

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'J', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI

Before Shri Shamim Yahya, AM & Shri Ravish Sood, JM

ITA No.4084/Mum/2015 : Asst.Year 2011-2012

M/s.Dev Land and Housing Pvt.Ltd. 10 th Floor, Dev Plaza Opp : Andheri Fire Station, SV Road Andheri (West), Mumbai – 400 058. PAN : AACCD3656L.	बनाम/ Vs.	Addl.Commissioner of Income-tax Circle 8(1) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : S/Shri Vijay Mehta & Anuj Kisnadwala
प्रत्यर्थी की ओर से /Respondent by : Ms.Arju Garodia (DR)

सुनवाई की तारीख / Date of Hearing : 22.06.2017	घोषणा की तारीख / Date of Pronouncement : 30.06.2017
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आदेश / ORDER

Per Shamim Yahya, AM

This appeal by the assessee is directed against the order of learned CIT(A) dated 04.03.2015 and pertains to assessment year 2011-2012.

2. The grounds of appeal read as under:-

"1. The learned Commissioner of Income Tax (Appeals) has erred in law and facts in passing the order u/s 143(3) of the Income Tax Act, 1961 determining the total income at Rs. 41,91,18,080/- as against returned income of Rs. 41,55,63,010/-

2. Purchase Rs. 2.83,064/-

(a) The learned Commissioner of Income Tax (Appeals) has erred in law and facts in disallowing purchases of Rs. 2,83,064/- pertaining to previous year settled in this year. The reasons

given by him for doing so are wrong and contrary to the fact of the case.

(b) The learned Commissioner of Income Tax (Appeals) ought to have allowed these purchases as even if it would have been accounted in previous year Work in progress on the other side would have gone up almost by the same amount which would be tax neutral.

3. Disallowance of payment made to Indian Polo Association of Rs. 10 Lacs.

(a) The learned Commissioner of Income Tax (Appeals) has erred in law an.' facts in disallowing Rs. 10 lacs paid to Indian Polo Association toward sponsoring the Indian team for Polo game. The reasons given by him for doing so are wrong and contrary to the fact of the case.

(b) The learned Commissioner of Income Tax (Appeals) ought to have allowed this contribution of Rs. 10 lacs which promotes the players to take part sports at world level tournaments. The sponsorship of Indian Polo tea commercially contributes to increase in business.

4. Foreign Exchange Difference of Rs. 23,61,000/-

(a) The learned Commissioner of Income Tax (Appeals) has erred in law a facts in disallowing foreign exchange difference of Rs. 23,61,000/- incurred wholly and exclusively for the purpose of business. The reasons given by r for doing so are wrong and contrary to the fact of the case.

(b) The learned Commissioner of Income Tax (Appeals) ought to have allo exchange difference of Rs.23,61,000/- or the basis of details given by assessee.

5. Foreign Travelling Expenses of Rs.4,11,012/-

(a) The teamed Commissioner of Income Tax (Appeals) has erred in law and facts in disallowing Rs. 3.31.012/- being travelling expenses pertaining to Dubai. The reasons given by him for doing so are wrong and contrary to the fact of the case.

(b) *The learned Commissioner of Income Tax (Appeals) has erred in law and V facts in disallowing Rs. 22,000/- being Switzerland visa charges. The reasons given by him are for doing so are wrong and incorrect.*

(c) *The learned Commissioner of Income Tax (Appeals) has erred in law and facts in disallowing Rs. 58,000/-pertaining to visit to Jodhpur via Udaipur. These are business expenses and incurred for the company as business.*

6. Sales promotion expenses of Rs. 4,11,000/-

(a) *The learned Commissioner of Income Tax (Appeals) has erred in law and facts in disallowing Rs. 4,11,000/- pertaining to sales promotion expenses. The reasons given by him for doing so are wrong and contrary to the facts of the case.*

(b) *The learned Commissioner of Income Tax (Appeals) ought to have allowed theses expenses as business expenses. These expenses are incurred during Ganeshotsav celebration in Mumbai which results into generation of more business for the benefit of the company.*

7. *The learned Commissioner of Income Tax (Appeals) has erred in law and facts in charging interest of Rs. 36,25,570/- instead of Rs. 29,86,774/- u/s 234C of the Act. He ought to have charged interest on the tax due on returned income.*

8. *The learned Commissioner of Income Tax (Appeals) has erred in law and facts in charging interest of Rs. 57,30,168/- instead of Rs. 55,70,791/- u/s 234B of the Act.*

9. *The appellant craves leave to add, to amend, alter and/or delete any of the grounds of appeal before or during the course of appeal.”*

3. *Apropos ground relating to purchase.*

3.1 On this issue the Assessing Officer made the disallowance by observing as under:-

“It was seen from Annexure 5 (pertaining to Clause 22(b) of the Tax Audit report) that the assessee had claimed following expenses in this A.Yr. although they pertained to earlier A.Yrs.

Sl No.	item (Rs.)	Amount
1.	Material purchased	2,83,064/-
2.	Professional charges	5,42,993/-
3.	Brokerage	3,26,719/-

The assessee was asked vide notice u/s 142(1) to justify the claim of above expenses and also state whether IDS has been deducted on the above mentioned amounts, wherever applicable. The assessee replied vide its letter dated 19.08.2013 as under :

Material purchased of Rs 2,83,064/-

Sr. No.	Name of the Party	Amount (in Rs)	Remarks
1	Paramount InfraProjects	92,400/-	Bill dated 30.06.09 settled on 07.08.10
2	Paramount InfraProjects	20,000/-	Bill dated 20.01.09 settled on 07.08,10
3	SSD Electricals	1,8007-	Bill dated 30.01.10 settled on 24.07.10

4	SSD Electricals	1,800/-	Bill dated 11.03.10 settled on 24.07.10
5	SSD Electricals	3,600/-	Material used in the month of May'10 settled on 29.07.10
6	HILTMndia Pvt Ltd	5,650/-	Material used in the month of May'10
7	Hari Om Tempanes	1,61,364/-	Material used in the month of May and June'10 and bill settled on 25,06. 10
	TOTAL	2,83,0647-	

The assessee has further claimed that some of the bills were under dispute and settled in this year. Hence, the expenditure should be allowed in this year.

I have gone through the submission of the assessee, but, I am not convinced. Since, the assessee is following mercantile system of accounting, hence, the bills should have been debited to the books of account in the same year when raised. Since the sale-bills have been raised in A.Y. 2010-11, these expenses cannot be allowed in A.Y. 2011-12. Hence, Rs 2,83,064/- is disallowed and added to the income of the assessee. Penalty proceedings u/s 271(l)(c) are initiated for furnishing inaccurate particulars of income.

However, the submission of the assessee regarding the professional charges of Rs 5,42,993/-and the brokerage of Rs 3,26,719/- are considered and found in order. Hence, no adverse view is taken.”

3.2 Before the learned CIT(A), assessee made elaborate submissions and also placed reliance upon several case laws. The learned CIT(A) summarily dismissed the assessee's submissions by holding as under:-

“It is an admitted fact that the bills for specific amount were issued for purchase of material and the amount was required to be booked as expenses during the relevant period. The reliance of the AR of the appellant on various case laws is patently wrong because in the present case of the appellant the bills were actually issued and the explanation of the appellant that the liability was determined and crystallized in A.Y. 2011-2012 is factually wrong. Hence the grounds of appeal is rejected.”

3.3 Against above order, assessee is in appeal before us we have heard both the counsel and perused the records. Learned counsel of the assessee submitted that the impugned expenses have been incurred by the assessee during the year. Though the bills were received in the earlier year they were settled during the current financial year. He submitted that in some of the bills some amount was also deducted. He submitted that this aspect has been totally ignored by the authorities below. He further pointed that the some of the materials have been used during the present assessment year. Furthermore he submitted that this issue is revenue neutral. Inasmuch as had the expenditure being booked in the earlier period they would have added to the opening work in progress. By booking the expenditure in the current assessment year it is only the work in progress the cost of which will increase, hence learned counsel submitted that no benefit would accrue to the assessee by deliberately booking prior period expenses. Per Contra learned departmental representative relied upon the order's of authorities below.

4. Up on careful consideration we find considerable cogency in the submissions of the learned counsel of the assessee. Though the bills have been received earlier they have been settled during the current period after

deducting sum amounts. Furthermore, the assessee's plea regarding the booking of expenditure being revenue neutral is also cogent. In these circumstances we set aside the order's of authorities below and decide the issue in favour of the assessee.

5. Apropos ground relating to disallowance of payment made to Indian Polo Association .

5.1 On this issue, the Assessing Officer made the disallowance by observing as under:-

“The assessee has claimed e payment of Rs 10 acs made to Indian Polo Association under the head 'Business Promotion Expenses'. The assessee had also submitted the supporting documents pertaining to this payment. Perusal of these documents showed that Indian Poio Association is a Registered Trust with DIT(Exemption) Delhi, payment to which is entitled for deduction u/s 80G(5)(vi) of the I.T. Act @ 50%. Hence, the assessee was informed vide notice u/s 142(1) that the payment of Rs 10 lacs does not qualify as 'Business Promotion Expenses' but, is entitled for deduction u/s 8QG(5) at the rate of 50%.

The assessee replied vide its letter dated 23,07.13 and stated that the payment was made towards sponsorship fees for sponsoring the Indian Team and all the Indian Team members were wearing T-shirt having DLH Logo. Hence, this is allowable as business expenditure u/s 37 of the Act and the reliance was placed on the decision of CIT V/s Lake Palace Hotels and Motels Pvt Ltd (Raj) 293 ITH 281.

The submission of the assessee has been carefully perused, but, the same is not found satisfactory. The payment of Rs 10 lacs was made to a Trust, the donors of which enjoy the benefit of exemption u/s 80G(5) of the Act. Thus, this payment cannot

qualify as 'Business Promotion Expense', Although, the assessee has claimed that it resulted into advertisement of the company because the players were wearing T-shirts carrying logo of the assessee company, but, no such evidence was produced during the course of scrutiny assessment. Moreover, the letter of Indian Polo Association dated 22.03.2011 (submitted by the assessee during the course of scrutiny assessment) mentions that the payment is for sponsorship of Indian Polo Team to New Zealand for preparation of World Cup Zonal Playoffs 2011. It means that the payment made by the assessee was for the sporting activity outside India. Since the assessee does not have any business connection / activity outside India, the expenditure cannot be said to have resulted into any publicity of the assessee company in India. Thus, the payment of Rs 10 lacs to Indian Polo Association is disallowed and added to the total income of the assessee. However, the deduction u/s 80G(5) is allowed to the assessee on this payment. Penalty proceeding u/s 271(l)(c) is initiated for furnishing inaccurate particulars of income on this account.

The reliance placed by the assessee on the decision of CIT V/s Lake Palace Hotels and Motels Pvt Ltd (Raj) 293 ITR 281 is also misplaced. Here, the Hon'ble High Court held that the expenditure towards sponsoring teams for tournaments in India do have advertisement value. Hence, such sponsorship fees .should be allowed as 'business expenditure', However, in the case of our assessee, the payment has been made to a Trust which is eligible for deduction u/s 80G(5). Also, the sponsorship is for some tournament to be held abroad which is not covered by any TV telecast / Radio broadcast. Thus, there cannot be any advertisement value attributable to such sponsorship. Therefore, the ratio of this decision is not applicable in the case of the assessee.

Reliance Is placed on the case of Malyala Manorama Co. Ltd V/s CIT (284 ITR 69 Ker), where it has been held that if the assessee makes contribution of a certain sum to a Trust, but, claims it as deduction u/s 37(1), the same is not correct. This contribution is not wholly and exclusively for the purpose of

business or profession. The mere fact that indirectly the assessee would earn goodwill or some publicity by itself would not be sufficient to claim deduction u/s 37(1). Burden was entirely on the assessee to establish that the amount laid out or expended by it was wholly or exclusively for the purpose of business. Further, the object of the Trust was not business promotion and the contribution made by the assessee was not used for business promotion. It was therefore, held that the contribution made by the assessee would be an allowable deduction u/s 80G and not u/s 37(1) of the Act.”

5.2 Upon assessee's appeal, the learned CIT(A) by a very laconic order upheld the addition holding as under:-

“After careful perusal of the assessment order and written submissions of the A/R of the appellant it has been observed that the A O has made addition of Rs. 10,00,000/- on account of disallowance of amount claimed to be paid to Indian Polo Association debited under the head business promotion expenses and the appellant has filed an appeal against the disallowance.

The AO has discussed the detailed facts in the assessment order and his categorical finding that the payment was made by the assessee for the supporting activity outside India is vital to the facts of the case. The A/R of the appellant has not been able to rebut the charge by the AO that the burden was entirely on the appellant to establish that the amount laid out or expended by it was wholly or exclusively for the purpose of business.

In view of the facts discussed supra the appellant has failed to prove that the payment of Rs. 10,00,000/- made to Indian Polo Association is eligible for deduction as business promotion expenses. Hence the grounds of appeal no. 3 is dismissed. However it is clarified that the appellant shall be entitled to deduction u/s 80G(v) if the appellant proves that the donation made to India Polo Association has been allowed to be eligible for deduction.”

5.3 Against above order assessee is in appeal before us. We have heard both the counsel and perused the records. Learned counsel of the assessee submitted that assessee has spent the amount towards the sponsorship of Indian team. The players were wearing T-shirts bearing the logo of the assessee company. Assessee had also placed before the learned CIT(A) contract for sponsorship of Indian team to New Zealand. Confirmation was also received from the Indian Polo Association that the amount was received as sponsorship fee. The learned counsel of the assessee further placed reliance upon Hon'ble by Rajasthan High Court decision in the case of Commissioner of income tax versus Lake Palace hotels and motels 293 1TR 281.

5.4 Per Contra learned departmental representative relied upon the order's of the authorities below.

5.5 Up on careful consideration we find that the assessee has paid is sum of Rs.10 lack to the Indian Polo Association towards the sponsorship fee for the Indian team tour of New Zealand. This aspect has been confirmed by the Indian Polo Association. The players of the Indian team were wearing the T-shirts containing the logo of the assessee. In the circumstances it is clear that the amount was meant for sponsorship of the sporting activity which was with the view to make advertisements on behalf of the assessee. By no stretch of imagination it can be said that the amount incurred was not for the purpose of business of the assessee. The decision of Hon'ble Rajasthan High Court in the case of Lake Palace Hotel (supra) duly supports the case of the assessee. in the background of aforesaid discussion and precedent

we set aside the order's of authorities below and decide the issue in favour of the assessee.

6. Apropos ground relating to foreign exchange loss;

6.1 On this issue the Assessing Officer made the disallowance observing as under:-

"The assessee has claimed a loss of Rs 23,61,000/- under the head 'Foreign Exchange Difference Expenses'. It was claimed by the assessee vide its letter dated 26.06.2013 that it had bought a pay order of 2 million dollars in favour of 'Essential International Investment ILC, Dubai and subsequently, the pay order was cancelled resulting into the above mentioned loss, The assessee was asked vide notice u/s 142(1) as under ;

"Please refer to "Annexure - 13" of your reply dated 26-06-2013, You have claimed Rs. 24,53,350/-as "Foreign Exchange Difference expenses". You have claimed that you had bought a pay order for 2 million dollars in favour of "Essential International Investment LLC" and subsequently, you have to cancel this pay order leading to above mentioned loss. However, the business purpose of making such payment is not proved because you never had any business activity abroad. The supporting papers filed by you do not prove the business purpose. Hence, the above foreign exchange difference of Rs. 24,53,350/- is proposed to be disallowed".

The assessee replied vide its letter dated 23.07.2013 and claimed that it was planning to undertake a construction of residential project at Dubai for which the said Demand Draft was made. However, the ' proposal could not be finalized and the demand draft was cancelled. The foreign exchange difference arising on this account is allowable expenditure. It was further contended vide letter filed in this office on 05.08.2013 that the amount was to be utilized for the execution of residential

complex at Dubai in joint venture with M/s Essential International Investment LLC, Dubai. Further, it relied on the main object clause of the memorandum claiming that the assessee is authorized to carry on the business of construction of residential apartments anywhere in the world.

It was further submitted by the assessee that balance Rs 92,350/- is not a loss but a foreign exchange of Rs 92,350/- purchased from M/s Atlast Exchange Bureau Pvt Ltd for the purpose of travelling. By oversight, it was debited to exchange loss instead of foreign travelling expenses. It contended that the same is an allowable business expenditure.

The assessee was asked to substantiate this contention with supporting documents like email exchanged with the concerned parties, the details of the property which they were planning to buy etc. However, no such documentary evidence was submitted during the course of scrutiny assessment. It was admitted by the AR that they do not have any such documentary evidence. In absence of the same, the business expediency of the above foreign exchange loss is not proved. The intention of purchasing the pay order of 2 million dollars and subsequent cancellation is not proved. Therefore, the foreign exchange difference loss of Rs 23,61,000/- is disallowed and added to the income of the assessee. Penalty proceedings u/s 271(1)(c) is initiated for furnishing inaccurate particulars of income on this account.”

6.2 Upon assessee's appeal, the learned CIT(A) dismissed the issue raised by holding as under:-

“The AO has made the disallowance because as per detailed discussion the assessment order the appellant has failed to file any evidence during the course of assessment proceedings that the pay order in the favour "M/s Essential International Investment L.L.C." was on account of investment in the residential project at Dubai.

The A/R of the appellant has stated during the course of appellate proceedings that no mail trail of legal documentation was available as the negotiation was oral.

In view of the above stated facts the appellant has failed to discharge the onus to prove that the pay order was purchased for some business dealings by producing any evidence either during the course of assessment or appellate proceedings. The reliance by the A/R of the appellant on the case law is futile. Hence the grounds of appeal is rejected.”

6.3 Against above order assessee is in appeal before us. We have heard both the counsel and perused the records. Learned counsel of the assessee has submitted that there is no dispute that assessee has actually suffered the loss. He submitted that assessee is engaged in construction business. That assessee had proposed to engage in to construction business at Dubai. Therefore assessee was making preliminary enquiries in this regard. Assessee had made a pay order of \$2 million in favour of essential International investments Dubai. Subsequently the above pay order was cancelled which resulted in the loss. Learned counsel for the assessee submitted that it was duly submitted before the learned assessing officer that assessee's memorandum permits as an object business of construction of residential apartments anywhere in the world. Hence learned Counsel submitted that as it is undisputed that assessee has incurred the loss. That the loss was incurred in connection with the business activity of the assessee which is duly permitted in the memorandum of association. Hence learned counsel pleaded that the loss is allowable. Per Contra learned departmental representative relied upon the order's of the authorities below.

7. Up on careful consideration we note that as regards the loss of rupees 24,53,350 it is undisputed that the same was incurred on account of foreign exchange loss. Assessee has purchased pay order of two million-dollar in connection with its proposed construction activity business in Dubai. Later on as the talks did not proceed further the pay order was encashed resulting in the loss. The assessing officer has disallowed this expenditure on the ground that assessee has not produced supporting documents like email exchange with the concerned parties. We note that this is not the cogent basis for disallowing expenditure. It is undisputed that the assessee has incurred loss. This was on account of purchase of pay order of two million-dollar in favour of a essential International investment Dubai, The name of the payee itself demonstrates the business purpose of the transaction. However as the project did not materialise, the pay order was en cashed which resulted in exchange loss to the assessee. In such circumstances there is no reason why the assessee should not be allowed the loss as an expenditure. The reasoning of the assessing officer that absence of emails between parties is fatal to the allowance of the expenditure was not cogent. Learned CIT-A on the other hand has simply upheld that assessing officers action without proper observation. In the circumstances we set aside the order's of authorities below and decide the issue in favour of the assessee.

8. For the rest of the exchange loss amounting to Rs.92,350, it was submitted before the A.O. that it was actually travelling expenditure wrongly booked as foreign exchange loss. However, no further detail is there. In absence of proper detail, we confirm this disallowance.

9. Apropos ground relating to foreign travelling expenses;

9.1 On this issue the Assessing Officer made the disallowance observing as under:-

“The assessee has claimed following expenses pertaining to foreign travelling.

Sr-No.	Name of the Person	Piece of Visit	Amount Spent (in Rs)	Amount disallowed in computation of income (In Rs.)
1	Shri Vijay Thakkar & Others	Cancellation of Chinese visa	19,500	NIL
2	Shri Vijay Thakkar & Others	Switzerland visa charges	33,000	11,000
3	Shri Vijay Thakkar & Others	Hongkong	2,20,500	Nil
4	Shri Vijay Thakkar & Others	Hongkong	6,05,062	4,71,382
5	Shri Vijay Thakkar & Others	Dubai	2,09,612	Nil
6	Shri Vijay Thakkar & Others	Dubai	48,900	Nil
7	Shri Vijay Thakkar & Others	Dubai	72,500	Nil
8	Madhudben Thakkar (Relative of Director)		50,000	50,000
	TOTAL		12,60,074	5,32,382

As mentioned in the preceding paragraphs, it has been held that the assessee does not have any business connection in Dubai, But for making simple written statement they have not adduced any documentary evidence to prove their business link in Dubai, In fact, they have confirmed during the course of hearing that they do not have any such documentary evidence Hence, any expenditure pertaining to Dubai cannot be allowed as business expenditure. In view of above, Rs 3,31,012/-(2,09,612+48,900+72,500) is disallowed as expenditure

not laid wholly and exclusively for the business purposes. Similarly, the Switzerland visa charges claimed of Rs 22,000/- (33,000-11,000) is disallowed as expenditure not laid wholly and exclusively for the business purposes.

Further, it is seen that the assessee had claimed expenditure of Rs.58,000/- on account of travelling expenses to Udaipur. The assessee had explained vide its letter filed in the office on 13.09.2013 that then Managing Director of the assessee company visited Jodhpur via Udaipur on 07.01.2011 where the assessee company's partnership firm i.e. M/s Shreenath Builders is developing a residential complex. Since, the income pertaining to M/s Shreenath Builders is non-taxable in the hands of the assessee company, any expenditure pertaining to the partnership firm is not allowable. Hence, Rs 58,000/- is disallowed and added to the income of the assessee.”

9.2 On assessee's appeal, the learned CIT(A) dismissed the plea of the learned Counsel of the assessee by holding as under:-

“According to the AO the appellant has failed to produce any documentary evidence during the course of assessment proceedings to justify the claim of expenditure of travelling for Dubai. Similarly the Switzerland Visa charges have also been disallowed on account of want of evidence. Further the claim of travelling expenditure to Udaipur has been disallowed.

The AR of the appellant claimed that the appellant company holds 50% share capital of Hi-Sky Aviation Services Limited registered at Dubai and the assessee was making frequent visits to Dubai.

In the present case the AR of the appellant has made a half hearted attempt to justify the travelling expenditure for Dubai because neither it has been brought on record that who actually went to Dubai because the assessee is a company which cannot travel. Moreover the reasons for making frequent visits have not been explained.”

9.3 Against above order assessee is in appeal before us we have heard both the counsel and perused the records we find that as regards the expenditure on account of travelling expenses to Dubai it is not the case of the revenue that the expenditure has not been incurred or the expenditure is bogus. The sole reason is that the assessee has not produced any documentary evidence to prove the link in Dubai. the assessee has duly submitted before the learned CIT(A) that the assessee company holds 50% share capital of high sky aviation services Ltd registered at Dubai and that the visits were in this connection. The learned CIT(A) has not examined this aspect but has referred it as half-hearted attempt. In this regard learned counsel of the assessee in the paper book page number 41 has referred to certificate of incorporation and shareholders list of high sky aviation services Ltd v. Dubai. We find that when the expenditure has actually been incurred and the business connection at Dubai is on record then the expenditure incurred on the travelling to Dubai cannot be disallowed. Hence we set aside the order's of authorities below and decide this issue in favour of assessee.

9.4 As regards the expenditure on account of the visa charges on account of Switzerland visit is concerned we note that there is no reference to any business connection and hence the disallowance by the authorities below is sustained.

9.5 As regards the disallowance of Rs.58,000 pertaining to Udaipur visit is concerned explanation given was that in these places assessee's companies partnership concern namely M/s.Shreenath Builders was developing a

residential complex. The assessing officer has disallowed expenditure by holding that partnership firm expenditure cannot be allowed in the hands of the assessee. We find that the reasoning adopted by the assessing officer is not cogent. When the travelling expenditure concerned was in connection with the project which is of a partnership concern of the assessee company, it cannot be said that there was no business purpose for the assessee to engaging to the travelling. No case has been made out that the expenditure is bogus. Hence we set aside the order's of authorities below and decide this issue in favour of the assessee.

10. Apropos sales promotion expenses;

10.1 On this issue the assessing officer made the disallowance by observing as under:-

“Assessee claimed vide its letter filed in this office on 26.06.2013 that Rs 4,11,000/- pertaining to Sales promotion expenses incurred during Ganeshotsav celebrations and other festivals were wrongly debited into donation account and disallowed in the computation of income. It contended that the same is an allowable business expenditure and requested that the same should be allowed u/s 143(3).

The submission made by the assessee is not acceptable in view of the fact that the assessee had not claimed this expenditure either in the original return of income or the revised return of income. It has been decided by Hon'ble Supreme Court in the case of Goetze (India) Ltd that there is no provision in the Income Tax Act to amend the return of income by filing an application and not by revising the return of income. Further, perusal of various donation receipts show that they are simply contributions for religious functions to third parties and they cannot be termed as sales promotion expenses as they have

not been spent wholly and exclusively for the business purposes. Further, one receipt pertaining to 'Bajrang Mitra Mandal' for Rs 21,000/- is dated 02.07.2011."

10.2 Upon assessee's appeal, learned CIT(A) uphold the disallowance holding as under:-

"According to the AO, the expenditure claimed as sales promotion expenses is supported by receipts of donations made to third parties which have been stated to be given for various religious functions. Thus as per his finding the same have not been spent for business promotion and further that one receipt of Rs.21,000/- dated 21.07.2011 does not pertain to A.Y. 2011-12.

Keeping in view of the fact that the AR of the appellant has not been able to give any credible explanation regarding the claim of expenditure which was neither made in the original return of income nor in the revised return, the disallowance made by the AO is confirmed. Regarding the objection of the AO that such claim can only be made in the return of income as per the judgment of Hon'ble Supreme Court in the case of Goetz (India) it is clarified that the CIT(A) has powers under the Act to entertain such claim in the appellate proceedings but the same is not being exercise because the appellant has failed to bring any evidence on record to justify the claim of such expenditure."

10.3 Against above order assessee is in appeal before us. We have heard both the counsel and perused the records. We find that assess assessing officer has disallowed expenditure only on the ground that the claim was not made in the original return but was made during the assessment proceedings. In the assessment proceedings it was explained that sales promotion expenses incurred during the ganesh chaturthi celebration and other festivals were wrongly debited in donation account and were

disallowed. The assessing officer also observed that on perusal of various permission receipts showed that there are simply contributions to religious functions and they cannot be termed as sales promotion. Up on assessee's appeal learned CIT(A) has upheld the action.

10.4 Against above order assessee is in appeal before us.

11. We have heard both the counsel and perused the records. We find that it is the assessee's plea that the impugned expenditure was erroneously disallowed by the assessee and expenditure was booked in donation account. However it is the plea of the assessee that these are sales promotion expenses being contributions given to various parties on the occasion of Ganesh Chaturthi and other festivals. The assessee plea was disallowed on the ground that the same was not originally made in the return and that the expenditure are incurred on religious contribution. Contributions given on religious activities is a common practice in India and has been held to be allowable in very decisions. In our considered opinion Hon'ble Apex Court in the case of Goetza (India) limited has held that the decision in that case doesn't impinge upon the tribunal's authority to adjudicate and admit assessee's lawful requests. Accordingly we hold that this issue deserves to be adjudicated. It is undisputed that the expenditure has been incurred. It was earlier wrongly debited to donation account. Later on assessee claimed it under sales promotion expenses. The expenditure is in nature of contributions made on the occasion of religious festivals. By no stretch of imagination it can be said that these contributions are not meant for the purpose of the business of the assessee. Hence we hold that the expenditure incurred being in the business interest of the assessee deserves

to be allowed. Accordingly we set aside the order's of authorities below and decide the issue in favour of assessee.

12. In the result, this appeal filed by the assessee stands partly allowed. Order pronounced on this 30th day of June, 2017.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 30th June, 2017.
Devdas*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A), Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai