue raised by the Revenue in this appeal ground is that learned CIT(A) erred in deleting the addition made by the AO for Rs. 32,94,114/- after having reliance on the additional documents submitted by the assessee

without taking remand report from the AO which is in contravention of the rule 46A of Income Tax Rules 1962.

3. Briefly, the facts are that the assessee in the present case is a Private Limited Company and engaged in manufacturing of electric fan parts. At the outset the learned DR before us submitted that the relief has been given on the basis of reconciliation statement submitted by the assessee first time before the learned CIT(A) and no opportunity for cross examination to the AO was provided for the same. As such the provisions of rule 46A of Income Tax Rules was contravened by the learned CIT(A). The Id the DR vehemently supported the order of AO. On the other hand, Id AR before us submitted that no fresh evidence was submitted at the time of appellate stages. The impugned reconciliation statement was also submitted before the AO at the time of assessment and he supported the order of Id. CIT(A).

4. We have heard the rival contention and perused the materials available on record. In the instant case the reconciliation statement was submitted by the assessee at the time of assessment as evident from the order of AO which reads as under:-

“It has been explained by Mr Roy that purchase of others of ₹19,59,676/- debited to other account and sales tax of ₹11,58,657/- were excluded from the purchase. The explanation as well as reconciliation of purchase has no basis at all. On analyzing the various heads of expenses as per Note 19 to 24 of the Audited Profit & Loss Account it is seen that the following heads have been incorporated in the profit & loss account.”

From the above observation, it is amply clear that the reconciliation statement as challenged by the Revenue as fresh evidence is not actually additional evidence. Accordingly we hold that the provisions of rule 46A of Income Tax Rules 1962 has not been contravened by the Id CIT(A). In the light of above reasoning, we hold that the order of the Ld. CIT(A) is correct and in accordance with law and no interference is called for. Hence, we uphold the same and this ground of Revenue;s appeal is dismissed.

4. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the AO for Rs.5,44,561/- by holding as business expenses.

5. On examination, AO found that sale promotion expenses are representing the bills paid to the various clubs. Accordingly, AO has called upon the assessee to explain and establish that these club expenses were incurred wholly and exclusively for the purpose of its business. In compliance thereto, the assessee submitted that various meeting were held with the customers and their representatives for the purpose of its business in the clubs and accordingly these expenses were incurred. However, AO disregarded the plea of assessee by observing that the expenses were incurred very frequently and the details of the customers with whom the meetings were held were not furnished. Accordingly, AO disallowed the sale promotional expenses for Rs 5,44,561/- and added to the total income of assessee.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that all the expenses were incurred by the Directors and Senior employees of assessee for having interaction with the customers for the purpose of technical and commercial negotiations. Such interaction with suppliers and customers were necessary in order to finalize and negotiate rates, contracts etc. These expenses were also necessary to maintain cordial business relationship with the respective parties associated with the assessee. As of now, the clubs are providing perfect platform for interaction, exchange of information and conduct of such business meetings. Therefore, all such expenses were incurred wholly and exclusively for the purpose of assessee's business. After considering the same, Ld. CIT(A) deleted the addition made by AO by observing as under:-

"9. I have considered the A/Rs submissions and perused the impugned order of the AO making disallowance of sales promotion expenses. I have also perused the details of sales promotion expenses and the judicial decisions relied upon by the A/R of the assessee. From the details of the sales promotion expenses it is observed that the expenditure comprise of expenses paid at clubs. Before the AO the assessee had explained that these expenses

were incurred towards business meetings held at clubs with the customer representatives for technical & commercial negotiations. The A/R explained that in the assessee's line of business, the directors are required to engage in constant liasoning with customers, suppliers & business associates. Meetings with out-station customers & associates are commonly held at clubs to negotiate contract & deals. It is the assessee's claim that the club expenses are incurred by the directors in the course and for the promotion of the business interests of the assessee. in support of its claim for sales promotion expenses incurred at clubs, the assessee relied on decisions of various High Courts. On going through the facts of the case, I find prima facie merit in the assessee,'s claim. It is very common in this modern age to hold business meetings at clubs to entertain clients and also discuss business. Before the AO the appellant had explained the nature & purpose of incurrence of such expenses. All the expenses were vouched for. The AO also admits that the expenses were paid through proper banking channels. Considering the nature & scale of assessee's business, the quantum of sales promotion expenses is also found to be reasonable. I further note that the AO has also not been able to pin-point or prove any specific infirmity in the details of sales promotion expenses or that any of the expenses were personal in nature. The Full Bench of Punjab & Haryana High Court in the case of CIT Vs Groz Beckert Asia Ltd (supra) has held that such club expenses are incurred by the director to facilitate running of business which in turn benefits the assessee and therefore it was held fully allowable by way of deduction from the profits of the business. For the reasons set out in the foregoing and in light of the decision of Punjab 7 Haryana High Court in the case of CIT Vs Groz Beckert Asia Ltd (supra), I hold that the sales promotion expenses of Rs.5,44,561/- was a deductible business expenditure. The AO is accordingly directed to delete the disallowance of Rs.5,44,561/-. Ground No.2 is therefore dismissed."

Being aggrieved by this, Revenue has come up in appeal before us.

7. Before us Ld. DR for the Revenue has submitted that parties with whom the meetings were held by assessee were not furnished at the time of assessment proceedings. He vehemently relied on the order of AO.

On the other hand, Ld. AR for the assessee submitted that all the necessary details of sales promotion expenses were furnished at the time of assessment proceedings. Ld. AR for the assessee further submitted that the rates in the clubs are the concessional rates and therefore it is always cost-effective to hold the business meeting with the clubs. The assessee was able to achieve its turnover of Rs. 4 crores approximately by maintaining the cordial

relationship with its business associates. Ld. AR relied on the order of Ld. CIT(A) and stated that issue may be decided on merit.

8. Heard the rival contentions and perused the materials available on record. We find that in the instant case the AO disallowed the club expenses claimed by the assessee on the ground that these were not incurred for the purpose of the business. However the same were allowed by the Id CIT(A) by holding that these expenses were incurred to hold business meetings at clubs to entertain clients and expand the business . Now the issue before us arises for the adjudication so as to whether the club expenses incurred by the assessee are having any nexus with the business of the assessee in the aforesaid facts and circumstances. In this connection, we find that the clubs provided several kinds of facilities such as conferences, business meetings, as well as provision for multimedia exhibition. Many clubs allow membership to companies or other business entities. The membership is given in name of company or other concern. It is very well known that the clubs are a platform to meet people. The meetings can be privately organized or can be in the course of mass meetings or gatherings at the time of functions or celebrations at club. By visiting clubs, chances of making new contacts improve. With new contacts people can do more interactions which can be beneficial for business and profession. Therefore business organizations like company, firm, bank, co-operative society etc. functions through human agencies which may be directors or other officers of business organization. Therefore, business organizations provide facility to their officers to attend and avail services of clubs. Clubs make company or other business organization as its member. This is generally called as corporate membership. The expenses may be in nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc. The purpose of the expenditure is to have a suitable platform for meeting people and getting advantages of meeting many people at a time to maintain old contacts and also to make new contacts. The main purpose of the organization is to induce its officers to attend such places for

maintaining and making contacts for the benefit of business. Even if some personal advantage is obtained by officers, it will be in nature of maintaining good relations with officers and in nature of staff welfare expenses. Therefore, the expenses are incurred wholly and exclusively for the purpose of business. By obtaining membership for a period of more than one year, there may be an advantage of enduring nature. However, such advantage is in the field of revenue benefit and not for obtaining any capital asset or obtaining benefit in capital field. Therefore such expenses will be of revenue nature. In view of above, we find no infirmity in the order of Id CIT(A). Hence, this ground of appeal raised by the Revenue is dismissed.

9. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 21/12/2016

Sd/-
(न्यायिक सदस्य)
(A.T.Varkey)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 21/12/2016 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Wrd-8(1), P7, Chowringhee Square, 5th Floor, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Arun Electrical Pvt. Ltd., B1-D, 3rd Floor, White House, 119 Park Street, Kolkata-16
3. संबंधित □ यकर □ युक्त / Concerned CIT Kolkata
4. □ यकर □ युक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, □ यकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/□ देश से,

/True Copy/

उप/सहायक पंजीकार
□ यकर अपीलीय अधिकरण,
कोलकाता ।