

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Shri Aby.T.Varkey, JM & Shri M.Balaganesh, AM ]

I.T.A Nos. 2066 /Kol/2014

Assessment Year : 2010-11

DCIT, Circle-4, Kolkata

-vs-

M/s J.Thomas & Co. Pvt. Ltd..  
[PAN: AABCJ 2851 Q]

(Appellant)

(Respondent)

I.T.A Nos. 2071/Kol/2014

Assessment Year : 2010-11

M/s J.Thomas & Co. Pvt. Ltd.  
[PAN: AABCJ 2851 Q]

-vs-

DCIT, Circle-4, Kolkata

(Appellant)

(Respondent)

For the Appellant : Shri David Z. Chowngthu, Addl. CIT(DR)

For the Respondent : Shri Anup Sinha, ACA

Date of Hearing : 25.09.2017

Date of Pronouncement : 01.11.2017

**ORDER**

**Per M.Balaganesh, AM**

1. These cross appeals by the Revenue and Assessee arise out of the orders of the Learned Commissioner of Income Tax (Appeals) -IV, Kolkata [in short the ld CITA] in Appeal No. 48/CIT(A)-IV/2013-14 dated 08.08.2014 against the order passed by the DCIT, Circle-4, Kolkata [ in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 21.03.2013 for the Assessment Year 2010-11.

Both these appeals are taken together and disposed off by this common order for the sake of convenience.

**First let us take up Revenue Appeal in I.T.A. No. 2066/Kol/2014 for Assessment Year 2010-11**

2. The only issue to be decided thereon is as to whether the Ld. CIT(A) was justified in deleting the disallowance made towards advances written off in the sum of Rs. 82,34,907/- in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a company engaged in the business of tea/coffee auctioneering, financing and rubber handling. The Ld. AO observed in the course of assessment proceedings that the assessee had claimed deduction of Rs. 82,34,907/- as a trading loss. The Ld. AO further observed that the assessee had not filed any document regarding the 'Settlement' or 'Court Order'. He further observed that the minutes of the Board of Directors filed by the assessee did not make any mention about the settlement or court case or any other reason for writing off the debts. Accordingly, he concluded that the assessee had not established that the claim has become irrecoverable during the year under consideration and accordingly, disallowed the same.

4. The Ld. CIT(A) deleted the disallowance by observing as under:

*"6.2. I have carefully perused the contention of the AO and the submissions made by the appellant. It is brought to my notice that in the normal course of its business the appellant has made the advances to various tea companies. It is further brought to my notice that since the advances form a part of the business activity, the write off of the same as irrecoverable should be allowable as a normal trading loss while computing the income.*

*6.3. My attention is also drawn to the fact that the appellant vide its letter dated 15<sup>th</sup> March, 2013 has made available to the AO adequate documents to demonstrate that the advances given have become bad during the relevant Assessment Year apart from*

*Board's Resolution as alleged by the AO which has not at all considered by the AO while finalizing the order. I have gone through the documents and have found that the same rightly demonstrate that reasons for writing off the advances during the years under consideration.*

*6.4 My attention is further drawn to the decision of the Hon'ble Supreme Court in the case of CIT vs. Mysore Sugar Company Limited (Supra) and Hon'ble Madras High Court is the case of Devi Films Private Limited vs. CIT (Supra) wherein it was stated that even though the claim for deduction of an amount of advance written off did not squarely fall under section 36(1)(vii), the amount would nonetheless be allowed as deduction while computing the business profits where such advance had given by an assessee in the normal course and for the purpose of its business, other than on capital account.*

*6.5 My attention is also drawn to the decisions rendered by the Apex Court and various other judicial bodies of the country wherein the principle that advance given in the course of the business is incidental to the business and its write off may be allowed as a trading loss has been clearly brought out.*

*6.6 Further, my attention is also drawn to the appellate order passed in appellant's own case by me in the Assessment Year 2009-10 wherein the appellant's claim has been allowed.*

*6.7 In the light of the above facts and judicial pronouncements, I agree with the contention of the appellant that the advances given by the appellant to the various tea companies for the purpose of enhancing business opportunities are definitely incidental to the business of the assessee and as such the loss arising from non-realization of the said advances would be allowable as normal business loss of the appellant. Further, as regards the allegation of the AO that the appellant has never filed documentary evidence to support its claim, I find that the appellant has filed detailed documentary evidences to prove that the advances have been validly written off during the relevant Assessment Year. However, the AO has not considered the said submission containing the evidence while finalizing the Assessment Order. Accordingly, the disallowance made by the AO to the tune of Rs. 82,34,907/- in this regard is deleted."*

5. We have heard the rival submissions. We find that the assessee had debited a sum of Rs. 1,35,32,503/- in its profit and loss account towards bad debts and advances written off under the head 'other expenses' in Schedule 12 of the Audited Accounts. Out of above, bad debts written off was amounting to Rs. 32,01,096/- and Rs. 1,03,31,407/- was for advances written off. The details of advance written off are as under:

Name of Partner	Amount
Daloo Tea Company Pvt. Ltd.	71,27,069/-
Navneed Tea Industries	11,96,236/-
Manjamalai Tea Factory	20,08,102/-
Total	1,03,31,407/-

The above write off had been made in the books of accounts based on approval of the Board of Directors in the Board meeting held on 29.09.2010. We find that the assessee had during the course of assessment proceedings given its reply through its Authorized Representative's letter dated 15.03.2013 with regard to advances written off – partywise as under:

*Advances Written Off*

*Daloo Tea Co. (I) Ltd.:* The assessee company as a part of normal course of its business made an interest bearing advance to Doloo Tea Co on a condition that the entire sale proceeds of tea would be exclusively through the assessee company. Thus, your kindself may kindly appreciate that in order to secure the business of the assessee, the advance was made. However, in the year 2008, it was noticed by the assessee company that Doloo was not selling the tea through the assessee and hence as demand notice was raised on Doloo. However, Doloo did not give any reply to the aforesaid demand notice. As no reply was received, a suit was filed before the Hon'ble Calcutta High Court on 1<sup>st</sup> September, 2008 for recovery of the amount given to Doloo.

During pendency of the suit, Doloo agreed for an out of Court settlement on 6<sup>th</sup> February, 2009 stating that INR 5,00,000/- would be paid upfront and balance would be paid in installments INR 1 per kg of green leaf produced on a weekly basis sold from January, 2009. A copy of the out of court settlement agreement entered into by Doloo with the assessee company is enclosed for the reference of your kindself and marked as Annexure 'F'. However, except INR 5,00,000/-, no amount could be recovered from Doloo even after repeated follow ups.

Further, after entering into the settlement with Doloo, the assessee company had received a letter from Eastern Tea Estates Ltd. stating that since both the garden as well as the plant were taken on lease by Eastern Tea Estates Ltd., and as such Doloo had no jurisdiction to enter into settlement with the assessee company. As no further amount could be recovered from 00100 even after repeated follow ups and further, on receiving the letter from Eastern Tea Estates Ltd questioning the jurisdiction of out of court settlement made between Doloo and the assessee, the management of the

*assessee company had taken a decision to write off the amount of INR 71,27,069/- being the advance standing in the books of the assessee company vide Board Resolution dated 20<sup>th</sup> September, 2010. A copy of the said resolution is enclosed and marked as Annexure 'G'.*

*Navaneeth Tea Industries: The assessee company, as a part of normal course of its business, made a refundable advance with interest to Navaneeth Tea Industries on a condition that the entire crop of the aforesaid company would be exclusively sold through the assessee. Thus, your kindself may kindly note that in order to secure the business of the assessee company, the advance was made to Navneeth Tea Industries. Due to dishonour of the cheque given by Navneeth Tea Industries, a criminal proceeding was started against the above firm and its partners under the provisions of section 138 of the Negotiable Instrument Act. A copy of the notice and a copy of the petition filed before the Hon'ble Judicial Magistrate of Coonoor are enclosed and collectively marked as Annexure 'H'. Subsequently, a settlement was entered into between the assessee and Navneeth Tea Industries to withdraw the case filed before the Hon'ble Judicial Magistrate of Coonoor by paying INR 5,00,000/- upfront. As the settlement was entered into by the assessee the balance outstanding was written off by the assessee in the books of accounts for the previous year relevant to the assessment year under consideration passing the Board Resolution dated 20<sup>th</sup> September, 2010. A copy of the Board Resolution is enclosed for the reference of your kindself.*

*Manjamalai Tea Factory: The assessee company as a part of its normal course of its business made an advance with interest to Manjamalai Tea Factory on a condition that the entire crop would be exclusively sold through the assessee. Thus, your kindself may kindly note that in order to secure the business of the assessee company, the advance was made to Manjamalai Tea Factory. However, since the factory remained closed and the firm could not resume their business, the aforesaid advance could not be collected I recovered. Further, during the year under consideration, the assessee company was informed by the Banker, namely, M/s Union Bank, that substantial amounts were due to them from Manjamalai and dues of other creditors were also substantial. As there was no probability for recovery of advance from Manjamalai, the balance standing in the account of Manjamalai Tea Factory was written off by the assessee company during the previous year relevant to the assessment year under consideration passing the Board Resolution dated 20<sup>th</sup> September, 2010. A copy of the Board's Resolution is enclosed for the reference of your kindself."*

5.1. From the above, it could be seen that the assessee had written off the advances given in the normal course of business to aforesaid three parties after taking necessary steps for recovery of the same and also preferring civil suits and criminal suits, wherever possible, as the case may be. The assessee had also enclosed the necessary evidences in this regard before the Ld. AO. Hence, it would be factually incorrect to

state that no legal steps were taken by the assessee for recovery of the dues. The relevant evidences with regard to steps taken by the assessee for recovery of these advances and consequential write off thereon are enclosed in pages 18 to 46 of paper book. We find that the issue under dispute is squarely covered by the Co-ordinate Bench decision of this Tribunal in favour of the assessee in assessee's own case for the assessment year 2009-10 in I.T.A. No. 275/Kol/2014 dated 28.02.2017 wherein it was held that :

*"5. Ground No. 2 is against the deletion of a disallowance made on account of claim for bad debt of Rs. 82,34,907/-. The Assessing Officer disallowed this claim of bad debts on the ground that the assessee could not establish as to the legal efforts taken to recover the debts and also on the ground that the assessee could not demonstrate that these amounts were taken as the income of the assessee in the earlier year. Before the Ld. CIT(Appeals), the Ld. Counsel for the assessee submitted that these were trade advances made to various tea companies, which were written off in the year under consideration. It was submitted that the advances were made to M/s. All India Tea & Trading Co., Tonganagaon tea Co. Limited, Amritapur Tea Co. Limited during the normal course of business of the assessee at the interest rate of 21% per annum. On the condition mentioned in section 36(1)(vii) read with section 36(2) of the Act, he submitted that, when a loss arises out of non-recovery of such advances, the same should be allowed as a business loss while computing the profit and gains of business and as the monies were advanced for the purpose of its business. These three companies had financial and certain other difficulties and consequently the agreements could not be executed. Thereafter settlements were arrived between the assessee and these companies, wherein, certain dues were paid to the assessee-company and the balance was written off. The Board of Directors of the assessee-company had recorded these business developments and passed resolution accepting the settlements. Further there were small sundry balances receivable from various tea companies and these were written off as irrecoverable by passing necessary resolutions. The assessee relied on the judgment of the Hon'ble Supreme Court in the case of CIT -vs.- Mysore Sugar Company Limited [46 ITR 649(SC)] and by the Hon'ble Madras High Court in the case of Devi Films Private Limited -vs.- CIT [75 ITR 301 (Mad.)]. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of CIT -vs.- Abdullabhai Abdulkadar reported in 41 ITR 545. Reliance was also placed on the decision of the Kolkata Bench of this Tribunal in case of DCIT -vs.- ITC Limited in ITA No. 157/KOL/1996, order dated 30.04.2001. The Id. CIT(Appeals) agreed with the contentions of the Id. counsel for the assessee and granted relief. We find no infirmity in this order of the Id. CIT(Appeals). The advances were given by the assessee in the normal course of its business and when a loss arises due to non-recovery of such advances and when the same is irrecoverable and written off as such, the same should be allowed as a loss while computing the profit and gains of business.*

6. *The Hon'ble Delhi High Court in the case of CIT vs. Sumangal Overseas Limited [I.T.A. No. 174 of 2011(Del)] held as follows:*

*“A trading loss has a wider connotation than a bad debt. A bad debt may also be a trading loss. But a trading loss need not necessarily be a bad debt. There may be a bad debt which may not fall within the purview of section 36(1)(vii) of the Act, but may well be regarded as one eligible for deduction incurred in the course of carrying on business will come under that category and will naturally enter into computing the net total income as the real profit chargeable to tax cannot be arrived at without setting off legitimate trading loss.”*

7. *Applying the proposition laid down in this case law to the facts and circumstances of the case, we uphold the finding of the first appellate authority and dismiss this ground of the Revenue.”*

6. Respectfully following the same we find no infirmity in the order of the Id. CIT(A) and accordingly delete the grounds by the Revenue in this regard.

**Now let us come to Assessee's Appeal in I.T.A. No. 2071/Kol/2014 for Assessment Year 2010-11**

7. The only issue to be decided in the appeal of the assessee is as to whether the Id. CIT(A) was justified in upholding the disallowance of foreign travel expenditure incurred by the assessee to the tune of Rs. 27,73,244/-, the facts and circumstances of the case.

8. The brief facts of this issue is that during the previous year relevant to assessment year under consideration, the Chairman, Vice Chairman, Managing Director, Deputy Managing Director and Directors of the assessee had visited Australia, New York, UK, Dubai and Bangkok for the purpose of the business of the assessee and had incurred a total expenses of Rs. 27,73,244/-. The assessee had claimed the said expenses as allowable business expenses in the return of income for the relevant year. In the assessment proceeding under section 143(3) of the Income Tax Act, 1961 had asked the assessee to provide the details of travelling expenses. It was further asked to provide the

details of foreign travel expenses showing the names of visiting persons and the purpose of their visit abroad. The assessee vide its reply dated 04.03.2013 had filed the aforesaid details. Kindly refer to page no. 15 of Paper Book for a statement showing details of foreign travel expenses incurred during the relevant year along with the purpose of visit. The Ld. AO had further asked the assessee to provide a brief note on justification of foreign travel. In reply to the same, the assessee, vide its letter dated 15.03.2013 had filed its detailed reply justifying the claim.

9. The Ld. AO observed that the assessee is not engaged in the manufacture and sale of tea. Instead it is only acting as Tea Auctioneer, which is a platform through which, tea could be purchased and sold by the Indian manufacturers. In the instant case, there was no necessity of incurrence of foreign travel expenses by the assessee and thereby assessee has failed to prove the business nexus vis-à-vis the foreign travel expenses. He further observed that the foreign tour expenses incurred by the assessee had only benefitted the Indian manufacturers who in turn had exported tea to various countries abroad and the same had not in any way benefitted the assessee herein. With this observation, he disallowed the same in the assessment. The Ld. CIT(A) also upheld the action of the Ld. AO. Aggrieved, the assessee is in appeal before us on the following grounds:

*1.(a) That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'Ld. CIT(A)'] has erred in confirming the action of the Assessing Officer [hereinafter referred to as the 'AO'] in adding back an amount of INR 27,73,244/- on the alleged ground that there is no direct nexus between the travel expenditure incurred by the appellant with the auctioneering business of the appellant company.*

*1.(b) That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the action of the AO in adding back an amount of INR 27,73,244/- on the alleged ground that there is no direct nexus between the travel expenditure incurred by the appellant with the auctioneering business of the appellant ignoring the principles laid down by the Hon'ble Supreme Court of*

*India wherein it has been stated that an expenditure should be allowed even if results in directly facilitating the carrying on the business of the appellant.*

*2. That the appellant craves leave to add and/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal.*

10. We have heard the rival submissions. We find that the Ld. AR argued that the Senior Officials of the assessee viz. Chairman, Vice Chairman, Managing Director and Directors had visited foreign countries during the relevant year for the purpose of collecting information regarding exact requirement of imports of tea by foreign parties. The said information is subsequently passed on to the clients of the assessee who have export license. The clients of the assessee are gainfully utilizing the said information. Based on the said information and on the basis of overseas requirement of tea, they are purchasing tea through tea auctions conducted by the assessee. On such sale of tea through auction, revenue is generated to the assessee in the form of brokerage and it is a major source of revenue of the assessee.

