

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.569/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

M/s. J. Thomas & Co. Pvt. Ltd. 11, R.N. Mukherjee Road, Kolkata – 700 001.	Vs.	DCIT, Cir-4, Kolkata P-7, Chowringhee Square, AayakarBhavan, Kolkata – 700 069.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AABCJ 2851 Q		
(APPELLANT)	..	(RESPONDENT)

Appellant by

:Shri S.C Giri

Respondent by

:Shri Arindam Bhattacharjee, Addl. CIT

सुनवाईकीतारीख/ **Date of Hearing** : **20/11/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **13/12/2017**

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee, pertaining to assessment year 2011-12, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)–6, Kolkata, in Appeal No.286/CIT(A)-6/Kol/2015-16, dated 24.02.2016, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act') dated 17.02.2014.

2.The grounds of appeal raised by the assessee read as under:

"1. That on the facts and in circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeal) [hereinafter referred to as 'Id.CIT(A)'] grossly erred in confirming the action of the Assessing

Officer (hereinafter referred to as the 'AO') in adding back an amount of INR 21,15,106/- 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 without appreciating the fact that the said expenditure was directly related to its business as it had generated brokerage income of the appellant to the tune of INR 4,61,47,508/- during the relevant year.

2. That on the facts and circumstances of the case and in law and without prejudice to Ground No.1 above, the Id. CIT(A) grossly erred in adding back an amount of INR 21,15,106/- 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 held that an expenditure should be allowed even if the same results in indirectly facilitating the carrying on the business of the appellant.

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

3. The brief facts qua the issue are that the assessee company has spent expenses to the tune of Rs.21,15,106/- for foreign travel. The AO observed, during the assessment proceedings, that the Managing Director and other officials of the company have undergone foreign tours to UK, Australia, Dubai and Sri Lanka. During the proceedings, the AO asked the reasons of foreign travel and the assessee submitted the reasons thereof. However, the AO ignored the submissions of the assessee and held that the assessee company is engaged in the business of tea and coffee auctioneering, financing and rubber handling and not engaged in the business of exporting tea, coffee or any other items. The AO noted that the foreign travel expenses incurred by the high officials of the assessee company cannot be said to have been incurred for any direct benefit of the assessee company and hence, it cannot be stated that the expenditure has been incurred for the purpose of the business of the assessee company. Therefore, the AO disallowed the entire foreign travel expenses of Rs.21,15,106/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A) who has confirmed the addition made by the AO. The CIT(A) held that assessee had not furnished any details of tangible benefits derived from the foreign travel. It was only generally stated by the assessee that prospective foreign buyers are identified and the information is passed onto the clients who have export licenses which help the auction buyers to purchase the desired quantity to satisfy the foreign market. The assessee submitted before the Id. CIT(A) that the entire expenses helped to generate revenue from selling the required quantity of tea through auction. The assessee also submitted that the details of brokerage earned by it from various clients. But the Id. CIT(A) held that details of brokerage cannot be and have not been linked with any specific information gathered by the assessee through its directors or employees while on their foreign travel. Therefore, as per Id. CIT(A) the nexus between the foreign travel expenses and the assessee's business was missing and therefore, he confirmed the addition made by the AO.

5. Not being satisfied with the order of the CIT(A), the assessee is in further appeal before us. The Id. Counsel for the assessee has submitted before us the details of different purchases by exporter through auction vis-a-vis brokerage earned by assessee (vide P.B.19). The Id. Counsel stated that there was direct nexus between the foreign travel and the business of the assessee. Apart from this, the Id. Counsel stated that the assessee's issue under consideration is fully covered by the judgment of Hon'ble ITAT, Kolkata in assessee's own case in ITA Nos.2066/Kol/2014 & 2071/Kol/2014, A.Y.2010-11 dated 01.11.2017, wherein it was held that the senior employees of the assessee company visited foreign countries and it has generated revenue to the assessee in the form of brokerage income. The said expenses on foreign travel have been incurred out of commercial expediency and it should be viewed from a businessman's point of view. The Hon'ble Tribunal further held that assessee incurred similar foreign expenses in earlier year 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 were filed by the Ld. counsel in this regard.

6. On the other hand, the Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. Having heard the rival submissions and perused the materials available on record, we note that the senior employees of the assessee company visited foreign countries and it has generated revenue to the assessee in the form of brokerage income. The said expenses on foreign travel have been incurred out of commercial expediency and it should be viewed from a businessman's point of view. Besides, the assessee had incurred similar foreign expenses in earlier year also. The revenue had accepted the same as business expenditure. We also note that assessee's case under consideration it is fully covered by the Coordinate Bench of Kolkata in ITA Nos.2066/Kol/2014 & 2071/Kol/2014 dated 01.11.2017 (supra). In view of the aforesaid findings and respectfully following the judgment of Coordinate Bench in assessee's own case(supra), we direct the AO to delete the disallowance made towards foreign travel expenses to the sum of Rs. 21,15,106/-.

8. In the result, the appeal filed by the assessee, is allowed.

Order pronounced in the open court on this **13/12/2017**.

Sd/-
(N. V. VASUDEVAN)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;
दिनांक Dated 13/12/2017
RS(SPS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant – M/s. J. Thomas & Co. Pvt. Ltd.
2. प्रत्यर्थी/ The Respondent-DCIT, Cir-4, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/** DR, ITAT,
Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

//True Copy//

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.