

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA
BEFORE SHRI A.T.VARKEY, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.322/KoI/2014

(निर्धारण वर्ष /Assessment Year:2010-2011)

Mohata Coal Company Pvt.Ltd. HMP Building 5 th Floor, 4, Fairlie Place Kolkata-700001	Vs.	DCIT, CC-XXI, Aayakar Bhawan Purva, 8 th Floor, 110 Shanti Palli, Kolkata-700107
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM 1775 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Amit Agarwal, Advocate
Revenue by : Shri Rajat Kumar Kureel, JCIT Sr.DR

सुनवाई की तारीख / **Date of Hearing** : **21/12/2016**

घोषणा की तारीख/**Date of Pronouncement** **04/01/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2010-2011, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-II, Kolkata, in Appeal No.19/CC-XXI/CIT(A)C-II/13-14, dated 09.12.2013, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section 143(3) of the Income Tax Act 1961, (in short the 'Act'), dated 25.03.2013.

2. Brief facts of the case qua the assessee are that the assessee company engaged in the business of manufacturing of fabricated metal & structural products, filed its e-return of income on 24.09.2010 showing total income of Rs.9,99,292/-. Thereafter the case of the assessee was selected for scrutiny and the AO framed the assessment making disallowance of Rs.13,79,177/- of staff welfare expenses and

Rs.5,59,225/- of travelling expenses on account of expenses incurred by the assessee for higher studies of a staff of the company.

3. Aggrieved from the order of Id. Assessing Officer, the assessee filed an appeal before the Id. CIT(A), who has also confirmed the additions made by the AO, by observing the followings :-

5. I have considered the submission of the appellant and perused the assessment order. During the course of appellate proceedings, the Ld. A.R. of the appellant company was asked to submit the details/explanation with regard to exact relationship between Ms. Megha Goyal and one of the Directors of the appellant company, copy of appointment letter of Ms. Megha Goyal, her educational qualification at the time of her appointment, her designation in the company's job, for which course she went to UK, duration of course and up to which period did she work in the company after completing her course. The aforesaid details were submitted by the appellant's A.R. On examination of details, it is observed that Ms. Megha Goyal is the daughter of brother of Shri Ramesh Goyal, one of the Directors of the appellant company i.e. she is the niece of the director. It is observed that Ms. Megha Goyal was appointed as "Public Relation Officer" of the company w.e.f. 1st October, 2008 at the monthly remuneration of Rs.30,000/- and other benefits applicable to the employees of the company. As per the appointment letter, Ms. Goyal was responsible for overall supervision of the Company's Machining Division and also look after day to day affairs with the Company's Vendors. At the time of her appointment in the appellant company, she was holding a simple graduation degree. It is explained by the Ld. A.R. that in the month of July, 2009, Ms. Megha Goyal approached the company to sponsor for her higher study in UK at the Nottingham University for MBA in the Management Stream. On her request, the company had agreed to sponsor her higher study for which she also executed a bond that after completion of course she will work for the company for the minimum period of 3 years at the salary of Rs.1,35,000/- per annum. As per the details submitted in the course of appellate proceedings, on completion of her course Ms. Goyal again joined the company in October, 2010 and left the company in June, 2013.

On careful consideration of facts, I am of the opinion that the AO has arrived on the right conclusion that the expenditure incurred by the appellant company on the higher education of niece of one the directors is not allowable as deduction u/s 37 of the Act. On perusal of copy of appointment letter and Sponsorship Agreement (Bond), it appears that all the documents were made and planning was done so that the expenditure incurred on the higher studies of Ms. Megha Goyal may be claimed as business expenditure of the

