

**आयकर अपीलिय अधिकरण, "ई" खंडपीठ मुंबई**  
**INCOME TAX APPELLATE TRIBUNAL, MUMBAI-"E", BENCH**  
सर्वश्री राजेन्द्र, लेखा सदस्य एवं संदीप गोसाईं, न्यायिक सदस्य  
**Before S/Sh. Rajendra, Accountant Member & Sandeep Gosain, Judicial Member**  
**आयकर अपील सं./ITA No.2989/Mum/2012 निर्धारण वर्ष/Assessment Year-2009-10**

Subhash Chandra Punja, 1501, 15 <sup>th</sup> Floor, Ambrosia Orchard Avenue, A.S. Marg, Hiranandani Gardens, Powai, Mumbai-400 076. <b>PAN:AADPP 0457 B</b>	Vs.	Income tax Officer-10(3)(4), Room No.452, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020.
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(अपीलार्थी / Assessee )

(प्रत्यर्थी / Respondent)

**निर्धारिती ओर से/Assessee by : Shri Subhash Shetty**

**राजस्व की ओर से/ Revenue by : Shri Aarsi Prasad, DR**

**सुनवाई की तारीख/ Date of Hearing : 15.01.2016**

**घोषणा की त /Date of Pronouncement : 15.01.2016**

**आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश**

**Order u/s.254(1) of the Income-tax Act, 1961 (Act)**

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the order dt.27.2.2012 of CIT(A)-20, Mumbai, the Assessee has filed the present appeal. During the course of hearing the Authorised Representative (AR), did not press ground No.3 and 4. Hence, same stand dismissed as not pressed.

2. Assessee, an individual filed his return of income on 31.3.2009 declaring total income of Rs. 8,53,600/-. The Assessing Officer (AO) completed the assessment on 21.12.2012, u/s. 143(3) of the Act, determining the income of the assessee at Rs.37,62,380/-.

3. First effective Ground of appeal (GOA-1 and 2) is about foreign travel expenses. During the assessment proceedings the AO found that the assessee had spent a sum of Rs.13.26 lakhs through various credit cards, that the expenses incurred has been paid by his employer i.e. Robonik (India) P. Ltd.(RIPL), that the total payment made by the employee to the assessee was of Rs.22.51 lacs. The AO issued a show cause notice in that regard and asked the assessee as to why the payment in question (Rs.22,51,208/-) made to him by his employer should not be treated as perquisite u/s. 17(2)(iii) of the Act. After considering the submission of the assessee, dated 8.11.2011, the AO referred to the section 17(2)(iii) specially the term perquisite. He held that the assessee was a director of RIPL, that he had utilised his own credit card for incurring personal expenses such as travelling, boarding, lodging and purchase of space, that he had spent Rs.22.51 lacs, that the bill payment was effected by the employer by way of adjustment of his loan given to the employer company, that the assessee had received various amenities/benefits free of cost from the employer, that the explanation given by the assessee about adjustment against the loan was an afterthought, that it did not match with the details on record, that he had failed to prove nexus of said expenditure and to offer satisfactory explanation for incurring the credit card expenses, that he had not filed confirmation letter from the company, that the amount spent by the assessee and reimbursed by the company was squarely covered within the meaning of perquisite. Finally, the AO added it back to the income of the assessee.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was stated that the assessee had advanced loan to the company, that he had submitted all loan confirmation letters, that as on 31.3.2009 loan, amounting to Rs.2.20 cr., was outstanding, that the AO had confused the difference in the loan amount as adjustments of the credit card expenses, that the assessee had purchased material worth Rs.9.29 lakhs, that expenses were incurred for commercial expediency of the business of the company, that the expenses incurred through credit cards were recorded in the books of account of the company, that the company had paid fringe benefit taxes on the expenses incurred through the credit card of the assessee, that the expenses were not in the nature of perquisites.

After considering the submission of the assessee, the FAA held that the difference of Rs.19.85 lakhs was on account of outstanding interest payable, that out of Rs.22.5 lakhs, Rs.10.78 lakhs were incurred under the head foreign travelling expenses, that Rs.9.92 lakhs were spent for purchasing raw material, that the details produced by the assessee with regard to foreign travel expense did not conclusively prove that the entire expenses were incurred for the company's business exclusively, that the personal element could not be ruled out, accordingly he held that 50% of the expenditure on account of foreign travel was to be treated as perquisite in the hands of the assessee.

5. Before us, the AR stated that the assessee himself had disallowed 10% of the travelling expenditure, that the foreign tours were undertaken for business purposes, that the disallowance made by the FAA was on higher side. Departmental Representative (DR) left the issue to the discretion of the Bench.

6. We have heard the rival submissions and perused the material before us. We find that the FAA had held that the personal element in the travelling expenses could not be ruled out considering the foreign tours undertaken by the assessee, that the assessee had claimed that he himself had disallowed 10% of the travelling expenses, that the FAA had disallowed 50% of the expenses, that the assessee was the director of the company who was single handedly handling its affairs. In our opinion, by disallowing 10% of the expenses the assessee had himself indirectly admitted existence of personal element with regard to the travelling expenditure. However, in our opinion disallowance of 50% was on higher side. We are of the opinion that to meet the end of justice disallowance should be restricted to 25%. Ground no. 1-2 are allowed in favour of the assessee, in part.

As a result, appeal filed by the assessee stands partly allowed.  
फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 15<sup>th</sup> January, 2016.  
आदेश की घोषणा खुले न्यायालय में दिनांक 15 जनवरी, 2016 को की गई।

Sd/-

Sd/-

(संदीप गोसांई/Sandeep Gosain )  
न्यायिक सदस्य/Judicial Member

(राजेन्द्र / Rajendra)  
लेखा सदस्य/Accountant Member

मुंबई Mumbai, दिनांक Date: 15.01.2016  
व.नि.स. Jv.Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR “ E” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि के खंडपीठ, आ.अ.न्याया.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**  
उप/सहायक पंजीकार **Dy./Asst. Registrar**  
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**