

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

ITA No. 4682/DEL/2017 [A.Y. 2012-13]

M/s Media Features [India] Pvt. Ltd
11/5B, param Tower, 2nd Floor
Pusa Road, New Delhi

Vs.

The I.T.O
Ward 16(3)
New Delhi

PAN : AADCM 3904 D

[Appellant]

[Respondent]

Date of Hearing : 27.11.2017
Date of Pronouncement : 29.11.2017

Assessee by : Shri S.K. Chaturvedi, CA

Revenue by : Shri Atiq Ahmed Sr. DR

ORDER

This appeal of the assessee arises from the order of the ld.
CIT(A)- 38, Delhi vide order dated 31.05.2017 for A.Y. 2012-13.

2. The assessee has raised the following grounds of appeal:

“1. CIT(A) has erred by confirming the addition of the amount of stale cheques at Rs. 99,877/- despite the fact that the same amount was not claimed as expenses during the year under appeal, this action is illegal, arbitrary and against the facts and circumstances of the case.

2. *CIT(A) has erred on facts and in law by confirming the disallowance of renewal fee paid to Sikkim Manipal University on the ground that no TDS was deducted , her action is illegal, arbitrary and against the facts and circumstances of the case.*

3. *CIT(A) has erred by confirming the addition of Rs. 5,50,000/-, the amount paid for acquiring a new Sikkim Manipal University Centre with registered students, on the ground that no TDS was deducted from this amount and also without properly adjudicating the facts and contention of appellant, her action is illegal, arbitrary and against the facts and circumstances of the case.*

4. *The appellant craves leave to add, delete, modify any ground of appeal.”*

3. Briefly stated, the facts of the case pertaining to Ground No. 1 are that the assessee has maintained a stale cheque, which is available at page 36 of the paper book. The assessee has submitted explanation about the same which was not accepted by the Assessing Officer, who made the additions which was confirmed by the ld. CIT(A).

4. I have heard the rival submissions and perused the relevant material on record. It was submitted by the ld. counsel for the

assessee that the cheques were issued to MCD which were never encashed and the assessee has reversed the entry during the impugned year. The Assessing Officer has to verify whether the assessee has claimed the expenses in the preceding years and in case he has claimed the same in the preceding year, that reversal entry will definitely be income of the impugned year. Accordingly, the matter is set aside to the file of the Assessing Officer who will decide the issue de novo after affording adequate opportunity of being heard to the assessee. Ground No. 1 is allowed for statistical purposes.

5. As regards the next issue, i.e. Ground No. 2, the Assessing Officer made addition u/s 40A(2) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] and the Assessing Officer as well as the Id. CIT(A) has mentioned that the transaction is squarely covered u/s 194J(I)(ba) of the Act which states that “any person, not being an individual or HUF who is responsible for paying to a resident any sum by way of remuneration or fees or commission by whatever name called other than those on which tax is deductible u/s 192 of the Act to director of a company.....shall deduct an amount of 10% as income tax thereon.” But this amendment has come into force w.e.f. 1.7.2012 ie, relevant to assessment year 2013-14 and not in the impugned year

i.e. 2012-13. Therefore, no addition u/s 40(a)(ia) of the Act can be made in the impugned year and hence the addition so made is directed to be deleted. Thus, ground No. 2 raised by the assessee is allowed.

6. As regards Ground No. 3, the Assessing Officer has made an addition of Rs. 5,50,000/- on the ground that the assessee has claimed Revenue expenditure of an amount of Rs. 5,50,000/- which, in fact, should have been capital expenditure and which has been confirmed by the ld. CIT(A).

7. Brief facts of the case, as emanating from the order of the ld. CIT(A) are that as a matter of fact, Rs.5,50,000/- was paid to purchase a new centre *No.02969* from M/s Anupam Institute of Information Technology & Management, the copy of agreement is being enclosed at page no. 12-14 of paper book.

8. This amount was paid to acquire a right with the permission of SMU to run already set centre. This payment has not generated any capital asset and also not of enduring nature but a payment to facilitate the assessee to start a new centre. Therefore, it is a revenue expenditure. This has been held by Hon'ble Supreme Court as under:

“Any Expenditure- Meaning- Spending’ in the sense of paying out or away : money is the primary meaning of 'expenditure' is what is paid out or away and is something which is gone irretrievably. Expenditure, which is deductible for income for tax purposes, is one which is either actually paid or, if the accounts are on mercantile basis, provided for towards a liability actually existing at the time, but: putting aside of money which may become expenditure on the happening of an event is not expenditure. [Indian Molasses Co. Pr. Ltd. v. CIT, (1959) 37 ITR 66 (SC)]

If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and the conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future [Empire Jute Co. Ltd. v. CIT, (1980) 124 ITR 1, 10 (SC)]

9. It is the intension of the object with which the asset is acquired, that nature of the expenditure incurred over it, and not the method or the manner in which the payment is made, or the source of such payment.

10. Further reliance is placed on Delhi High Court decision in case of CIT v. Relaxo Footwear Ltd. 293 ITR 231 (Del), wherein it has been held “that new unit was a part of the existing business and there was no dispute that there was unity of control and interlacing of the units. Thus the expenses incurred by the assessee for the setting up of the new unit which was a part of the existing business were therefore, to be allowed as a revenue expenditure.”

11. Similarly Madras High Court has also held the same in the case of CIT v. Rane (Madras) Ltd. 293 ITR 459 (Mad)

12. In that view of the matter, I am of the view that the ld. CIT(A) is not justified in confirming the addition made by the Assessing Officer and the same is directed to be deleted. Thus ground No. 3 is allowed.

5. In the result, the appeal of the assessee in ITA No. 4682/DEL/2017 is partly allowed.

The order is pronounced in the open court on 29.11.2017.

Sd/-

[B.P. JAIN]
ACCOUNTANT MEMBER

Dated: 28th November, 2017

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi