



IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.31/Mum/2016

(Assessment Year :2010-11)

M/s. Sarang & Associates 302, Shabnam Apartment 33, S.V.Road, Andheri (W) Mumbai – 400 058	Vs.	DCIT CEN CIR 36, Mumbai
PAN/GIR No. AAAFS0638J		
Appellant)	..	Respondent)

Assessee by	Shri Piyush Chhajed
Revenue by	Shri V. Justin
Date of Hearing	03/01/2018
Date of Pronouncement	08/01/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-53, Mumbai dated 20/10/2015 for A.Y.2010-11 in the matter of order passed u/s.143(3) of the IT Act.

2. Following grounds have been taken by the assessee:-

1. On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.8,00,000/- treating the current repairs as Capital expenditure without appreciating that the same were in nature of repairs and therefore was Revenue expenditure.

2. On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.97,162/- being 15% of Vehicle expenses on ad-hoc basis without pin-pointing any specific defects or instances.

3. Learned AR placed on record the order of the Tribunal in assessee's own case for A.Y.2011-12 wherein issue No.1 has been decided by the Tribunal in assessee's favour vide order dated 24/11/2016. The precise observation of the Tribunal was as under:-

4. We have heard rival contentions and gone through the facts and circumstances of the case. Admittedly assessee is owner of building known as "Shabnam Apartments" situated at Andheri West. The assessee submitted the details of "repairs and maintenance" and "labour charges" amounting to Rs.49,60,053/-. The assessee submitted a copy of bill issued by one contractor M/s 'Z' Fabricators amounting to Rs.33,33,035/-. It was claimed that the assessee owns a building which was damaged and required extensive repairs and rehabilitation. The assessee submitted the details of expenditures and taken us through bills and vouchers which states that major repairs were carried out i.e. removing of existing plaster, breaking of RCC member and redoing of existing plasters and glazing of the buildings. Other expenses like repair and maintenance and miscellaneous expenses were carried out. The assessee claimed that this building is part of balance-sheet and assessee being owner it has already capitalized building when it was purchased. But now on the same building for redoing the entire building, the assessee has carried out repair and renovation and incurred these expenses of Rs.49, 60,053/-. The learned Counsel for the assessee relied on the decisions of Hon'ble Delhi High Court in the case of CIT Vs. Modi Industries Ltd. (2011) 339 ITR 467 (Delhi) wherein Hon'ble High Court held that insofar as purchase of pumping sets, Mono block pump with HP Motors and two transformers is concerned, they were not stand alone equipments, but were the part of bigger plant. Therefore, it would be treated as replacement of those parts when they are not used independently and the expenditure would be liable to deduction under Section 37(1). Similarly, Hon'ble Gujarat High Court in the case of CIT Vs. Udaipur Distillery Co. Ltd. 268 ITR 451(Guj), wherein it was held that purchase of transformers in replacement of existing transformer, which could not be used independently, falls within the category of revenue expenditure and hence, is an allowable deduction under Section 37(1) of the Act. These expenditures are, thus, treated as Revenue expenditure.

5. We find that in the present case the expenditure was incurred on repairs, reinforcement, replacement of dilapidated beams, pillars, walls, etc., of the existing press building and that the assessee did not bring into existence any new asset over and above the existing building. We are of the view that the assessee had been incurring such

expenditure in the past as and when the need arose and it was towards preserving and maintaining the existing asset. This issue is supported by the decision of Hon'ble Supreme Court in the case of CIT Vs. Saravana Spinning Mills P. Ltd. (2007) 293 ITR 201(SC). In the present case the Department doubted the nature of the expenditure considering the magnitude of the expenditure incurred in the current year compared to the expenditure in the earlier years. We are of the view that the authorities below had acted on the presumption that a part of the building had been demolished and that the items had actually been used for erection of a new structure. However, we find from the records of the case that for this conclusion, the Department could not bring on record any evidence to justify the stand that the expenditure was actually for erection of a new building or asset. We find that the contention of the assessee that it had undertaken major repairs to put the dilapidated columns, beams, roofs, etc., in its original position, which had become dangerous and unsafe for the workmen and hindered the normal operation of the business, was not controverted by the Departmental representative nor had any evidence to the contrary been produced before the Tribunal or the authorities below. Accordingly, we are of the view that the assessee had incurred the said expenditure only to preserve and maintain the existing asset and that the expenditure was not of a nature which brought into being a new asset or created a new advantage of an enduring nature. Consequently, the expenditure is revenue in nature and has to allow as deduction. We allow the claim and reverse the orders of the lower authorities.

4. It is clear from the finding of the Tribunal that out of total repair charges of Rs. 49,60,053/-, Rs.33,33,035/- was allowed in the A.Y.2011-12, the expenditure Rs.8,00,000/- is therefore, required to be allowed in the A.Y.2010-11 under consideration. We direct accordingly.
5. Assessee is also aggrieved for confirming the disallowance of 15% out of vehicle expenses on adhoc basis.
6. We have considered rival contentions and found that AO has disallowed 20% vehicle expenses on account of personal use which was reduced by CIT(A) to 15%. Keeping in view the nature of assessee's business vis-à-vis possibility of personal use, we restrict the disallowance to the extent of 10% on account of personal use. We direct accordingly.

7. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this 08/01/2018

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 08/01/2018

Karuna Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai