

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
and
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.829/Bang/2017
(Assessment year : 2012-13)

M/s.Universal Textile Mills,
44, Gudahatti Main Road,
Neralur Post, Attibele,
Bengaluru. ... Appellant
PAN:AAAFU 7276 P

Vs.

Deputy Commissioner of Income-tax,
Circle-4(3)(1),
Bengaluru. ... Respondent

Appellant by : Shri Rajkamal Ganeriwala, CA
Respondent by : Shri M.K.Biju, JCIT (DR)

Date of hearing : 06/11/2017
Date of pronouncement : 17/11/2017

ORDER

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of the Commissioner of Income-tax (Appeals), Bengaluru-2, Bengaluru, [CIT(A)] dated 07/01/2017 for the assessment year 2012-13.

2. The assessee raised the following grounds of appeal:

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1. The Learned assessing authority has erred in law by disallowing expenses u/s 37 of the Act, of Rs9,31,232/- which was reduced by First Appellate Authority to Rs. 4,56,616/- on foreign travel, terming it as of personal nature, which is an arbitrary, sans evidence and is based on presumption and hence liable to be quashed.
2. The Learned First Appellate Authority has erred in facts of the case and understanding of the Journal Entry made in Voucher test checked, which formed the very basis for decision of disallowance. Actually the amount Rs.7,300/- is debited to Drawings of Partner and not to travel account as is alleged in the said impugned Order.
3. Your appellant seeks leave to urge any other ground at the time of hearing.

PRAYER:

1. Your appellant humbly pleads before your honour to quash the disallowance fully on account of Foreign Travel, though modified by Learned First Appellate Authority to Rs.4,56,616/- from out of Rs.9,31,232/-
2. To delete the consequential levy of interest on tax amount.
3. Briefly facts of the case are that the assessee is a partnership firm. It is engaged in the business of export of silk fabrics. Return of income for the assessment year 2012-13 was filed on 28/09/2012 declaring income of Rs.4,97,66,800/-. Against said return of income,

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the assessment was completed at total income of Rs.5,50,79,235/- vide order dated 26/03/2015 passed u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. While doing so, the Assessing Officer (AO) made addition on account of overseas commission paid of Rs.43,83,206/- and made disallowance of 20% of travelling expenditure of Rs.9,31,232/-. The AO disallowed overseas commission paid on the ground that no TDS was made. In respect of foreign travel expenditure, AO held that the partners of the assessee undertook foreign travel, therefore, he presumed that 20% of the expenditure should be in the nature of personal expenditure.

4. On appeal before the CIT(A), the CIT(A) granted relief in respect of disallowance of commission paid to foreign parties. However, confirmed addition made on account of foreign travel. The CIT(A), after referring to description given in the vouchers dated 14th June 2011 concluded that the expenditure was also incurred towards family members of the firm. Therefore, he confirmed the entire disallowance. Being aggrieved, the assessee is in appeal before us.

5. We heard rival submissions and perused the material on record. In the present case, the AO has disallowed 20% of travel expenditure holding to be in the nature of personal expenditure of the partners of the assessee. This is done merely based on surmises and conjectures. The AO had not referred to any evidence. However, the CIT(A) had referred to one of the vouchers wherein expenditure of Rs.3,18,176/- was incurred and it was stated in the narration of the expenditure that the amount was also incurred towards partners Shri Aditya Jaipura and

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one Ms.PJ. It is not known who that person Ms.PJ is. Even assuming that she is not the partner of the firm, only 50% of Rs.3,18,176/- can be confirmed and the balance disallowed in absence of any evidence on record suggesting personal nature cannot be upheld. Therefore, we direct the AO to disallow 50% of Rs.3,18,176/- and delete the balance addition.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 17th November, 2017

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 17/11/2017

srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore