

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

Before Shri Saktijit Dey (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.8635/Mum/2011
(Assessment year: 2008-08)

Sujata Chinai 72, Bharatiya Bhavan, Marine Drive, Mumbai-400 020 PAN : ADUPC0630K	vs	ACIT-11(1), Mumbai
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Appellant by	None
Revenue by	Shri V Justin

Date of hearing	24-01-2018
Date of pronouncement	31-01-2018

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against the order of the CIT(A)-3, Mumbai dated 19-10-2011 and it pertains to AY 2008-09.

2. The brief facts of the case are that the assessee, an individual, filed her return of income for the assessment year 2008-09 on 16-06-2008 declaring total income at Rs.51,09,029. The assessment was completed u/s 143(3) on 03-12-2010 determining total income at Rs.1,10,70,730 interalia making additions towards disallowance of professional charges and rent u/s 40(a)(ia) for failure to deduct tax at source under respective provisions, disallowance of studio expenses being capital in nature and

adhoc disallowance of various expenses. Aggrieved by the assessment order, the assessee preferred appeal before CIT(A).

3. Before CIT(A), assessee has filed elaborate written submissions and challenged each item of addition made by the AO. Insofar as disallowance of professional charges and rent u/s 40(a)(ia) for failure to deduct tax at source, assessee submitted that since expenditure incurred have been paid within the same financial year, no disallowance can be made u/s 40(a)(ia). In this regard, relied upon the decision of ITAT, Hyderabad Bench in the case of Teja Constructions vs CIT (2010) 39 SOT 13 (Hyd). As regards disallowance of studio expenses treating the same as capital expenditure, the assessee has submitted that it has furnished copies of bills of charges to whom payment of more than Rs.50,000 was made. Therefore, the AO was incorrect in disallowing expenditure. Similarly, insofar as disallowance of 20% of adhoc expenses, the AO has disallowed expenses on his own without calling for any details. The CIT(A), after considering relevant submissions of the assessee partly allowed appeal filed by the assessee wherein he sustained addition made by the AO towards disallowance of professional charges and rent u/s 40(a)(ia) and also disallowance of studio expenses by treating the same as capital expenditure; however, allowed partial relief in respect of adhoc disallowance of expenditure and scaled down the disallowance to 10% instead of 20% made by the AO. Aggrieved by

the order of CIT(A), assessee is in appeal before us.

4. None appeared for the assessee. We have heard the Ld.DR and perused the material available on record. Insofar as disallowance of professional charges and rent for failure to deduct tax at source, the assessee has failed to furnish any explanation for not deducting TDS except stating that expenditure incurred has been paid within the financial year, therefore, no disallowance can be made u/s 40(a)(ia) for failure to deduct TDS in view of the decision of Hyderabad Bench of the Tribunal in Teja Constructions (supra). We do not find any merit in the argument of the assessee for the reason that the Hon'ble Supreme Court in the case of Palam Gas Services Pvt Ltd vs CIT (2017 394 ITR 300 (SC) has considered the issue of words 'paid' and 'payable' in the light of section 40(a)(ia) and held that the word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid. Therefore, we are of the opinion that the AO was right in disallowing professional charges and rent u/s 40(a)(ia) for non deduction of TDS.

5. As regards disallowance of studio expenses by treating the same as capital expenditure, the CIT(A) has given categorical finding that on perusal of the bills submitted by the assessee it was found that the assessee has purchased capital items like air conditioners, furniture and fixtures and equipments, etc. which are in the nature of capital

expenditure and hence, not allowable as deduction. The assessee has not furnished any evidences to justify expenditure claimed under studio expenses is allowable against business income. Therefore, we are of the view that the CIT(A) was right in confirming addition made by the AO towards disallowance of studio expenses as capital in nature and his finding is upheld.

6. Similarly, insofar as adhoc disallowance of 20% expenses out of business promotion expenses, motor car expenses, depreciation on motor car and costume expenses, the CIT(A) has scaled down the disallowance to 10% by considering the fact that the assessee has failed to furnish any kind of evidence to justify expenses. We do not find any reason to interfere with the order of the CIT(A). Hence, we are inclined to uphold the findings of the CIT(A) and reject ground raised by the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 31st January, 2018.

Sd/-

sd/-

(Saktijit Dey)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 31st January, 2018

Pk/-

Copy to :

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

/True copy/

By order

Sr.PS, ITAT, Mumbai