

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

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.387/Kol/2013
Assessment Year :2009-10

M/s Dey Book Concern, 15, ShyamCharanDey Street, Kolkata -73 [PAN No.AAEFD 2942 C]	V/s.	ACIT, Circle-37, Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Ravi Tulsia, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Rajat Kr. Kuveel, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	27-11-2015
घोषणा की तारीख/Date of Pronouncement	20-01-2016

आदेश/ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by assessee is against the order of Commissioner of Income Tax (Appeals)-XXIV, Kolkata in appeal No.1051CIT(A)-XXIV/C-37/11-12 dated 19.12.2012. Assessment was framed by ACIT, Circle-37, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 28.12.2011 for assessment year 2009-10.

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

"1. The orders passed by the lower authorities are arbitrary, erroneous, without proper reasoning, invalid and bad in law, to the extent to which they are prejudicial to the interest of the appellant.

2. On the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining the disallowance out of 'Book Distribution' expenses to the

extent of ₹9,69,062/- being 15% of the total expenses claimed in this regard at ₹64,60,413/- instead of allowing the full claim.

3. On the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining the disallowance out of 'Carriage Inward' expenses at ₹6,999/- and out of 'Carriage Outward' expenses at ₹7,307/- instead of allowing the full claims.

4. On the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining the disallowance of ₹1,303/- and ₹7,750/- out of "Ganesh Puja" expenses and "Bengali New Year Celebration" expenses respectively.

5. On the facts and in the circumstances of the case, the learned CIT(A) erred in sustaining the disallowance out of 'Sales Promotion' expenses at ₹70,904/-, being 10% of the total claim of ₹7,09,039/- in this regard.

6. On the facts and in the circumstances of the case, the learned CIT erred in sustaining the disallowance out of 'Canvassing charges' at ₹99,623/-, being 10% of the total claim of ₹9,96,235/- in this regard."

3. First ground raised by assessee is that Ld. CIT(A) erred in sustaining the disallowance of Book Distribution expenses to the extent of ₹9,69,062/- being 15% of total expense claimed by assessee of ₹64,60,413/-.

4. Briefly stated facts are that assessee is a partnership firm engaged in the publication business which involves both publishing and selling books. During the year assessee has claimed expense for an amount of ₹64,60,413/- on account of books distribution. The assessee submitted that distribution of sample or specimen books to educational institutions, teachers and academicians is essential for the purpose of making the books popular. Once the books become popular among the users of the books then it is easy to introduce the books in schools & colleges for the corresponding academic sessions. The assessee also submitted that distribution of sample books in publication industry is very much prevalent and essential to make bonanza sale of the books in competitive market. However, the AO called upon the assessee for the verification of the expenses but the assessee could not submit bills and vouchers in support its book distribution expenses. Assessee submitted only certain receiving registers which were signed by various

educational institutions, teachers and academicians to whom specimen copies of books were given. It was observed by AO from receiving registers that stamps of various reputed colleges were also mentioned. Besides, some individual names of recipients of sample books also were recorded along with phone numbers. The AO randomly rang up to some of phone numbers for the purpose of verification but most of the numbers were found out of services, while other persons refused to acknowledge of having received any sample book. The assessee further submitted that no schools, colleges and teachers will admit the fact that they have received the sample books because this system of book distribution is outside the norm of educational system. As such the AO could not verify the expense regarding distribution of sample books, therefore disallowed 35% of expense as claimed by assessee under the head "book distribution". Accordingly, AO added a sum of ₹22,61,145/- to the income of assessee.

5. Aggrieved, assessee preferred appeal before Ld. CIT(A) who upheld the action of AO after giving partly relief by observing in para-3.3 of his order, which reproduced below:-

"3.3 I have carefully considered the observation of the Assessing Officer in the assessment order and also the submissions of the Ld. A/R. During the year, the appellant has incurred an expenditure of Rs.64,60,413/- on account of "book distribution". The appellant could not produce the supporting bills and vouchers before the A.O at the time of scrutiny assessment. During the course of appeal, the Ld. A/R has explained that the appellant's business of publishing and selling books depends on the distribution of sample/specimen books to various educational institutions and teacher. Keeping in view the volume of the business, I am of the opinion that the expenditure shown at Rs.64,60,413/- on account of book distribution is very high and excessive. In my opinion, it would be reasonable and proper if the disallowance out of book distribution expenses is restricted to Rs.9,69,062/- being 15% of book distribution expenses. Accordingly the AO is directed to restrict the disallowance on account of book distribution expenses to Rs.9,69,062/- instead of Rs.22,61,145/-. This ground of appeal is partly allowed."

6. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

7. Shri Ravi Tulsiyan, Ld. Authorized Representative appearing on behalf of assessee and Shri Rajat Kr. Kuveel, Ld. Departmental Representative appearing on behalf of Revenue.

8. We have considered rival contentions of both the parties and perused the materials available on record. The Ld AR submitted a paper book which is running topages from 1 to 429. Theld. AR submitted that assessee is engaged in publication business which requireslot of promotional activities for the growth of business. For that purpose, it is necessary to distribute the sample books amongst students and teachers so as to increase sale of such books. As per the prevailing practice in publication business, the promotion of book selling is done by distributing specimen copies of the books to various educational institutions like schools, colleges and teachers/principles of such educational institutions. The Ld. AR further submitted that assessee distributed sample books free of cost to the abovementioned parties after taking acknowledgement from those concerned parties and in this regard our attention was drawn at **pages 33 to 45** of the paper book, wherein the receiving of sample books were duly signed by the recipients. The assessee also submitted that distribution of sample books does not increase sale in same year but in the year when sample books are included in the curriculum of next academic session. Ld. AR submitted that sample books distribution is an integral part of a publication house and prayed for allowing of all the expenses incurred in relation to sample books distribution expenses. On the other hand, Ld.DR vehemently relied on the order of authorities below.

9. From the aforesaid discussion, we find that AO disallowed the expense in relation to sample books distribution on the basis of non-availability of supporting documents at the time of assessment proceedings. The assessee was able to produce only the receiving registers duly signed by the recipients to whom the specimen copies were given. In the absence of documentary evidence the AO disallowed such expense on the basis of reasonable

estimate. We further find that such expense claimed by assessee for distributing of sample books are not supported from the bills & vouchers. However, Ld. AR was able to give the registers, wherein the details of recipients of sample books were contained. We also find that disallowance was made by AO @ 35% of total book distribution expense which has been reduced by Ld. CIT(A) to 15%. From the order of lower authorities we find that that the nature of the expenses has not been doubted but the supporting expenses vouchers have not been produced, so the disallowance was made on estimated basis. No comparison of such expenses claimed by the assessee in the preceding years or subsequent years relevant to the year under consideration has been furnished. Considering the fact regarding the importance of distribution of sample books and totality of the claim of assessee we further restrict the distribution of such expenses to the extent of 5%. Accordingly, we direct the AO to re-compute the disallowance of sample books distribution expenditure @ 5% of the total expense incurred by assessee. This ground of assessee's appeal is partly allowed.

10. Ground No. 2 raised by the assessee in this appeal is that Ld. CIT(A) erred in sustaining disallowance of carriage inward expense of ₹6,999/- and carriage outward expenses at ₹7,307/-.

11. During the year, assessee has claimed carriage inward expenses for an amount of ₹ 69,990/- which was supported from the debit vouchers. Therefore, AO has disallowed 25% of carriage inward expenses and added to the income of assessee.

12. Aggrieved, assessee preferred appeal before Ld. CIT(A) who has reduced the disallowance to the extent of 10% of carriage inward expenses by observing as under:-

"4.3 I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the Ld. A/R. Considering the volume of the business, the AO is directed to restrict (i) the disallowance out

of Carriage Inward Expenses to Rs.6,999/- and (ii) the disallowance out of Carriage Outward Expenses to Rs.7,307/- instead of Rs.17,498/- and Rs.18,267/- respectively. These grounds of appeal are partly allowed.”

13. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

14. Before us Ld. AR submitted that the assessee has to pay charges to coolies and transports for bringing the books from binders to its sales counter and then again carry them out to the distributors for delivery. Such expenses are petty in nature but numerous in number, the transporters to whom payments are made are usually minivan drivers or rickshaw pullers. Therefore, payments to such coolies/transporters are only made in cash. Moreover, payments made to coolies/transporters in this regard consist of various amounts ranging from ₹10 to ₹ 2,875/-. It is only possible to make such payments in cash and not through any banking channel. It was also submitted by Ld. AR that on the reverse side of vouchers the names of coolies/transporters to whom payment were made put their signatures/thumb impressions. Evidencing the genuineness of the expense, sample copies of debit vouchers relating to 'carriage inward' and 'carriage outward' enclosed at page No. 46 to 89 of the paper book is enclosed. The assessee has also submitted a chart in support of its claim. On the other hand Ld. DR relied on the orders of authorities below.

15. At the time of hearing, we find from the chart given by Ld. AR in relation to above stated expenses that assessee has been incurring such expenses for the above stated activities and no disallowance has been made in the past. Besides, this, we find the amount incurred by assessee is meager. Considering the submission of Ld. AR and totality of the facts, we reverse the orders of authorities below and delete the additions made by AO. This ground No. 3 of assessee's appeal is allowed.

16. Ground No.3 raised by the assessee in this appeal is that Ld. CIT(A) erred in sustaining the disallowance of ₹1,303/- and ₹7,750/- out of “Shree Ganesh Puja and “Bengali New Year Celebration” expenses.

17. During the year assessee has claimed expenses for the purpose of “Ganesh Puja” for an amount of ₹ 5,210/-and “New Bengali Year” celebration for an amount of ₹31,000/- only. Mostly, these expenditures were incurred in cash and supported with debit vouchers only. Therefore, AO has disallowed 25% of such expenses and added total income of assessee.

18. Aggrieved, assessee preferred appeal before Ld. CIT(A) who has upheld the action of AO by observing as under:-

“I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the Ld. A/R. Considering the nature of the business, the disallowances of Rs.1,303/- and Rs.7,750- out of Ganesh Puja and Bengali New Year Celebration respectively are confirmed. This ground of appeal is dismissed.”

19. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

20. Before us Ld. AR submitted that “Ganesh Puja” is considered necessary for betterment of its business. Indians have emotional attachment with such festival of “Ganesh Puja”. The people of West Bengal also celebrate “Bengali New Year”. Assessee has incurred expenses on the purchase of flowers and sweets which were distributed amongst the workers and business associates. The necessary detail of such expense is enclosed at pages 91 to 93 of the paper book. It was also submitted by Ld. AR that such expenses have been incurred by assessee in the earlier assessment year and no disallowance was made. Finally, assessee prayed for relief of such expenses. On the other hand Ld. DR simply relied on the orders of authorities below.

21. From the aforesaid discussion, we find that AO disallowed such expenses on ad hoc basis @ 25% of the above-stated expenses. However, we find from the details of expenses given by assessee in the form of a comparative chart that such expenses have been incurred by assessee in earlier year and no disallowance have been made on this account. Therefore, in order to maintain the consistency of such expenses we deem it fit to reverse the orders of authorities below and delete the same. This ground of assessee's appeal is allowed.

22. Ground No. 4 raised by the assessee in this appeal is that Ld. CIT(A) erred in sustaining the disallowance of sales promotion at ₹70,904/- being 10% of ₹7,09,039/-

23. During the year assessee has claimed sales promotion expense for an amount of ₹7,09,039/- which is comprising the following:-

- a. Expenses reimbursed for sales campaign locally – Rs.58,406/-
- b. Expenses reimbursed for sales campaign in the district –
Rs.3,24,467/-
- c. Car hired expenses for the above – Rs.3,26,166/-

23.1 During the course of assessment proceedings, AO found that all the expenses claimed by assessee in the case of (a) and (b) have been incurred in cash. The assessee has produced only debit vouchers in support of its claim. Therefore, AO has disallowed the above expenses @ 15% and added back to the total income of assessee. However, in case of (c) assessee has produced vouchers in support its claim but AO found on estimate basis that 20% of such expenses are in personal nature. Therefore, 20% of such expenses are disallowed and added to the total income of assessee.

24. Aggrieve, assessee preferred appeal before Ld. CIT(A) who has reduced such expense to the extent of 10% by observing as under:-

“6.3 I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the Ld. A/R. During the year, the appellant has incurred an expenditure of Rs.7,09,039/- on account of Sales Promotion Expenses. During the course of appeal, the Ld. A/R has explained that the appellant debited expenses which were incurred by the sales boys during sales promotion campaigns in different places of West Bengal so that the books published by the appellant were enlisted in different schools. In the assessment order, the AO has observed that the vouchers in relation to Sales Promotion Expenses have been mostly maintained. Considering the facts of the case, the AO is directed to restrict the disallowance to Rs.70,904/-, being 10% of Sales Promotion Expenses instead of Rs.1,41,808/-. This ground of appeal is partly allowed.”

25. Before us Ld. AR of assessee submitted that the assessee in order to popularize its business in all avenues of education conducts promotional campaigns through its sales executive to increase sales all over of this State. For this purpose sales executives travel in and outside Kolkata to distribute books in different areas as a part of this campaign. For the same, the employees of the assessee incur expenses on food and accommodation, travelling etc. The employees are paid in advance for the same. However, after returning from such campaigns, the employees submit details of actual expenses incurred by them. Evidencing these expenses, sample copies of bills relating to lodging expenses are enclosed at page nos. 107 to 112 of the paper book. However there was no bill available for expenses incurred on food since bills from hawkers or street food centre are usually not available. The executives are required to eat at small vendors and are not permitted to eat at restaurants, therefore proper bills are not issued for the food expense. Further, sometimes car is hired for travelling in and around Kolkata and the payments for the same are made sometime through cheque and sometime in cash. Evidencing these expenses sample copies of bills relating to car hiring expenses are enclosed at **page No. 113 to 142** of the paper book. On the other hand Ld. DR simply relied on the orders of authorities below.

26. From the aforesaid discussion, we find that assessee has been claiming these expenses in the earlier years and subsequent year to the relevant year. But no disallowance has been made in respect of the above expenses in

earlier years and subsequent years to the relevant assessment year. We find that the AO has disallowed the expenses on *ad hoc* basis due to non production of the supporting bills and vouchers. However the Id. AR before us has submitted a chart showing the comparison between the turnover and such expenses for the earlier years and subsequent year. The purpose of this comparison of expenses of various years is to justify that the assessee has been incurring such expenses consistently and no issue for the disallowance arose. In view of above and in the interest of justice we reverse the orders of authorities below and delete the addition. This ground of assessee's appeal is allowed.

27. Ground No. 5 raised by the assessee in this appeal is that Ld. CIT(A) erred in sustaining the disallowance of canvassing charges at ₹99,623/- being 10% of Rs. 9,96,235/-

28. During the year assessee has claimed a sum of ₹9,96,235/- towards the canvassing charges. It was claimed that assessee is having certain agents who used to go to the shop owners in sunburn areas for the promotion of its publishing books. The agents used to charge some commission for the sale of books and for collecting the sale consideration from the shop owners. During assessment proceedings the AO found that the payments have been incurred partially in cash and partially in cheque. The assessee did not produce all the vouchers in support of its claim. Therefore, 25% of such expenses was disallowed and added to the total income of assessee.

29. Aggrieved, assessee preferred appeal before Ld. CIT(A) who reduced the disallowance to the extent of 10% of such expenses by observing as under:-

"7.3 I have carefully considered the observation of the Assessing Officer in the assessment order and also the submission of the Ld. A/R. During the year, the appellant has incurred the expenditure of Rs.2,49,059/- on canvassing charges. During the course of appeal, the Ld. A/R has explained that the appellant has paid commissions to book shop owners in sub-urban areas for

promoting books published by it. Considering the nature of the business of the appellant, the AO is directed to restrict the disallowance to Rs.99,623/-, being 10% of Canvassing charges instead of Rs.2,49,059/-. This ground of appeal is partly allowed.”

30. Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

31. We have heard rival contentions and perused the materials available on record. Before us Ld. AR submitted that the assessee used to pay commission to book shops owner in sub-urban areas for promoting books published by it and reflected such expenses under the head “canvassing charges”. The necessary detail of the canvassing charges is enclosed at **page No. 143 to 429** of the paper book. On the other hand Ld. DR simply relied on the orders of authorities below.

32. From the aforesaid discussion, we find that the assessee has been incurring such expenses for canvassing charges for which no disallowance has been made by Revenue either in earlier year or subsequent year. Therefore to keep the consistency incurring by assessee for such expenses and considering the facts of the case, we delete the additions made by AO and confirmed by Ld. CIT(A) and AO is directed accordingly.

33. **In the result, assessee’s appeal is partly allowed.**

Order pronounced in the open court 20/01/2016

Sd/-
(N.V.Vasudevan)
(Judicial Member)
Kolkata,
*Dkp

Sd/-
(Waseem Ahmed)
(Accountant Member)

दिनांक:- 20/01/2016 कोलकाता ।

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

1. अपीलार्थी/Appellant-M/s Dey Book Concern, 15, ShyamCharan Dey St. Kol-73
2. प्रत्यर्थी/Respondent-ACIT, Cir-37, Kolkata
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,
/True Copy/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।