

IN THE INCOME TAX APPELLATE TRIBUNAL : 'A' BENCH, KOLKATA

**Before : Shri M. Balaganesh, Accountant Member and
Shri S.S.Viswanethra Ravi, Judicial Member**

ITA No. 1310/Kol/2015

A.Y : 2008-09

**M/s. C.Marc (India)
Pvt. Ltd.**

PAN:AABCC0664Q

[Appellant-Assessee]

Vs.

D.C.I.T. Cir-6(2), Kolkata

[Department-Respondent]

Appellant by : Shri M.K. Datta, FCA, Id.AR

Respondent by : Shri Soumyajit Dasgupta, Addl.CIT, Id.DR

Date of Hearing : 15-11-2017

Date of Pronouncement : 12-01-2018

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by the Assessee is against the order dt. 06-08-2015 of the CIT-A, 4, Kolkata for the A.Y : 2008-09.

2. The only effective issue is to be decided as to whether the CIT-A justified in confirming the disallowance of Rs.14 lakhs made under the head 'repairs & maintenance' by the AO in the fact and circumstances of the case.

3. The brief facts of the case are that the assessee is a private limited company and engaged in the business of management consultancy. The assessee filed its e-return of income declaring total income of Rs. 4,47,78,320/-. Under the scrutiny, notice u/s. 143(2) of the Act dt. 24-08-09 was issued. In response to which, the AR of the assessee appeared and filed copies of relevant details i.e Tax Audit Report (TAR) and books of account, which were test checked and examined by the AO. The AO determined the total income at Rs.4,90,36,960/- as against of Rs.4,47,78,320/- returned by the

assessee, inter-alia by making various disallowances vide his order dt. 31-12-2010 passed u/s. 143(3) of the Act.

4. During the assessment proceedings the AO requested the assessee to submit the details of repair & maintenance expenses as claimed by it in the return. The assessee filed written submissions by stating that it has paid Rs.15.65 lakhs and Rs.15.73 under the heads 'repairs & maintenance to flat and 'others' paid to various parties. For non submission of any evidence/bill and voucher et., the AO disallowed of Rs.7,00,000/-each under both the heads by stating as under:-

*"4.0 Repairs and Maintenance of Rs.31.38 lakhs
During the course of scrutiny proceedings the assessee was requested to submit the details of repairs and maintenance expenses. The assessee filed a written submission wherein it has been stated that repairs and maintenances to Flat of Rs.15.65 lakhs and Others of Rs.15.73 lakhs paid to the various parties without any evidence/bill/voucher etc. The assessee's contention is not acceptable. Hence, Rs.7,00,000/- under the of Flat and Rs.7,00,000/- under the head of Others are being added to the total income."*

5. The assessee challenged the above before the CIT-A and contended that inspite of having filing of details, books of account and audited accounts before the AO by supporting vouchers, evidences and documents in respect of all expenses during the assessment proceedings the AO arbitrarily disallowed at @ 50% approximately i.e. at Rs.7,00,000/- and Rs.7,00,000/- on both the heads i.e. under the heads 'repairs & maintenance' and 'others' on the reason that no evidences relating to said expenditure were not filed before the AO by the assessee. Before the CIT-A the assessee submitted that the expenditure involved in the impugned addition incurred wholly and exclusively for the purpose of business. The assessee has been following the same method of accounting policy consistently and regularly since very inception of the assessee company.

6. The CIT-A considering the submissions of the assessee confirmed the said disallowance as made by the AO by observing that the assessee has not made any effort to establish as to what

expenses were incurred on repairs and upkeep. Relevant portion of finding of the CIT-A on this issue is reproduced herein below:-

"6.2 I have considered the AR's submission and perused the assessment order. I find that the order of the AT is cryptic on the subject. At the same time however, I find that the AR did not help the matter because his submissions in the course of appeal were also as cryptic. In the income tax proceedings onus of leading the evidence in support of the deduction claimed is on the assessee. The AR of the appellant did not bring on record any cogent material in support of the fact that details of expenses to the tune of Rs.31.38 lacs were filed before the AO. No doubt true that the assessee was required to incur the expenses on upkeep of the premise but the onus of proving the genuineness of the expenditure was on the assessee. The assessee could not run away from its obligation of furnishing of the requisite particulars and challenge the AO's order by stating that no adhoc disallowance was warranted. Although I find that the AO restored the adhoc disallowance without rejecting books yet I also find that the efforts of the AR were wanting even at the appellate stage because no effort was made to establish as to what expenses were incurred on repairs and upkeep. In fact, I find that no explanation whatsoever has been provided with regard to his disallowance. Having regard to these facts therefore I am constrained to uphold the disallowance of Rs.14 lacs out of repairs and maintenance expenses. This ground stands dismissed."

7. Aggrieved by such order of the CIT-A, the assessee is in appeal before us and in support of the contention filed paper book containing pages 1-36. The Id.AR of the assessee has reiterated his submissions as made before the CIT-A. He also submits that the assessee produced voluminous records in support of the claim before the CIT. On perusal of the same, the CIT-A deleted the some of the disallowances on other items. He further submits that in respect of impugned disallowance the assessee produced the documents in support of the expenditure incurred by the assessee before the AO, but he choose to examine only some documents and evidences and disallowed the same at approximately 50% each arbitrarily under both the heads as claimed by the assessee. The Id.AR argued that neither before the AO nor the CIT-A had any material on record to reject and disallow the same at 50% each head of the claim. Both the authorities have failed to give any reason on such disallowance. In support of the contention, the Id. AR referred to pages 18-36 of the paper book and argued that all the items as appearing in the ledger accounts are supported by voucher and evidences of payments and taxes thereon deducted at source from the payees. He also argued that the assessee claimed total expenditure towards 'repairs and maintenance' of Rs.31.38 laksh, which works out to 2.15% only of

the total cost price of the corresponding assets and referred to page 36 of the paper book. The Id.AR of the assessee has relied on the decision of the Hon'ble High Court of Madras in the case of Commissioner Of Income Tax vs The Lakshmi Vilas Bank Ltd dt.16.04.2014, Tax Case (Appeal) No.896 of 2013.

8. On the other hand, the Id.DR submits that the assessee did not bring on record any evidence in support of its claim before the AO. Therefore, he made such disallowance and added the same to the total income of the assessee. The onus is only on the assessee to prove the genuineness of the expenditure. The Id. DR further argued that the evidences as filed in pages 18-35 of the paper book were neither before the AO nor before the CIT-A showing the genuineness of the said expenditure/transaction, which is fully doubtful for non-submission of any evidence. Therefore, the AO has rightly disallowed the same in the facts and circumstances of the case. He relied on the orders of the AO & CIT-A.

9. In reply, the AR submits that the order of the CIT-A is cryptic and he failed to assign any reason to confirm the said disallowance made by the AO. He argued that the arguments as advanced by the Id.DR are incorrect in respect of non-submission of any evidence before the lower authorities. The AO/CIT-A failed to consider the submissions as made by the assessee before them.

10. Heard rival submissions and perused the material available on record including the case laws and the details as available in the paper book filed by the assessee before us. However, we find that evidence or explanation were not before the authorities below. On perusal of pages 18-35 of the paper book, we find that these details were not available before the AO for his consideration. Therefore, taking into consideration the facts and circumstances of the case and in the interest of justice, we deem it fit and proper to remand the

matter to the file of the AO for his fresh consideration. He shall pass a fresh order as per law, in view of evidences filed before him. The assessee shall be at liberty to file the evidences, if any, to substantiate its claim. Therefore, the grounds raised by the assessee in this regard are allowed for statistical purpose.

11. In the result, the appeal (ITA No. 1310/Kol/2015 for the A.Y 2008-09) of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 12-01-2018

Sd/-
M. Balaganesh
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 12-01-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee : M/s. C. Marc (India) Pvt. Ltd
IPHMR Campus, 318/B, Prantik Pally, Kolkata-107.
2. Respondent/Revenue : The DCIT, Cir 6(2), Aaykar Bhawan,
P-7, Chowringhee Square, Kolkata-69.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order

Sr.P.S,
Head of Office
ITAT Kolkata