



ITA Nos. 7811/Mum/2010 & 866/Mum/2015
Mahesh Ramdas Kanani
Assessment Years-2007-08 & 2008-09

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री डी.टी. गरासिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.7811/Mum/2010
&

आयकर अपील सं./I.T.A. No.866/Mum/2015

(निर्धारण वर्ष / Assessment Years: 2007-08 & 2008-09)

Mahesh Ramdas Kanani 16/18, 1 st Floor, Back Side, Girilila Building Champa Galli Cross Lane, Mumbai – 400 002	बनाम/ Vs.	Additional Commissioner of Income Tax Range 4(3) Mumbai -400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AADPK-4968-J		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	D.V.Lakhani, Ld. AR
Revenue by	:	Suman Kumar, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	09/08/2017
घोषणा की तारीख / Date of Pronouncement	:	04 /10/2017

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are two appeals by assessee for Assessment Years [AY] 2007-08 & 2008-09 which assails separate orders of first appellate



authorities. Since, issues are common in both the appeals, we dispose-off the same by way of this common order for the sake of convenience and brevity. First we take up ITA No. 7811/Mum/2010 which is appeal for AY 2007-08 and contest the order of Ld. Commissioner of Income Tax (Appeals)-8 [CIT(A)], Mumbai dated 01/09/2010 *qua* confirmation of disallowance on account of *foreign travelling expenses*, *ad hoc* disallowance against *telephone and motor car expenses*, and addition against certain *commission income*.

2.1 Briefly stated, the assessee being *resident individual* engaged in *wholesale business of textile* under proprietorship concern namely *Mahesh Trading Company* and in the business of *share trading* was assessed u/s 143(3) for impugned AY on 16/12/2009 at Rs.2,08,75,810/- after certain additions / disallowances as against returned income of Rs. 1,96,31,796/- filed by the assessee on 31/10/2007. The disallowances / additions, which are subject matter of this appeal, are as follows:

No.	Nature of Addition	Amount (Rs.)
1.	<i>Commission Income</i>	<i>2,06,258/-</i>
2.	<i>Foreign Travelling Expenses</i>	<i>3,38,859/-</i>
3.	<i>Telephone Expenses</i>	<i>1,09,966/-</i>
4.	<i>Motor Car Expenses</i>	<i>1,13,306/-</i>
	Total	

2.2 The addition against commission income was made since the assessee claimed TDS credit of Rs.24,084/- deducted by *Kurlon Limited* on commission of Rs.4,29,306/- whereas the assessee offered only an amount of Rs.2,23,048/- against the same on the premises that it was following cash system of accounting and the balance amount was not received during the year. However, not convinced, Ld. AO noted that the



assessee was following mercantile system of accounting and full TDS credit was claimed by the assessee and therefore, added the differential amount of Rs.2,06,258/- to the income of the assessee.

2.3 The addition of foreign traveling expenses pertained to travelling expenses of the assessee to *New York* which comprised of Rs.1,72,291/- as fare expenses and Rs.1,66,568 as other expenses. The assessee explained that the trip was for a duration of 11 days and undertaken by the proprietor to procure the export orders as well as facilitating import of fabrics and therefore, allowable business expenditure. However, Ld. AO noted that the assessee visited *Las Vegas*, a well known tourist place and therefore a *pleasure trip* only and further, the assessee could not prove fulfillment of conditions of Section 37 and therefore, not allowable to the assessee.

2.4 Further, the assessee claimed *Telephone Expenses* of Rs.4,39,863/- against multiple telephone connections few of which stood in the name of assessee's son and therefore, Ld. AO disallowed 25% of the same to account for personal element in the same. Similar *ad hoc* disallowance of 25% was made against *motor car expenses* of Rs.4,53,226/- claimed by the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 01/09/2010 where the addition against *foreign travelling expenses* got confirmed whereas *ad hoc* disallowance of 25% against *telephone and motor car expenses* was reduced to 15% with credit of *suo-moto* disallowance of Rs.61,434/- made by the assessee. The addition against *commission income* was confirmed on the premises that the assessee was not consistently



following cash method of accounting in respect of *receipts and expenditure*. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Representative for the Assessee [AR] while drawing our attention to the documents placed in the *paper book*, contended that *foreign travelling* was undertaken by the *proprietor* himself only and the same pertained to trip to *New York* only and not to *Singapore* as wrongly noted by lower authorities. Further, the son of the assessee never accompanied the assessee on this trip and the trip was undertaken for business purposes since the assessee took samples of material with him to procure export order. These samples were duly procured by the assessee against invoices and therefore the expenses were allowable in terms of Section 37(1). Regarding addition against *commission income*, Ld. AR contended that the said commission was received by the assessee in the next AY i.e. 2008-09 and offered to tax in that year and therefore, addition thereof in the impugned AY was not justified. The Ld. AR further contended that *ad hoc* disallowance of 15% against *telephone and motor car expense* was on the higher side.

5. *Per contra*, Ld. DR contended that all the issues have fairly been settled by Ld.CIT(A) on factual matrix and hence, do not require any further interference.

6. We have heard the rival contentions and perused relevant material on record. So far as the *ad hoc* disallowance of 15% against *telephone and motor car expense* is concerned, we find the same to be fair and reasonable since personal element in the same could not be ruled out. Moreover, the credit of *suo-moto* disallowance made by the assessee has already been granted to him by Ld. CIT(A). Therefore, the same



being quite fair and reasonable stands confirmed. This ground of assessee's appeal stands dismissed.

7. Regarding addition of *commission income*, the assessee has contended that the same has been offered by the assessee in immediately next AY and therefore, addition thereof in the impugned AY would result into double taxation. We agree with the said contentions. However, the lower authorities have noted that the assessee is not consistent in following cash system of accounting with respect to *receipts & expenditure* and therefore, we confirm this addition of Rs.2,06,258/- in impugned AY. As a logical consequence, the same could not be taxed in AY 2008-09. Therefore, while confirming this addition, we restore the matter back to the file of Ld. AO with a direction to delete the same from AY 2008-09 after verifying the fact that the same has been offered in AY 2008-09. Technically, this ground of assessee's appeal stands dismissed but the assessee would get relief thereof in AY 2008-09 subject to verification by Ld. AO and hence the same is, in fact, tax neutral.

8. Regarding addition against *foreign travelling*, it is the prime condition of Section 37 that the expenditure should be incurred wholly and exclusively for the purpose of business carried out by the assessee. Notwithstanding the place of visit or the person who made the visit, the onus is on assessee to show fulfillment of this prime condition. The contentions raised before us by Ld. AR, in this regard, are merely bald assertions without any cogent material or documentary evidences. The onus was on assessee to establish that the *foreign travelling expenses* incurred were for the purpose of business, however, the same, in instant case has remained *un-discharged*. Therefore, this additions stands



confirmed and resultantly, this ground of assessee's appeal stands dismissed.

9. Ground No. 5 assails imposition of interest u/s 234B. The same being mandatory and consequential in nature and hence, do not require our interference and therefore, dismissed.

10. In nutshell, the assessee's appeal stands dismissed.

11. Now, we take up ITA No. 866/Mum/2015 which is appeal for AY 2008-09 and contest the order of Ld. Commissioner of Income Tax (Appeals)-8 [CIT(A)], Mumbai dated 07/01/2011. The solitary issue involved in this appeal is addition of *foreign travelling expenses* claimed by the assessee. Ground No. 2 contests imposition of interest u/s 234B. The same being mandatory and consequential in nature do not require our interference and therefore, dismissed.

12. In this year, the assessee, in similar manner, claimed *foreign travelling expenses* of Rs.7,01,509/- which were disallowed by Ld. AO and confirmed by Ld. CIT(A). The assessee, on similar lines, has assailed addition thereof before us.

13. Upon perusal of documents placed on record, we find that in this year the assessee has produced a letter dated 11/07/2007 from one of his foreign customer namely *Linens 'N' Essentials, INC. New York*. In the said letter addressed to *Mahesh Trading Company*, the customer while making a reference to recent visit of assessee to the office of the customer, expressed inability to place the order on the premises that the quoted price were on the higher side. Further, the break-up of foreign travelling expenses reveals that the amount of Rs.3,48,176/- pertains to visit of assessee's son to *USA* for 16 days and the balance amount of



ITA Nos. 7811/Mum/2010 & 866/Mum/2015
 Mahesh Ramdas Kanani
 Assessment Years-2007-08 & 2008-09

Rs.3,53,333/- pertains to visit of assessee and his son to *Mauritius* for 7 days. Therefore, in this case, the assessee is able to produce some documentary evidences, though *feeble*, on record. Therefore, from the point of reasonableness, we are inclined to allow the claim of the assessee to the extent of Rs.3,48,176/- and confirm the balance additions. The Ld. AO is directed to re-compute the assessed income in terms of this order and also make suitable adjustments as per para-7, if found admissible after verification.

14. Resultantly, the assessee's appeal stands partly allowed.

15. To sum up, ITA No. 7811/Mum/2010 stands dismissed whereas ITA No.866/Mum/2015 stands partly allowed.

Order pronounced in the open court on 04th October, 2017.

Sd/-
(D.T. Garasia)
 न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
 लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04. 10.2017
 Sr.PS:- *Thirumalesh*

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

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