

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'C(SMC)' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member**

**I.T.A. No. 1997 /KOL/ 2014  
Assessment Year: 2003-2004**

**NEECO INDIA LIMITED,.....Appellant**  
**C/o. Sri Jitendra Kaushik, Advocate,**  
**19D, Muktaram Babu Street,**  
**Kolkata-700 007**  
**[PAN : AABCN 0834 B]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-11(4), Kolkata**

**Appearances by:**

*Shri Jitendra Kaushik, Advocate, for the assessee*  
*Shri Rajat Kumar Kureel, JCIT, D.R., for the Department*

Date of concluding the hearing : June 09, 2016

Date of pronouncing the order : August 05, 2016

**O R D E R**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-XII, Kolkata dated 27.08.2014.

2. The issue raised in Ground No. 1 of this appeal relates to the disallowance of Rs.67,166/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) out of travelling expenses.

3. The assessee in the present case is a Company, which is engaged in the business of trading of Instrument Parts, measuring instruments, cables, etc. The return of income for the year under consideration was filed by it on 14.11.2013. During the course of assessment proceedings, various expenses claimed by the assessee were examined by the Assessing Officer and on such examination, he found that the expenses claimed by the assessee on travelling at Rs.2,23,889/- were more than 25% of the commission receipts, for which the same were incurred.

According to the Assessing Officer, the expenses so claimed by the assessee on travelling thus were excessive and unreasonable and there was a possibility of certain personal element involved therein. He, therefore, made a disallowance of Rs.67,166/- out of travelling expenses being 30% of Rs.2,23,889/-. On appeal, the Id. CIT(Appeals) confirmed the said disallowance.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As rightly submitted by the Id. counsel for the assessee, no instance whatsoever was pointed out by the Assessing Officer to show any personal or unverifiable element involved in the relevant expenses incurred by the assessee on travelling. He made an ad hoc disallowance of 30% out of such expenses merely on the ground that the same were more than 25% of the corresponding commission receipts, for which the same were claimed to be incurred. In my opinion, the disallowance made by the Assessing Officer out of travelling expenses thus is not well founded and the Id. CIT(Appeals) is not justified to confirm the same. I, therefore, delete the disallowance made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on this issue and allow Ground No. 1 of the assessee's appeal.

5. The issue raised in Ground No. 2 relates to the disallowance of Rs.42,530/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of car hire charges.

6. A sum of Rs.42,530/- paid to M/s. Ganesh Travels of Chennai was claimed by the assessee under the head "car hire and maintenance charges". From the perusal of the bills raised by the said party, it was noticed by the Assessing Officer that all the bills were drawn only for visits made by the assessee to Tirupati on different dates. Since the business purpose of the said visits could not be explained by the assessee, car hire charges to the extent of Rs.42,530/- were disallowed by the Assessing Officer. On appeal, the Id. CIT(Appeals) confirmed the said

disallowance made by the Assessing Officer for the same reasons as given by the Assessing Officer.

7. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the disallowance on account of car hire charges has been made by the Assessing Officer and confirmed by the Id. CIT(Appeals) for the failure of the assessee to establish the business purpose of the visits made to Tirupati. Even at the time of hearing before me, the Id. counsel for the assessee has not been able to explain as to how the visits to Tirupati were made for the purpose of the assessee's business. I, therefore, find no justifiable reason to interest with the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer on this issue and upholding the same, I dismiss Ground No. 2 of the assessee's appeal.

8. The issue raised in Ground No. 3 relates to the disallowance of Rs.82,017/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of sales promotion expenses.

9. Under the head "general expenses", a sum of Rs.82,017/- was claimed to be incurred by the assessee on sales promotion. Since the genuineness of the said expenses as well as business expediency could not be satisfactorily explained by the assessee despite specific opportunities given, the Assessing Officer disallowed the sales promotion expenses claimed by the assessee. Even before the Id. CIT(Appeals), the assessee could not establish its case on this issue and consequently the disallowance made by the Assessing Officer on account of sales promotion expenses was confirmed by the Id. CIT(Appeals).

10. I have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id counsel for the assessee has relied on the submission made by the assessee on this issue before the Id. CIT(Appeals) in writing as placed at page no. 5 of the paper

book, it is observed that the same is not sufficient to establish the genuineness of the expenditure claimed to be incurred by the assessee on sales promotion as well as its business expediency. The onus in this regard is on the assessee to support and substantiate its case and since the assessee has failed to discharge the same satisfactorily by bringing relevant documentary evidence on record, I find no infirmity in the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer on this issue. Ground No. 3 is accordingly dismissed.

11. During the course of appellate proceedings before the Tribunal, the assessee has raised an additional ground challenging the disallowance of Rs.76,830/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of commission.

12. In the application filed for admission of the additional ground, the assessee has submitted that the issue raised in the additional ground is arising from the order of the Id. CIT(Appeals), but the same was not raised in the original grounds by inadvertence. Keeping in view the submission of the assessee as well as the 'no objection' from the Id. D.R., the additional ground raised by the assessee is admitted and the same is being disposed of on merit.

13. During the year under consideration, expenditure of Rs.76,830/- was claimed to be incurred by the assessee towards commission on sale. Before the Assessing Officer, the assessee, however, could not establish the genuineness of the said expenditure as well as its business expediency despite sufficient opportunity given in this regard. The Assessing Officer, therefore, disallowed the expenditure claimed by the assessee on sales commission. On appeal, the Id. CIT(Appeals) confirmed the disallowance made by the Assessing Officer on this issue on the ground that the assessee even before him failed to establish the business expediency of the sales promotion expenses claimed to be incurred by it.

14. I have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the Id. D.R., the claim of the assessee for expenditure incurred towards commission on sales can be allowed only if it is established on evidence that the amount of such commission was paid by the assessee to the parties, who have rendered services in connection with the sales made during the year under consideration. The onus in this regard is on the assessee and he has failed to discharge the same satisfactorily before the authorities below as well as before me. Even the basis of such commission payment has not been explained by the assessee. I, therefore, find no justifiable reason to interfere with the impugned order of the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer on account of sales commission and upholding the same, I dismiss the additional ground filed by the assessee.

**15. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on August 05, 2016.

**Sd/-  
(P.M. Jagtap)  
Accountant Member**

***Kolkata, the 5<sup>th</sup> day of August, 2016***

- Copies to :*
- (1) **NEECO INDIA LIMITED,  
C/o. Sri Jitendra Kaushik, Advocate,  
19D, Muktaram Babu Street,  
Kolkata-700 007**
  - (2) **Income Tax Officer,  
Ward-11(4), Kolkata**
  - (3) **Commissioner of Income Tax (Appeals)-XII, Kolkata;**
  - (4) **Commissioner of Income Tax- ,**
  - (5) **The Departmental Representative**
  - (6) **Guard File**

*By order  
Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**