10.1. The Ld. AR argued that the assessee earns brokerage income when various parties purchase/sell tea through tea auctions , the said brokerage is computed on the basis of value of tea auctioned by the assessee. The parties who participate in auction are mainly two folds: 1) Who purchase tea from tea auction and 2) the parties who are selling tea through tea auctions. Hence, the assessee is earning both buying brokerage and selling brokerage. The tea purchased by the parties in auction is sold by them to various consumers within India and abroad. The Ld. AR further stated that the various customers who participated in tea auction had purchased tea through auction conducted by the assessee amounting to Rs. 376,65,99,580/- for the purpose of their export. The brokerage earned by the assessee out of such auctions was Rs. 4,37,49,885/-. In this regard, the Ld. AR filed a statement showing partywise details of purchases made by various customers through auctions conducted by the assessee and brokerage earned thereon by the assessee, as an additional evidence for which a separate application under

Rule 18(4) read with Rule 29 of the ITAT Rules, for filing the additional evidence was preferred. This application contained the reasons for admission of the same by mentioning that the assessee could not quantify the said details earlier and as such the same was not filed before the lower authorities. It was further pleaded in the said application that this being the first year in which the Ld. AO has resorted to disallowance to foreign travel expenses in the assessment order u/s 143(3) of the Act, these details were never worked out by the assessee. Hence, the same could not be filed before the lower authorities. It was pleaded that the said details were however filed before the Ld. AO for the subsequent years in the scrutiny proceedings. We find that the said statement contains the name of the exporters who bought tea in auction, quantity of tea bought by parties, value of tea bought by parties, buying brokerage earned by the assessee, selling brokerage earned by assessee, and total brokerage earned by assessee. This statement merely contains details of tea purchased by exporters through auctions and brokerage earned by the assessee thereon to the tune of Rs. 4,37,49,885/-. The Ld. AR further argued that the information so collected by the Senior Officials of the assessee pursuant to their foreign travel, generated revenue to the assessee in the form of brokerage. Hence, the foreign travel expenses of Rs. 27,73,244/- has to be regarded as expenditure incurred wholly and exclusively for the purpose of the business of the assessee and accordingly the same is allowable u/s 37(1) of the Act. It was also pleaded by the Ld. AR that the Vice Chairman, Managing Director, Deputy Managing Director and Directors of the assessee have specialized knowledge and experience in the area of tea manufacturing and export, and so they can convince the potential importer of various countries to import good quality tea in substantial quantity from India. After coming back from the foreign countries, they pass on the information regarding requirements of importers to the clients of the assessee who have the license for exports. Thus, functions performed by the Chairman, Vice Chairman, Managing Director, Deputy Managing Director and Director of the assessee are summarized as under:

- To explore import potentiality;

- To get acquainted with the buyers (importers);
- To study gradation (quality) demand for improvement in quality produce;
- To show cause Indian produce to other countries; and
- To explore new markets for Indian tea.

Thus, it is submitted that with the knowledge and experience of the above senior employee of the assessee in the areas of tea manufacturing and marketing, the details of prospective foreign buyers with their requirement of grade/quantity of tea are being noted and this information is being given to the clients of the assessee who have export licenses which in turn help the auction buyers to buy the quantity required to meet the demands of the foreign buyers. It helps the assessee to generate revenue in the form of brokerage from tea auctions. The Ld. AR further submitted that by visiting the foreign countries for the purpose of attending various tea festivals at the request of the Indian Tea Association/Indian Tea Board, the senior officials of the assessee find out new markets for Indian tea abroad other than conventional markets, which also helps the clients of the assessee to export substantial quantity of tea in those countries after buying tea through auction conducted by the assessee which directly generates revenue to the assessee. Thus, by finding out new foreign buyers as well as finding out new markets abroad, the assessee is helping the clients to export huge quantity of tea by purchasing the same through auctions which also directly helps the assessee to generate more revenue in the form of brokerage. In view of the same, the foreign travel expense should be regarded as expenses incurred directly for the benefit of the business of the assessee. Thus, the revenue of the assessee is directly dependent on the volume of tea sold through auction conducted by the assessee. Hence, foreign travel expenses should be allowable as deduction under section 37(1) of the Act.

10.2. It was further pleaded that the said foreign travel expenditure is not capital in nature and not personal in nature. The same has been incurred wholly and exclusively for the purpose of business of the assessee.

10.3. The Ld. AR without prejudice to the above argument further argued that even if there is no direct benefit generated out of foreign travel, even then, the same is allowable as deduction. In this regard he placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. Indian Bank Ltd. reported in 1965 AIR 1473 (SC) wherein it was held that:

*“In allowing a deduction which is permissible the question arises: Do we look behind the expenditure and see whether it has the quality of directly or indirectly producing taxable income? The answer must be in the negative for two reasons: First, Parliament has not directed us to undertake this enquiry. There are no words in sec. 10(2) to that effect. On the other hand, indications are to the contrary in section 10(2)(xv) of the Income Tax Act, 1961, what Parliament requires to be ascertained is whether the expenditure has been laid out or expended wholly and exclusively for the purpose of the business. The legislature stops short at directing that it be ascertained what was the purpose of the expenditure. If the answer is that it is for the purpose or will produce taxable income. Secondly, the reason may well be that Parliament assumes that most types of expenditure which are laid out wholly and exclusively for the purpose of business would directly or indirectly produce taxable income, and it is not worth the administrative effort involved to go further and trace the expenditure to some taxable income.”*

10.4. In response to all these arguments, the Ld. DR vehemently relied on the orders of the lower authorities. We find that the Hon'ble Gauhati High Court in the case of CIT vs. Williamson Tea Assam Ltd. reported in 38 Taxmann.com 154(Gau) in the context of foreign travel expenses vis-à-vis Section 37 of the Act had held that :

*“Before deciding the issues, in question, we deem it apposite to have a look at the scope of section 37 of the Act. Section 37 of the Act provides that an expenditure to be covered by the ambit of section 37 of the Act, the expenditure should be wholly and exclusively for the purpose of business. The true test for an expenditure, laid out wholly and exclusively for the purpose of business, is that it is incurred by the assessee as incidental to its trade for the purpose of keeping its trade going on and that the expenditure must be incurred by the assessee as a trader and not in any other capacity. The word “wholly” refers to the quantum of expenditure and the word “exclusively” refers to the motive, objective and purpose of the expenditure. The expression “wholly and exclusively”, appearing in section 37, does not mean necessarily. It is important to note, in this regard, that the word “necessarily” found place in the Income tax Bill, 1961, but it was dropped at the legislative anvil.*

*The Hon'ble High Court has further held that for the allowability of an expenditure under section 37 of the Act is not relevant as to whether the benefit, expected to be accrued out of an expenditure incurred is to accrue immediately or after a lapse of time, whether directly or indirectly. While deciding the issue the Hon'ble High Court placed reliance on the decision of the Apex Court in the case of CIT vs. Dhanrajgirji Raja Narasingirji (1973) 91 ITR 544 (SC) wherein it was held that it is not open to the Department to prescribe what expenditure an assessee should incur and in what circumstances he should incur the expenditure. Every businessman knows his business best."*

10.5. We find that the Id. CIT(A) had upheld the disallowance of foreign travel expenses on the contentions that it is the entire responsibility of the parties purchasing tea and coffee from the assessee through auction to ascertain and find clients/purchasers from abroad. And the assessee has no role in finding the clients from abroad. The Ld. CIT(A) observed that since the assessee is not an exporter of tea and coffee nor intending to do so in future, the foreign travel expenses is not liable as deduction. We hold in this regard the allowability of claim of the assessee has to be judged from the view point of the prudent businessman and not from the view point of the revenue. It is already well settled that it is irrelevant if a third party is benefitted by incurrence of a particular expenditure by an assessee. What is to be seen is only whether the expenditure was incurred out of commercial expediency and once the same is proved, then it would be allowed as deduction. It is also well settled that the businessman knows his interest best. The conditions for allowability of an expenditure u/s 37(1) of the Act is : (i) It should not be capital in nature. (ii) It should not be personal in nature. (iii) It should be incurred wholly and exclusively for the purpose of business of the assessee. Admittedly, the foreign travel expenditure is neither capital nor personal in nature. So the only point is to be decided is whether the same is incurred wholly and exclusively for the purpose of business of the assessee. In this regard, we would like to place reliance on the decision of the Hon'ble Supreme Court in the case of Sassoon J. David & Co. Pvt. Ltd vs CIT reported in 118 ITR 261 (SC) wherein it was held :

*"It has to be observed here that the expression 'wholly' and 'exclusively' used in section 10(2)(xv) of the Act does not mean 'necessarily'. Ordinarily it is for the assessee*

*to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under section 10(2)(xv) of the Act even though there was no compelling necessity to incur such expenditure. It is relevant to refer at this stage to the legislative history of section 37 of the Income Tax Act, 1961 which corresponds to section 10(2)(xv) of the Act. An attempt was made in the Income-tax Bill of 1961 to lay down the 'necessity' of the expenditure as a condition for claiming deduction under section 37. Section 37(1) in the Bill read 'any expenditure..... laid out or expended wholly, necessarily and exclusively for the purposes of the business or profession shall be allowed.' The introduction of the word 'necessarily' in the above section resulted in public interest. Consequently, when section 37 was finally enacted into law, the word 'necessarily' came to be dropped. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction u/s 10(2)(xv) of the Act if it satisfies otherwise the tests laid down by law."*

We further find that the Hon'ble Supreme Court in the case of S.A. Builders Ltd. vs. CIT reported in 288 ITR 1 (SC) while approving the decision of Hon'ble Delhi High Court in the case of CIT vs. Dalmia Cement (Bharat) Ltd. reported in 254 ITR 377 (Del) held that:

*"Once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits."*

We also find that the Hon'ble Apex Court in the case of Eastern Investment Ltd. vs. CIT reported in 20 ITR 1 (SC) had laid down the following principles for allowing business expenses:

*"(a) though the question must be decided on the facts of each case, the final conclusion is one of law."*

*(b) it is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned.*

*(c) It is enough to show that the money was expended 'not a necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the ground of commercial expediency, and in order indirectly to facilitate the carrying on of the business';*

*(d) beyond that, no hard and fast rule can be laid down to explain what is meant by the word 'solely'.*

Further, in the case of Williamson Tea (Assam) Ltd. (2013) 38 Taxmann.com 154 (Gau), the Hon'ble High Court allowed foreign travel expense relying on the decision of the Apex Court in the case of Shri Venkata Satyanarayana Rice Mill Contractors Co. Vs. CIT reported in 89 taxman 92 (SC) wherein it has been held that what is to be seen is not whether it was or was not compulsory for the assessee to make the payment, but the correct test is that of commercial expediency. The commercial expediency of a businessman's decision to incur such an expenditure. Such decisions have to be taken from a businessman's point of view and have to be respected by the authorities even if it appears to the latter that the expenditure incurred was unnecessary and avoidable.

10.6. We find that in the instant case, the senior employees of the assessee visited foreign countries and it has generated revenue to the assessee in the form of brokerage income on tea/coffee. Further, the said expenses have been incurred out of commercial expediency and hence it should be viewed from a businessman's point of view.

10.7. The Ld. AR stated that the assessee had incurred similar foreign travel expenses in earlier years also. The revenue had accepted the same till assessment year 2009-10 by allowing the same as business expenditure. The scrutiny assessment orders for the assessment years 2007-08 and 2009-10 framed u/s 143(3) of the Act dated 31.12.2009 and 30.12.2011 respectively are filed by the Ld. AR in this regard. When there is no change in the facts and circumstances of the case during the year under appeal, then

there is no need for the Revenue to take a different stand ignoring the principle of consistency. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Radhasaomi Satsang vs. CIT reported in 193 ITR 321 (SC).

10.8. In view of the aforesaid findings and respectfully following the ratio of the aforesaid decisions we direct the Ld. AO to delete the disallowance made towards foreign travel expenses to the sum of Rs. 27,73,244/- . Accordingly, the grounds raised by the assessee are allowed.

11. In the result, the appeal of the assessee in I.T.A. No. 2071/kol/2014 is allowed and the appeal of the revenue in I.T.A. No. 2066/Kol/2014 is dismissed.

**Order pronounced in the Court on 01.11.2017**

Sd/-  
[A.T.Varkey]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 01.11.2017

SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-4, Kolkata, P-7, Chowringhee Square, Kolkata-700069
2. M/s J. Thomas & Co. Pvt. Ltd., 11, R.N. Mukherjee Road, Kolkata-700001.
- 3..C.I.T.(A)-IV, Kolkata
4. C.I.T.- Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches