

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 7511/Mum/2014 (Assessment Year 2010-11)

M/s. National Refinery Private Limited Milan Building 87, Tardeo Road Opp. Air Conditioned Market, Mumbai-400034. PAN : AAACN2799J	Vs.	DCIT Circle 5(2) Now DCIT Circle 7(2) Aayakar Bhavan M.K. Road Mumbai-400020.
(Appellant)		(Respondent)

Assessee by	Shri Vinod Vasa & Ms. Dinkle Hariya
Department by	Shri Saurabh Deshpande
Date of Hearing	15.05.2018
Date of Pronouncement	23.05.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal of the assessee is directed against the order dated 13-10-2014 passed by Id CIT(A)-9, Mumbai and it relates to the assessment year 2010-11. The assessee is aggrieved by the decision of Ld CIT(A) rendered on the following issues:-

- (a) Disallowance of legal fee.
- (b) Disallowance of Professional fee
- (c) Disallowance out of miscellaneous expenses

2. The assessee is carrying on the business of melters, refiners, assayers of precious metals. The first and second issue relates to disallowance of legal and professional fee. The AO noticed that the assessee has claimed a sum of Rs.16.54 lakhs as legal and professional fee, out of which a sum of Rs.9.35 lakhs was found incurred in connection with defending criminal proceedings initiated against the directors and shareholders of the company. The AO disallowed the same and the Ld CIT(A) confirmed the same.

3. At the time of hearing, the Ld A.R submitted that an identical issue was considered in the assessee's own case by the co-ordinate bench of Tribunal in ITA No.25/Mum/2010 and others relating to AY 2005-06 & others and the Tribunal, vide its order dated 28-09-2016, has confirmed the disallowance. Inviting our attention to paragraph 8 of the order, the Ld A.R submitted that the Tribunal has laid down the proposition that if the concerned director/employee was subjected to legal proceeding in connection with the activities done during the course of carrying on business, then the legal & professional expenses is allowable. He further submitted that the Tribunal has confirmed the disallowance in the above said years, since the assessee has not shown that the expenses were incurred in those years in connection with the business carried on by the assessee. The Ld A.R submitted that during the year under consideration, these expenses were incurred for defending the directors, since the legal proceedings were initiated against them in connection with the activities carried on during the course of carrying on business. The Ld A.R also took support of certain documents furnished in the paper book.

4. On the contrary, the Ld D.R supported the order passed by Ld CIT(A).

5. The co-ordinate bench of Tribunal has already laid down the proposition that if the concerned director/employee was subjected to legal proceeding in connection with the activities done during the course of carrying on business, then the legal & professional expenses is allowable. Before us, the Ld A.R claims that the assessee would be in a position to satisfy the AO with regard to the above said proposition. Hence, in the interest of natural justice, we are of the view that the assessee may be provided with an opportunity in this matter. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh in the light of proposition laid down by the Tribunal in the assessee's own case referred supra.

6. The next issue relates to disallowance made out of miscellaneous expenses. The AO noticed that the expenses booked under the head "Miscellaneous expenses" are supported by self-made vouchers. He made adhoc disallowance of Rs.1.00 lakh. The Ld CIT(A) restricted the same to 10% of the expenses. Still aggrieved, the assessee has filed this appeal.

7. The Ld A.R submitted that the miscellaneous expenses have been incurred by the assessee and the self made vouchers were prepared when the assessee did not get vouchers from the payee. He submitted that there is no reason to suspect the expenditure merely for the reason that they are supported by self made vouchers.

8. The Ld D.R, however, placed reliance on the order passed by Ld CIT(A).

9. Having heard rival submissions, we are of the view that the order passed by Ld CIT(A) on this issue does not call for any interference. The self made vouchers are not susceptible for verification and hence disallowance of 10% to take care of revenue leakages, in our view, appears to be reasonable. Accordingly we uphold the order passed by Ld CIT(A) on this issue.

10. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order has been pronounced in the Court on 23.05.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 23/05/2018

Copy of the Order forwarded to :

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

6. Guard File.

//True Copy//

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BY ORDER,

Senior Private Secretary
ITAT, Mumbai