

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'B'**

**BEFORE SHRI N.V VASUDEVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.491/Bang/2017
(Asst. Year – 2007-08)

Mr. G.S Sridhar,
36, Windmills of your mind, EPIP Area,
Whitefield,
Bengaluru.
PAN – AGDPS5851L

. Appellant

Vs.

The Dy. Commissioner of Income-tax,
Circle – 9(1),
Bengaluru.

. Respondent

Appellant by : Shri B.K Manjunath, C.A
Respondent by : Smt. Padmameenakshi, JCIT

Date of Hearing : 12-10-2017
Date of Pronouncement : -10-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Commissioner of Income-tax (Appeals) - 1, Bangalore dated 30/12/2016 for asst. year 2007-08.

2. Briefly stated, the facts of the case relevant for this appeal are as under:-

2.1 The assessee, prop: Veritas Marketing Services and engaged in the business of trading in computer hardware and software, filed his return for asst. year 2007-08 on 31/10/2007 declaring income of Rs.38,18,098/-, comprising income from salary, business and income from other sources. The return was processed u/s 143(1) of the Income-tax Act, 1961 (in short 'the Act') and the case was subsequently taken up for scrutiny. The assessment was concluded u/s 143(3) of the Act vide order dated 9/12/2009, wherein the assessee's income was determined at Rs.57,07,705/- in view of on addition/disallowance of Rs.17,14,922/- on account of excess expenditure claimed of Rs.17,14,922/- in connection with earning of office facility charges and an amount of Rs.1,74,685/- on account of disallowance u/s 10 of the Act. On appeal, the Id CIT(A) dismissed the assessee's appeal vide the impugned order dated 30/12/2016 on the aforesaid issue.

3. Aggrieved by the order of the CIT(A)-1, Bangalore dated 30/12/2016 for asst. year 2007-08, the assessee has filed this appeal before the Tribunal, wherein he has raised the following grounds:-

"1. That the above order of the authorities below in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity and all other known principles of law.

2. That the total income computed and the total tax computed is hereby disputed.

3. The Learned Assessing officer / CIT(A) erred in disallowing expenditure to the extent of Rs. 17,14,922/-.

4. The findings, reasons and conclusion arrived by the AO / CIT(A) for disallowing the expenditure are unsustainable and untenable in law requires to be rejected.

5. The appellant denies the liabilities for interest u/s 234B. Further prays that the interest if any should be levied only on returned income. No opportunity has been given before levy of interest u/s 234B of the IT Act.

6. Without prejudice to the appellant's right of seeking waiver before appropriate authority the appellant begs for consequential relief in the levy of interest u/s 234 B of the Act.

7. For the above and other grounds and reasons which may be submitted during the course of

hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.“

4. **Grounds Nos.1,2 and 7**

4.1 The grounds raised at S.Nos. 1,2 and 7 (Supra), being general in nature, no adjudication is called for thereon.

5. **Grounds 2 and 3 – Disallowance of Expenditure – Rs.17,14,922/-**

5.1 In these grounds, the assessee contends that the orders of the authorities below were erroneous in disallowing the expenditure of Rs.17,14,922/-.

5.2.1 We have heard the rival contentions and perused and carefully considered the material on record. On an appraisal of the orders of the authorities below, we find that in the course of assessment proceedings, the Assessing Officer ('AO') observed that apart from the assessee's turnover of Rs.1,80,21,763/- in computer business on which gross profit of Rs.22,16,238/- was declared, the assessee had earned Rs.48 lakhs by way of office facility charges from M/s Techvoyant Infotech Pvt. Ltd., wherein the assessee and his wife were Directors. The AO was of the view that the assessee, with the intention of reducing his tax liability entered into an agreement whereby in order to earn office facility charges of Rs.48 lakhs, expenditure of Rs.65,14,922/- was shown as incurred. The AO was of the view that the assessee was unable to explain and justify that the

aforesaid expenditure of Rs.65,14,922/- was expended wholly and exclusively for the purposes of the assessee's business as required u/s 37(1) of the Act and proceeded to disallow the excess expenditure of Rs.17,14,922/- incurred for earning the office facility charges. This view of the AO was upheld by the Id CIT(A) in the impugned order and was supported by the Id DR for Revenue before us.

5.2.2 According to the Id AR to the assessee, the AO has misguided himself to make the aforesaid erroneous decision of disallowing the expenditure amounting to Rs.17,14,922/-, on the ground that the entire expenditure of Rs.65,14,922/- was incurred for earning of office facility charges; which was the result of total misconception of facts by the AO. In this regard, the Id AR drew the attention of the Bench to the Paper Book (pages 23-35) filed by the assessee. Referring to pages 24 to 28 thereof, which are copies of the assessee's profit and loss account, and schedules J,K and E thereto, the Id AR pointed out that the expenditure of Rs.65,14,922/- was incurred not only in respect of the earning of Rs.48 lakhs on account of office facility charges, but were also was, inter alia, incurred for earning income from its computer business with a turnover of Rs.1,70,98,369/-. It was further submitted that if the breakup of the expenditure of Rs.65,14,922/- as laid out in Schedules K and E are perused, it is clearly evident that they are in respect of depreciation, operating costs and financial costs of Rs.42,65,505/- which are incurred for salaries, postage, conveyance, telephone, rent, books and periodicals, freight, travelling etc. A perusal indicates that these

expenses are clearly and evidently not expended solely and exclusively for earning office facility charges of Rs.48 lakhs but were expended also the assessee's computer business and earning of other incomes also and therefore the disallowance made by the AO was not warranted.

5.2.3 We find merit in the contentions put forward by the Id AR of the assessee, in that the disallowance of expenditure of Rs.17,14,922/- made by the AO is erroneous and due to a misreading of facts in the financial statements of the assessee. It is amply clear to us from a perusal of the paper book at pages 24 to 28 containing the assessee's financial statements that the said expenditure of Rs.65,14,922/- was incurred not solely for earning of office facility charges as alleged by the AO, but was mainly, expended for the computer business of the assessee and, also for earning of other income. In our considered view, the aforesaid disallowance of expenditure of Rs.17,14,922/- by the AO was not warranted in the facts and circumstances of the case as discussed in paras 5.2.1 to 5.2.2 of this order (Supra) and being factually unsustainable, we therefore set aside the orders of the authorities below in this regard. However, in the interest of equity and justice we deem it appropriate to remand this matter to the file of the AO for examination and fresh adjudication thereon, in the light of our above observations in this regard, and after affording the assessee adequate opportunity of being heard in the matter and to file details and submissions required. Consequently, grounds 2 and 3 of the assessee's appeal are allowed for statistical purposes.

6. **Grounds 5 and 6 – Charging of interest u/s 234B of the Act**

6.1 In these grounds, the assessee denies itself liable to be charged interest u/s 234B of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H Ghaswala (252 ITR 1) (SC) and we therefore uphold the action of the AO in charging the said interest. The AO is, however, directed to re-compute the interest chargeable u/s 234B of the Act, if any, while giving effect to this order.

7. In the result, the assessee's appeal for asst. year 2007-08 is allowed for statistical purposes.

Order pronounced in the open court on **13th October, 2017.**

Sd/-
(N.V VASUDEVAN)
JUDICIAL MEMBER
Bangalore
Dated : 13/10/2017
Vms

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore