

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA Nos.857 to 859 & 861/Del/2015
Assessment Years : 2006-07 to 2008-09 & 2010-11

ACIT,
Central Circle-7,
New Delhi.

Vs. Devyani International Ltd.,
R/o F.2/7, Okhla Industrial Area,
Phase-I,
New Delhi.

PAN: AABCD5534A

CO Nos.291 & 292/Del/2015
(ITA Nos.858 & 859/Del/2015
Assessment Years : 2007-08 & 2008-09

Devyani International Ltd.,
R/o F.2/7, Okhla Industrial
Area, Phase-I,
New Delhi.

Vs. ACIT,
Central Circle-7,
New Delhi.

PAN: AABCD5534A
(Appellant)

(Respondent)

Assessee By : Shri Akshat Jain, CA
Department By : Ms Rachna Singh, CIT, DR

Date of Hearing : 18.04.2018
Date of Pronouncement : 23.04.2018

ORDER

PER R.S. SYAL, VP:

This batch of six appeals consisting of four by the Revenue and the two Cross Objections by the assessee relate to the assessment years 2006-07 to 2008-09 & 2010-11. Since some common issues are raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

Assessment Year 2006-07

2. The only issue raised by the Revenue in this appeal is against the deletion of addition of Rs.3,67,14,462/-.
3. Succinctly, the factual matrix of the case is that a search and seizure operation u/s 132 of the Income-tax Act, 1961 (hereinafter also called 'the Act') was carried out on M/s Jaipuria group of cases on 27.03.2012. Notice u/s 153A of the Act was issued to the assessee, pursuant to which a return of income was filed. The Assessing Officer observed that huge 'Advertisement expenses' were claimed to have been incurred. On being

called upon to furnish the details of the parties from whom advertisement work was allegedly got done, the assessee furnished a list. The Investigation Wing, in order to verify the genuineness of the advertisement expenses, picked up 16 parties on random basis and issued summons u/s 131 of the Act. 14 persons replied to the summons out of 16 parties and all of them accepted the genuineness of the transactions. The Assessing Officer noticed that no tax at source was deducted. Apart from that, it was further observed that the assessee declared to have paid a sum of Rs.4,43,650/- to M/s Ramendra Enterprises and Rs.3,94,79,646/- to M/s Yum Restaurants Marketing Pvt. Ltd. towards Advertisement expenses. Notices were issued u/s 133(6) of the Act to these two parties. In the absence of any compliance from them, the Assessing Officer made an addition of Rs.3,67,14,462/-, after reducing an amount of Rs.50 lac shown to have been due. The Id. CIT(A) deleted the addition, against which the Revenue has come up before the Tribunal.

4. We have heard both the sides and perused the relevant material on record. It is seen that the Assessing Officer made an addition of Rs.3.67 crore in respect of 'Advertisement expenses' claimed to have been incurred in respect of two parties, namely, M/s Ramendra Enterprises and M/s Yum Restaurants Marketing Pvt. Ltd., to both of whom notices were issued u/s 133(6) but remained uncomplied with. Apart from issuing such notices, the Assessing Officer did not conduct any further inquiry. He simply proceeded to make the addition without ascertaining the genuineness or otherwise of these transactions. His inference of non-genuineness of the transactions was based simply on non-compliance by these two parties, whose complete particulars were with him. In case of non-compliance, the AO ought to have deputed Inspector or got the enquiry conducted by any other means before jumping to the conclusion of the non-genuineness of the transactions. It is further pertinent to note that additions were made in similar way in other years of the assessee company. Such an issue came up for consideration before the Tribunal in assessee's own case for the assessment years 2009-10 and 2011-12. Vide order dated 06.04.2018, the Tribunal, in ITA No.860

and 862/Del/2015 and C.O. Nos.293 and 294/Del/2015, has upheld the deletion of similar additions made in respect of `Advertisement expenses' incurred by the assessee for which notices were issued u/s 133(6) of the Act but no compliance was made. Since the facts and circumstances of the instant ground are *mutatis mutandis* similar, respectfully following the precedent, we uphold the impugned order in deleting this addition.

5. In the result, the appeal is dismissed.

Assessment Year 2007-08.

6. The first issue raised by the Revenue in its appeal is against the deletion of addition of Rs.5,14,72,157/- made by the Assessing Officer on account of `Advertisement expenses'. Both the sides are in agreement that the facts and circumstances of this ground are similar to those of the assessment year 2006-07. Following the view taken hereinabove, we uphold the impugned order in deleting this addition.

7. The next issue raised by the Revenue in its appeal is against reducing the addition u/s 14A of the Act. The assessee in its Cross objection is

aggrieved against the sustenance of addition u/s 14A to the tune of Rs.13,89,653/-.

8. The facts apropos this issue are that the Assessing Officer computed disallowance u/s 14A of the Act at Rs.1,24,88,043/-. The ld. CIT(A) noticed in para 4.3.18 of the impugned order that the assessee had itself disallowed Rs.13,89,653/-, being, 0.5% of average investments and added it back in the computation of total income. He found that the Assessing Officer did not record any satisfaction before proceeding to make any disallowance u/s 14A of the Act. In the absence of recording of such a satisfaction, the ld. CIT(A) restricted the disallowance to Rs. 13,89,653/- and deleted the remaining addition. Both the sides are in appeal on their respective stands.

9. We have heard both the sides and perused the relevant material on record. The ld. AR contended that the ld. CIT(A) wrongly recorded the fact about the assessee having *suo motu* disallowed Rs. 13,89,653/-. Relying on the Tribunal order for the A.Ys. 2009-10 and 2011-12 passed in the

assessee's own case, the ld. AR contended that no incriminating material was found during the course of search and, hence, the addition sustained u/s 14A of the Act cannot be upheld because of the judgment of the Hon'ble jurisdictional High Court in the case of *CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del)*. It is noticed that the assessee filed similar Cross objections for the assessment years 2009-10 and 2011-12 and the Tribunal, respectfully following the judgment of the Hon'ble jurisdictional High Court in *Kabul Chawla (supra)* preferred to delete such additions.

10. It is, no doubt, true that no addition can be made u/s 14A of the Act in respect of completed assessments as on the date of search if no incriminating material is found. In such a scenario, the amount of income finally determined in the original assessment is liable to be repeated in the assessment made u/s 153A of the Act. The ld. CIT(A) in the instant case has recorded a finding that the assessee itself disallowed Rs.13,89,653/- u/s 14A of the Act, which has been assailed on behalf of the assessee. On a pertinent query, the ld. AR could not produce a copy of the computation of

income or its original assessment order, which was stated to have been passed u/s 143(3) of the Act on 30.12.2009 to demonstrate that no such disallowance was offered by the assessee and further that a return was actually filed u/s 139 of the Act for the year under consideration. Under these circumstances, we set aside the impugned order and remit the matter to the file of Assessing Officer for examining, firstly, if the assessee filed its return u/s 139 of the Act or offered disallowance of Rs.13.89 lac in the original return or any such addition was made. If it is found that no return was filed or the disallowance was so offered or an addition made in the order u/s 143(3) of the Act that, then, such a disallowance has to be repeated in the assessment made u/s 153A read with section 143(3) of the Act. In the otherwise scenario, the *ratio* laid down in the case of *Kabul Chawla (supra)* will apply and the addition will stand deleted. The ground raised by the Revenue is, therefore, dismissed and that taken by the assessee is allowed for statistical purposes.

11. In the result, the appeal of the Revenue is dismissed and the C.O. filed by the assessee is allowed for statistical purposes.

Assessment Year 2008-09

12. The first issue raised in this appeal by the Revenue is against the deletion of addition of Rs.5,04,24,777/- on account of 'Advertisement expenses'. As the facts are, admittedly, similar, following the view taken hereinabove, we uphold the impugned order in deleting the addition.

13. The other ground raised by the Revenue and the only issue raised by the assessee in its cross objection is against the addition u/s 14A of the Act. The facts and circumstances of this issue are, again, similar to the preceding year. Following the view taken for the assessment year 2007-08, we set aside the impugned order and remit the matter to the file of Assessing Officer for examining the issue in the way directed above. Thus, the ground taken by the Revenue is dismissed and that by the assessee is allowed for statistical purposes.

14. In the result, the appeal of the Revenue is dismissed and the C.O. filed by the assessee is allowed for statistical purposes.

Assessment Year 2010-11

15. The only ground taken by the Revenue is against the deletion of addition of Rs.1,44,56,578/- on account of unexplained 'Advertisement expenses'.

16. As the facts are, admittedly, similar, following the view for the immediately preceding assessment years discussed herein *supra*, we uphold the impugned order in deleting the addition.

17. In the result, the appeal filed by the Revenue is dismissed.

The order pronounced in the open court on 23.04.2018.

Sd/-

[K. NARASIMHA CHARY]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 23rd April, 2018.

dk

Copy forwarded to:

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

AR, ITAT, NEW DELHI.