appellant company and cleverly debited under the heads 'Staff welfare Expenses' and 'Travelling Expenses' and not shown separately as 'Education Sponsorship Expenses'. It is an admitted fact on record that Ms. Megha Goyal herself approached the appellant company for sponsorship of her higher education at UK and this happened only because her paternal uncle was the director of the company. This could have not been possible for any other employee not related to the management of the company. The appellant company incurred the substantial amount of expenditure only for the reason that she is a relative of the director. It is argued by the appellant that it was a prudent business decision to send Ms. Goyal for higher study so that after her return, the company may reap the benefits of her expertise and knowledge to promote the business of the appellant company. However, I am of the opinion that this argument is only on paper. In actual what benefits were derived by the appellant company from her higher education knowledge is not known even to the appellant company itself. Otherwise, the appellant could have substantiated its case strongly both before the AO as well in appellate proceedings. However, the appellant did not produce a single submission or data or evidence in support of its claim about the purpose for which sponsorship was granted for higher education of Ms. Goyal. As mentioned above, as per the bond, Ms. Megha Goyal was to work for the period of 3 years after returning from UK. The same bond says that if Ms. Goyal leaving the company before the expiry of the Bond period at her own will, the company will recover the total expenses incurred on her along with interest @ 18% per annum from her. As per the submission made by the appellant's A.R. in the course of appellate proceedings, it an admitted fact that for whatever reason but Ms. Megha Goyal left the company on her own before the expiry of bond period. Thus, in fact, as per the 'Sponsorship Agreement', the appellant company should have recovered all the expenditure along with interest from Ms. Goyal and in place of claiming the deduction of expenses under the heads staff welfare and travelling expenses, the appellant should have declared the interest income in the profit and loss account received from Ms. Megha Goyal for breach of Bond. However, nothing this sort was done by the appellant company and only reason for this was that Ms. Goyal was the niece of Shri Ramesh Goyal, Director of the appellant company. The claim of the appellant company that as per the bond Ms. Goyal agreed to work for a period of 3 years at a concessional salary of Rs.1,35,000/- per annum; is also an eye wash. Initially, she was appointed at a salary of Rs.3,60,000/- per annum. It is not known that how much salary jump was contemplated by the appellant company for her after completion of her course at UK and, therefore, claiming that she worked at a concessional amount of salary. As per the bond she was to work at the salary of Rs.1,35,000/- per annum. Considering her initial salary structure of Rs.3,60,000/- per annum, the appellant company was saving Rs.2,25,000/- per annum. In three years, the appellant could have recovered Rs.6,75,000/- only in the form of concessional

remuneration. Whereas, the appellant had incurred expenditure of Rs.19,38,402/-. Further, as mentioned above, Ms. Goyal left the company before the expiry of bond period. In view of above facts, I am of the opinion that the AO has arrived on a correct conclusion that the expenditure was not incurred wholly and exclusively for the purpose of business of appellant company and, therefore, not allowable as deduction u/s 37 of the Act.

5.3 In the case of CIT vs. R.K.K.R. Steels (P) Ltd., 258 ITR 306 (Mad.), the assessee company was engaged in the business of re-rolling and manufacturing of steel. The company claimed that the expenditure incurred on meeting the cost of travel to USA and the expenditure connected with the education of the son of Balwant Rai who was the director of the company, was deductible as business expenditure as the said Rajiv Rai had acquired a MBA degree and had later on joined the company. It was claimed that the expenditure was incurred for the benefit of the business of the company as he subsequently became the director of the company. The claim of the assessee was disallowed by the AO but allowed by the Tribunal. On further appeal to the High Court, the Hon'ble Madras High Court has held as under:

"If the assessee's logic were to be accepted, in every family owned business, all the expenditure incurred in bringing up the children who may later on be given a role in business as partners or directors could be claimed as business expenditure incurred in training the prospective employees and directors of the business. The expenditure permissible for deduction is expenditure that is wholly and exclusively laid out for the purposes of business. The expenditure which a father incurs out of his natural love and affection for his children in meeting the cost of their education cannot become business expenditure merely because he is also the owner or a director of a business in which the son or daughter subsequently takes part. It is not the case of the assessee that the assessee had a scheme of sending people abroad for training with stipulation that after receiving the benefit of training they should work for the company and that moneys expended on such training were in fact, moneys which were expended for the purpose of obtaining the benefit of their expert service after they acquire proficiency in the field in which they had been sent for training. It is evident that a director- father had, instead of incurring expenses from his personal account, which he should have, had, merely chosen to debit the expenditure of his son's education to the business of which he was the director. Such expenditure does not become business expenditure, merely because the father was in a position to debit the expenditure to the accounts of the business. The Tribunal was clearly in error in accepting and allowing the claim which had been rightly disallowed by the AO and the CIT(A) in appeal. On the facts and circumstances of the case, the expenditure incurred foreign training of Rajiv, son of the director of

the company cannot be said to have been incurred for the purposes of the business and was not allowable as admissible deduction."

In the case of appellant company the facts are almost similar to the facts in the case of R.K.K.R. Steels (P) Ltd. The appellant company did not produce any evidence that it was having any scheme for sending their employees abroad for training and as to whether prior to Ms. Megha Goyal any other employee was also sent abroad for training. Under the circumstances, on facts of the case and respectfully following the principle laid down by the Hon'ble Bombay High Court and the Madras High Court, it is held that the expenditure of Rs.13,79,177/- and Rs.5,59,225/- debited under the heads 'Staff Welfare' and 'Traveling' aggregating to Rs.19,38,402/- is not allowable as business expenditure u/s 37 of the Act. The disallowance made by the AO is confirmed. The ground no. 2 is dismissed."

4. Not being satisfied with the order of Id. CIT(A), the Assessee is in further appeal before us and has taken the following grounds of appeal :-

1. *That on the facts & circumstances of the case the order passed by learned Assessing Officer & CIT (A) was wrong & against the facts of the case.*
2. *That on the facts & circumstances of the case, learned Assessing Officer as well as CIT (A) was wrong in not allowing Rs.13,79,177/ - out of Staff Welfare Expenses & Rs.5,59,225/ - out of Travelling expenses on account of expenses incurred by; the appellant for higher studies of a staff of the company.*
3. *That on the facts & circumstances of the case, appellant may alter, add & delete any of the grounds of appeal on or before the hearing of the appeal.*

4.1 The Id. AR for the assessee has submitted that Miss Megha Goyal has joined the company from 1st October 2008 at the remuneration of Rs. 30,000/- per month for the post of Public Relation Officer (PRO). She had been looking after overall HR supervision of the company's Machining Division and also observed the day to day affairs of the company's vendor. In the month of July 2010, she approached the company to sponsor for her higher study in UK at the Nottingham University for MBA

in the Management stream. On her request, the company has agreed to sponsor her higher study. In this context, she has executed a Bond that after completion of her study, she will again join the company for a minimum period of three years at a remuneration of Rs. 1,35,000/- per annum. Her course was for 12 months only which was ended in September 2010. In the month of October 2010 she again joined the company at a remuneration of Rs. 1,35,000/- per annum and she has drawn the same as her first year remuneration from the company. She has left the company in the month of June 2013 due to her pregnancy. She had been worked with the company about 32 (thirty two) months after her study. She worked with the company at a low package after completion of her study and during her service period the company has reaped the benefits and expertise to promote its business operations and maintain labour harmony. The Id AR also submitted before us the appointment letter of Megha Goyal, Bond executed by Megha Goyal, copy of her Degree issued by the Nottingham University. Therefore, her study expenses should be allowed as business expenditure.

4.2 On the other hand, the Id. DR for the Revenue has primarily relied on the stand taken by the Id. Assessing Officer, which we have already noted in earlier para and is not being repeated for the sake of brevity.

4.3 Having Heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the Id AR for the assessee are supported by the facts narrated by him. As Id AR pointed out that Miss

Megha Goyal was working with the company prior to her higher study. Miss Megha Goyal had executed a bond stating that after her higher study she would work in the company. In fact she worked in company for 32 Months after her higher study. The company had reaped the benefits and expertise to promote its business operations and maintain labour harmony. The Id CIT(A) relied on certain judgments which are not applicable to the facts under consideration. Therefore, we are of the view that the addition made by the Assessing Officer and confirmed by the Id CIT(A) needs to be deleted. Accordingly, we delete the addition.

4.4 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 04/01/2017.

Sd/-
(A.T.VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 04/01/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-Mohata Coal Co. Pvt. Ltd.
2. प्रत्यर्थी / The Respondent.- DCIt, CC-XXI, Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता