

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

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

I.T.A No. 1385/Kol/2014

Assessment Year : 2004-05

Arrow Amenities Pvt. Ltd.
Kolkata

-vs.-

I.T.O., Ward-7(1)
Kolkata

[PAN : AAECA 5286 H]
(Appellant)

(Respondent)

For the Appellant : Shri N.M.Bhansali, Advocate
For the Respondent : Shri Sallong Yaden, Addl. CIT

Date of Hearing : 30.05.2017.

Date of Pronouncement : 02.06.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Assessee against the order dated 27.03.2014 of C.I.T.(A)-XXXVI, Kolkata relating to A.Y.2004-05.

2. Grounds of appeal raised by the Assessee read as follows :-

1. THAT the LD CIT(Appeals) was not justified in confirming the disallowing of Rs.37,21,420/- out of misc. expenses of Rs.37,26,420/-. The observation of the Ld. CIT(A) for dismissing the appeal on this ground is wrong, arbitrary and misconceived.

2. That the appellant craves for leave to alter, amend, modify any of the grounds and/or take additional Grounds before or at the time of hearing of this appeal.”

3. The Assessee is a company. It is engaged in the business of rendering transport services and the automobile services. The assessee during the previous year commenced its business of call taxi services. In the course of assessment proceedings the AO noticed that the assessee has claimed a sum of Rs.37,26,420/- in its profit and loss account under the head ‘miscellaneous expenses’ and deductible while computing income from business. According to the AO the assessee was requested to furnish details and evidence of incurring of miscellaneous expenses and justify the quantum of

expenses with reference to the volume of business. According to the AO the assessee had not filed any evidence regarding incurring of expenses and also had not explained the justification of these expenses with reference to the volume of business of the assessee. In this regard the AO also observed that during the previous year the assessee had receipts only to the extent of Rs.3,90,183/- from driver rental and recruitment receipts. The AO also noticed that in the books of accounts of the assessee only a sum of Rs.7,40,692/- which was 1/5th total expenses of Rs.37,26,420/- was debited in the profit and loss account whereas in the return of income filed the entire sum of Rs.37,26,420/- was claimed as revenue expenditure deductible while computing income from business. The AO was of the view that a sum of Rs.5,000/- can be regarded as reasonable expenses commensurate with the volume of the business carried out by the assessee. The AO accordingly disallowed the claim of assessee for deduction of Rs.37,21,420/-.

4. Before CIT(A) the assessee contended that the entire expenditure was incurred for the purpose of business of the assessee. It was submitted by the assessee that the expenses were wholly and exclusively for the purpose of business of the assessee and since it was the first year of the business the expenditure was high. The assessee also pointed out that for the purpose of accounting entries the assessee considered 1/5th of the expenditure as attributable to A.Y.2004-05 and since the expenses, though of revenue in nature, was such that the benefit of those expenses would enure for a period of time, the remaining 4/5th of the expenses was claimed by spreading it over in the subsequent assessment years. The assessee pointed out that such accounting treatment cannot be the basis to disallow a revenue expenditure in the present assessment year.

5. The CIT(A) however confirmed the order of AO observing as follows :-

“Appellant’s submission and facts available on record is carefully considered. Assessment record was called for and verified. On verification of the assessment record it is seen that appellant has merely given various broad heads under which the expenditure was incurred. No other details of expenditure such as

bills/vouchers or at least name, address and amount of payment made was furnished. From the broad heads given, it is seen that most of the heads of expenditure are in the nature of capital expenditure which was not allowable u/s 37 of the I.T Act Even otherwise the appellant has not discharged the onus cast upon him on the assessee to prove the expenditure claimed by it Reliance is placed on the decision of CIT vs. Modistone Ltd. 206 Taxman 123 (Delhi). In view of the above it is held that AO had correctly disallowed the expenditure claimed under the head Misc. Expenses. The appeal on this ground is dismissed.”

6. Aggrieved by the order of the CIT(A), the Assessee has preferred the present appeal before the Tribunal. Before us the Id. Counsel for the assessee pointed out that it was not correct on the part of CIT(A) to hold that the assessee had not furnished details of bills, vouchers and addresses of the persons to whom payment was made. It was also submitted that the expenses were revenue expenses and were deductible while computing the income from business. The Id. DR relied on the order of CIT(A).

7. We have considered the rival submissions. The details of the expenses that were disallowed by the AO are as follows :-

DETAILS OF MISC. EXPENDITURE WRITTEN OFF

Particulars	Total Amount	1/5 th Written off	Balance as on 31.03.04
Tel. & Tele.Communication	29,160	5,832	23,328
Taxi Meters	153,080	30,616	122,464
Vehicle Accessories	86,760	17,352	69,408
Printer for Taxi Meters	685,436	137,087	548,349
Advance Against IVH	1,559,020	311,804	1,247,216
Advance Against MDT	266,000	53,200	212,800
Vehicle Registration Exp.	348,443	69,689	278,754
Advance – Driver Recruitment	129,099	25,820	103,279
Advance – Taxi Operations	446,462	89,292	357,170
	3,703,460	740,692	2,962,768

8. In the course of assessment proceedings, the AO issued a notice dated 26.10.2005 u/s 142 (1) of the Act in which he had called for certain details. The details with regard to the miscellaneous expenses had not been called for by the AO. The assessee in a letter dated 27.09.2006 has however furnished the details of the miscellaneous expenses and had also explained the accounting treatment in the books of accounts with regard to the miscellaneous expenses as follows :-

“6. Details of Misc. expenses not written off of Rs.29.55.728/- and details of Misc. expenses written off of Rs.7.40,692/-. Only 1/5 th of the total expenditure of Rs.37,03,460/- were written off during the year as expenditure was of enduring nature.

11. Misc. expenses of Rs.29.62.76S/- were not written off during the year because the benefit of these expenditure were to accrue in long term. However, since the expenditure was incurred during the year for the purpose of business the same should be allowed in this year irrespective of its treatment in the accounts.”

9. As we have already seen that the assessee is in the business of hiring taxis based on the calls received at the call centre and transferred to taxis at various destinations, which is popularly referred to call taxi services. From a perusal of the miscellaneous expenses it appears that the expenditure like taxi meters, printer for taxi meters, IVH (to receive data from call centre) MDT which receives data from IVH etc, are included in the miscellaneous expenditure. The business model of the assessee is that the assessee hires cars owned by third parties and the assessee is not the owner of the cars. Therefore the aforesaid accessories which are required to render call taxi services cannot said to be items of capital expenditure. They are installed in the taxi owned by a third party. Therefore these items of expenses have to be regarded as revenue expenditure. With regard to the findings of CIT(A) that the bills and vouchers, names and address of the person to whom payments were made were not furnished by the assessee, we have already seen that the assessee was not called upon to furnish all these details in the notice dated 26.10.2005 issued u/s 142 (1) of the Act by the AO. Nevertheless in the order of assessment the AO has observed that the evidence for incurring these expenses were not furnished. It was therefore necessary for the assessee

to have furnished the necessary evidence before the CIT(A). We are of the view that the expenses in question cannot be regarded to be as capital expenditure. Nevertheless allowability of expenses in question u/s 37(1) of the Act is also dependent on the condition that these expenses were incurred by the assessee for the purpose of business of the assessee. We therefore set aside the order of CIT(A) and remand the question to the AO for fresh consideration with a liberty to the assessee to file evidence to show incurring of these expenses by the assessee. We may also add that the accounting treatment given by the assessee in the books of accounts will not be decisive in the matter. With these observations, we allow the appeal of the assessee for statistical purposes.

10. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 02.06.2017.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 02.06.2017.
[RG PS]

Copy of the order forwarded to:

1. Arrow Amenities Pvt. Ltd., 2, Nazir Alie Lane, Flat No.4A, Kolkata-700019.
2. I.T.O., Ward-7(1), Kolkata.
3. CIT(A)-XXXVI, Kolkata
4. C.I.T.-III, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

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

