



**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**ITA No.4955/Mum/2017**  
**(Assessment Year :2011-12)**

M/s. Sagar Entertainment Pvt. Ltd.,(Formerly Sagar Entertainment Ltd.) Sagar Villa, N.S.Road, No.12A JVPD Scheme, Vile Parle(W) Mumbai – 400 049	Vs.	ITO 11(1)(4), Mumbai
<b>PAN/GIR No.AAEC56492F</b>		
<b>Appellant)</b>	..	<b>Respondent)</b>

Assessee by	Shri K. Gopal
Revenue by	Ms. N. Hemalatha
<b>Date of Hearing</b>	<b>11/01/2018</b>
<b>Date of Pronouncement</b>	<b>22/01/2018</b>

**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)-4, dated 01/03/2017 for A.Y.2011-12 in the matter of order passed u/s.143(3) of the IT Act.

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

1. *Confirming addition to total income of Rs.18,83,892/- being entire expenses on medical expenses incurred on staff and directors included in "staff welfare".*
2. *Confirming addition to total income of Rs.1,61,481/- out of conveyance and travelling expenses and Rs.76,793/- out of car expenses.*

3. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in the profession / business of Producers and Exhibitors of TV Serials and Movies & Studio Renting. During the year under consideration, the assessee had declared income under the head profit and gains of business or profession. During the year under consideration, AO noticed that the assessee has debited Rs.18,83,892/- under the head medical expenses. During the assessment proceedings, vide notice u/s. 142(1) dated 3-10-2013, the assessee 'inter alia' was asked to establish the allowability of expenses claimed under the head medical expenses'.

4. The assessee, vide its representative, filed letter dated 9-10-2013. The relevant extract of said letter is reproduced hereunder;

*"Medical expenses for staff Rs. 39.871/-*

*The above medical expenses mainly pertains to medical reimbursement to the staff on monthly basis .-"*

*Medical expenses for directors Rs. 18,44,021/-*

*On going through the details your honour would notice that the above expenses pertains to the hospitalization expenses of employee director Mr. Anand Sagar. paid to Kokilaben Dhirubhai Ambani Hospital Mr. Anand Sagar is a employee director of the company since incorporation. Mr Ananad Sagar suffered a paralytic stroke (neurological disease) and was operated for DBS at Kokilaben Dhiruben Ambani Hospital. Accordingly the expenditure for the same is correctly claimed as medical expenses for directors under the head staff welfare. Also refer rule 3A.*

5. However, AO did not impress with the assessee's reply and held that the medical expenses of Rs, 18,44,021/- incurred by the company on Mr.

Anand Sagar, Director of the company for the purpose of paralytic attack is not allowable in view of the legal position contended in section 37 (i) of the Income tax Act, 1961.

6. By the impugned order, CIT(A) confirmed the action of the AO against which assessee is in further appeal before me. Shri. K.Gopal, appearing on behalf of the assessee contended that assessee company has reimbursed the medical expenses as per the policy of the company. He further mentioned that Shri Anand Sagar who was the Director and employee of the company hospitalized. The medical expenses of directors were for the hospitalization; and surgery of Director Shri Anand Sagar who had suffered a paralytic stroke and underwent DBS operation at Kokilaben Dhirubhai Ambani Hospital.

7. As per learned AR since the expenditure was incurred in the course of business and for the employee of the company who was also Director should be allowed as business expenditure. For this purpose reliance was placed on the decision of Co-ordinate Bench in case of Sharma International Ltd., 123 ITD 549 wherein similar expenditure was allowed after having the finding that because of the services of the Director Company was benefitted substantially and after inducting the surgery, Director had again resumed to the work which resulted in substantial increase in sales and profit of the company.

8. On the other hand, learned DR relied on the order of the lower authorities.

9. I have considered rival contentions and carefully gone through the orders of the authorities below and found that the above expenses pertain to the hospitalization expenses of employee director Mr. Anand Sagar, paid to Kokilaben Dhirubhai Ambani Hospital. Mr. Anand Sagar is an employee director of the company since incorporation. Mr. Anand Sagar suffered a paralytic stroke (neurological disease) and was operated for DBS at Kokilaben Dhirubhai Ambani Hospital. Accordingly the expenditure for the same is correctly claimed as medical expenses for directors under the head staff welfare. Assessee had claimed reimbursement of medical expenditure paid to the Director and employee of the company namely Shri Anand Sagar as business expenditure u/s.37 of the IT Act. I found that medical expenditure of Director cum employee was for hospitalization and surgery of Director who had suffered a paralytic stroke and underwent DBS operation at Kokilaben Dhirubhai Ambani Hospital. However, assessing officer considered the above expenditure as personal in nature and treated it not incurred wholly and exclusively for the purpose of the business and also observed that the assessee company has not brought on record any evidence to show the above expenses were made for the purpose of facilitating the carrying on of the business of the company or has a matter of commercial expediency and accordingly disallowed the entire above expenses of Rs.18,83,892/-. From the record I found that AO has never questioned about the commercial exigency of the aforesaid expenditure since Mr. Anand Sagar, the Director of the company is naturally an employee of the company and

thus any expenditure incurred by an assessee on his staff is naturally staff welfare expenditure. Secondly, the payment to hospital is not a capital in nature and finally the assessee is a company and thus there cannot be any expenditure which is incurred by the assessee company can be of personal in nature. Thus, the conditions laid down in section 37(1) are met fully and the claim of the assessee company is well covered as business expenditure u/s **37(1)**. The term commercial expediency is not defined in the Income Tax Act and thus, to understand the correct meaning of the same one has to rely on the principal laid down by Supreme court in case of S A Builders Ltd. (2007) (SC) and Tulipstar Hotel Ltd. (2012)(SC). In these cases the Supreme Court said that commercial expediency is within the meaning of purpose of business or profession. The court said that the expression "commercial expediency" is an expression of wide import and includes such expenditure, a prudent businessman incurs for the purpose of business or profession. In the present case Mr. Anand Sagar, a famous film director is looking after the TV serial direction produced by the assessee company. Thus the well being of such a personality is of utmost important for the business of the assessee company. In the circumstances, keeping the principal of "commercial expediency" the assessee incurred the expenditure on his hospitalisation and surgery and thus such expenditure incurred by the assessee company was for the purpose of the business of the assessee and in true sense of "commercial expediency" and thus the same is correctly claimed as expenditure u/s 37(1) and be allowed fully.

10. In view of the above discussion, I do not find any merit for disallowance of the medical expenditure incurred on reimbursement to the Director.

**11. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 22/01/2018

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

Mumbai; Dated 22/01/2018

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai