

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'A', New Delhi**

**Before : Shri I.C. Sudhir, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 3649/Del./2013
Assessment Year: 2010-11**

APPL Industries Ltd., F-169, Mansarovar Garden, New Delhi. PAN - AAFCA1026J (Appellant)	vs.	ACIT, Co. Circle 2(1), New Delhi. (Respondent)
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Appellant by	Sh. Salil Aggarwal, Advocate
Respondent by	Sh. S.K. Jain, Sr. DR

Date of Hearing	25.05.2017
Date of Pronouncement	31.07.2017

ORDER

Per L.P. Sahu, A.M.:

This appeal is preferred by the assessee against the order of the Id CIT(A)-V, New Delhi dated 03.04.2013 for the Assessment Year 2010-11.

2. Brief facts of the case are that the assessee filed return declaring an income of rupees 6,20,06,140/- on 12.10.2010. Later on the case was selected for scrutiny and statutory notices were issued and served upon the assessee. Detailed questionnaires were also sent to the assessee. This is a company engaged in the

business of manufacturing and trading of compound and master batch which is used as raw material in auto Mobile company for plastic components. During the assessment proceedings the Ld. assessing officer noted that an amount of Rs. 15,03,020/- has been debited as higher studies expenses. The assessee was asked to justify the claim of these expenses. The assessee submitted that managing director Sh. Aalekh Jain Hadi was sponsored for studies in foreign country for future benefit of the company. The assessee was not able to justify as to what type of higher studies were carried out and how these studies were relevant to the future of the company. As per letters dated 17/03/2010 the Ld. AO drew inference that he was a close relative of the directors. The Ld. assessing officer observed from the letters filed on 17/03/2010 that Sh. Aalekh Jain has been appointed as the director in the company on 28/09/2007 whereas in the submissions made before the CIT(A), it has been stated by the assessee that Shri Aalekh Jain was appointed as irector from 30.04.2007. The Ld. assessing officer also observed that he was in UK in the international course from January 2007 to December 2007. In this regard, the assessing officer issued show cause

notice to the assessee on 10.07.2012. Against this show cause notice the assessee replied as under :

“Assessee company has sent one of the director Sh. Aalekh Jain for higher studies in UK. Assessee company has invested the above amount to get full benefit of these expenses in the coming years. Therefore expenses incurred on account of higher studies should be allowed.”

3. From the above submissions and earlier reply submitted by assessee the Ld. assessing officer was not satisfied for reasoning that no effort has been made by the assessee to prove the contentions raised in its submission by any documentary evidence and there is no nexus with the business of the assessee and disallowed the total expenditure of Rs.15,03,020/-. Aggrieved by this addition the assessee appealed before the first appellate authority. The Ld. Commissioner of income tax (appeals) after considering the submissions of the assessee, disallowed the appeal of the assessee. Aggrieved by the order of the CIT (A) the assessee is in appeal before the Income Tax Appellate Tribunal.

4. The Ld. authorised representative submitted that the similar issues were involved for the assessment year 2008-09 and 2009-10 and the assessing officer disallowed to the education expenses of Aalekh Jain which were deleted by the CIT (A) in para No. 5 of the appeal order dated 29/09/2011 in appeal No. 108/2010-11. This decision has also been incorporated by the ld. CIT (A) in his order . He also relied on the 365 ITR 436.

5. The Ld. DR relied on the orders of the Lower authorities.

6. We have heard the submissions of both the sides and have gone through the entire material on record and we find no justification to interfere with the order of the ld. CIT(A) on this issue. The ld. CIT(A) has observed as under :

“From a perusal of the appeal order for the AY 2009-10 it has seen that the CIT(A) had seen the passport of Shri Aalekh Jain who had left Mumbai for London on 17.01.2007 and he was in London except for a brief period. He was made director of the appellant company from 30.04.2007. In the assessment order under consideration the AO has noted that in the submissions made before CIT(A) the appellant had submitted that Shri Aalekh Jain was appointed as director on 30.4.2007 whereas in the submissions made before him i.e. the AO, the appellant as per a letter dated 17.03.2007 had submitted that Shri Aalekh Jain was appointed as director on 28.09.2007. The fact remains that at the time of his leaving

for London on 17.01.2007 Shri Aalekh Jain was not director of the appellant company and there was no employee-employer relationship between Shri Aalekh Jain and the appellant company i.e. Shri Aalekh Jain had not been sent by the appellant company to London for studies as its employee. At the time of his appointment as director Shri Aalekh Jain was already in London for the purpose of studies in his individual capacity. The fact that he was already in London for studies and that there was no employee-employer relationship between Shri Aalekh Jain and the appellant company when he left for London escaped attention of the CIT(A) while passing the appeal order for the AY 2008-09; it also escaped attention of the undersigned at the time of deciding the issue for the AY 2009-10. From the aforesaid facts it is clear that Shri Aalekh Jain appointment as director was subsequently made merely to claim the expenditure incurred on his studies in the hands of the appellant company.

(ii). Keeping in view the facts and circumstances, the undersigned has no alternative other than deviating from the finding given by the CIT(A) for the AY 2008-09 and followed by the undersigned in the appeal order the AY 2009-10. Proceedings under the Income-tax law are not governed by principles of res-judicata and the doctrine of estoppel is also applicable in the light of new facts - facts being erroneously appreciated earlier. There is no heroism in perpetuating an error. Above all, CIT (A) is not a court of record.

(iii) Case laws referred to by the appellant are not applicable on the facts and circumstance of the appeal under consideration, In the case laws referred to by the appellant there was already employee-employer relationship between the parties when the employees were sent abroad for studies etc. whereas in the appeal under consideration there is no such relationship- Shri Aalekh Jain was appointed as director subsequently just to claim expenses on his studies and reduce tax liability of the appellant company. This is not permissible under the law.

(iv) The ratio of the judgement of the jurisdictional High Court of Delhi In the case of Enkay (India) Rubber (P) Ltd. 263 ITR 521(Delhi), relied upon by the AO is squarely applicable in this case .

(v) Without prejudice to the above, nothing has been brought on record to show that there was any nexus of the studies undertaken by Shri Aalekh Jain with the business of the appellant. For confirming the disallowance made by the AO on this account, reliance is being placed on the following judgments also, in which it has been held that expenditure incurred to earn personal gain and not for the purpose of business, is not allowable:

(a) Mac Explotec (P) Ltd. Vs. CIT (Kar) 286 ITR 378

(b) Silicon (India) Ltd. Vs DCIT (Mad) 295 ITR 422 and

(c) Echjay Forgings Ltd. Vs ACIT (Bom) 328 ITR 286

In view of the above, the disallowance made by the AO is confirmed and the ground of appeal is dismissed.”

7. Keeping in view the above findings of the Id. CIT(A) we find that the Id. CIT(A) has passed a reasoned order, which needs no interference. In the case of Kostub Investment Ltd. (supra) relied on by the assessee does not render any help in the instant case, being based on different set of facts and circumstances. The assessee has also failed to submit any evidence on record to substantiate the fact that when Shri Aalekh Jain had left India to abroad for studies, he was a director of assessee company. The assessee has not placed director's identification number (DIN) on

record. As noted by the authorities below, there is also contradiction in assessee's version regarding the date of appointment of Shri Aalekh Jain as director of the company. On the contention of assessee regarding rule of consistency, the Id. CIT(A) has given proper findings, which stand not properly controverted on behalf of the assessee. We, accordingly, find no justification to disturb the decision reached by the Id. CIT(A) on this account. Accordingly, the appeal of the assessee is found to have no merits and is liable to fail.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 31.07.2017.

Sd/-
(I.C. Sudhir)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated:31.07.2017

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Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*