

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH.R. K. PANDA, ACCOUNTANT MEMBER
AND
SH.KULDIP SINGH, JUDICIAL MEMBER**

ITA No.6704/Del/2014
Assessment Year: 2011-12

ITO Ward . 16 (4) Room No. 304 C. R. Building, I. P Estate New Delhi	Vs	M/s. Mercurius Advisory Services Pvt. Ltd. C-7/227, Sector-7, Rohini New Delhi -110085 AAFCM5179C
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. S. R. Senapati, Sr. DR
Respondent by	Sh. P. C. Yadav, Advocate Sh. Subas Acharya, Advocate

Co. No.204/Del/2015
(In ITA No. 6704/Del/2014)
Assessment Year: 2011-12

M/s. Mercurius Advisory Services Pvt. Ltd. C-7/227, Sector-7, Rohini New Delhi -110085 AAFCM5179C	Vs	ITO Ward . 16 (4) Room No. 304 C. R. Building, I. P Estate New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. P. C. Yadav, Advocate Sh. Subas Acharya, Advocate
Respondent by	Sh. S. R. Senapati, Sr. DR

Date of hearing:	12/04/2018
Date of Pronouncement:	31/05/2018

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 29.04.2014 of the CIT (A)-IX, New Delhi relating to A. Y. 2011-12. The assessee has filed the Cross objection against appeal filed by the revenue. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. Ground of appeal No. 1 by the revenue reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs.34,49,250/- on account of Client referral fee ignoring the fact that the assessee has either filed copies of the bills raised nor produced the original bills for verification ?”

3. Facts of the case, in brief, are that the assessee is a Private Limited company engaged in the business of Providing Management consultancy services mainly and primarily to Airtel, Vodafone and other telephone companies from its registered office at C-7/227, Sector -7, Rohini, New Delhi -110085. It filed its return of income on 22.09.2011 declaring total income of Rs. 9,23,830/-. During the course of assessment proceedings the Assessing Officer observed that the assessee has claimed client referral fee at Rs.34,49,250/-. On being questioned by the Assessing Officer the assessee filed the ledger account of the same showing the payment to 18 parties in the range of Rs.50,350/- to Rs.3,99,850/-. The Assessing Officer asked the assessee to give their present postal address with PAN numbers and also file copies of the bills raised by them and produce original bills for

his verification. Although the assessee filed the copies of the bills raised by them, however, original bills were not produced for verification. The Assessing Officer issued letters/ notice u/s. 133 (6) to 12 parties out of the 18 parties calling for the details as mentioned there in. He observed that some of the parties sent incomplete replies whereas in some of the cases there was no compliance. In one case the notice was received back unserved and thereafter the said person sent incomplete reply. Since none of the parties have given the details as asked for by the Assessing Officer in terms of the notice issued u/s.133 (6) of the IT Act specifying from which party they arranged / procured services for the above named assessee company for which they have received some fees, the Assessing Officer doubted the genuineness of such payment and held that these expenses cannot be said to have been incurred wholly and exclusively for the legitimate business needs of the assessee company. He accordingly disallowed the whole amount of Rs. 34,49,250/- to the total income of the assessee.

4. In appeal the Ld. CIT(A) deleted the addition by observing as under :-

“5.3 The submissions of the appellant have been carefully considered along with the observations of the AO as appearing in the assessment order, as well as position of law.

The following legal position related to the claim for deduction of the expenditure are governed by provisions of section 37 of the Act.

An analysis of section 37 (1) shows that,

- i. any expenditure*
- ii. not being expenditure of the nature described u/s 30 to 36*
- iii. not being in the nature of capital expenditure or*
- iv. personal expenses of the assessee*
- v. laid out or expended*
- vi. wholly or exclusively for the purpose of the business or profession shall be*

allowed in computing the income chargeable under the head "Profit or gain from business or professions".

AO has not specified any defect in the submissions of the appellant or the Books of accounts which have been audited and had duly been accepted by the AO. It is pertinent to note that the expense are being paid by banking channels after deduction of TDS and parties have shown the amounts received as their income and also confirmed the transactions in response to notices issued by the AO. It has been observed that the disallowance has been made on flimsy grounds like the bills are computer generated or the bills are having continued serial no. etc. AO has strongly emphasized that the appellant has not produced the original bills for verification. The observations of the AO are general and further the AO has ignored the fact that the parties have confirmed and has also shown the same in their returns of income placed before the AO.

A composite reading of the conditions for allowance under section 37(1) and the facts and evidences placed on record along with written submissions, completely establish that the claim of the appellant is legally justified as the parameters of allowability of expenditure are being fulfilled. There is no adverse material on record which leads to conclusion that the expenditure is not incurred for the purpose of the business. There is further no evidence that the expenditure is personal or of capital nature. This is not even the case of the AO that the expenditure has not been incurred or the payments have been made otherwise by banking channel. Thus there is no reason for disallowances of any of the expense incurred by the appellant.

Identical issue has been examined by the Hon'ble ITAT Jodhpur Bench which observed as underheld that the confirmations of all the agents have been filed along with their PAN before the CIT(A) and it was not the case of Assessing Officer that the confirmations furnished by the agents were false, the CIT(A) was fully justified in deleting the disallowance made by Assessing Officer. (A.Y. 2009-10) Fashion Suitings (P) Ltd. v. JCIT (2013) 154 TTJ 1 / 86 DTR 49 (Jodh.)(Trib.)

On the basis of above discussion and judicial pronouncement, appellant's appeal on this ground stands allowed."

5. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

6. We have heard the rival arguments made by the both the sides and pursued the orders of the authorities below. We find the Assessing Officer disallowed the whole of the client referral fees of Rs. 34,49,250/- on the ground that none of the parties have given the details as asked for in the terms of the notice issued u/s. 133 (6) by specifying from which party they procured services for the assessee company. The assessee failed to justify the incurring of such huge expenditure wholly and exclusively for the purpose of business. It is also the allegations of the Assessing Officer that the assessee did not produce the original bills for his verification. We find Ld. CIT (A) deleted the addition on the ground that the Assessing Officer has not specified any defect in the submission of the assessee or the books of accounts which have been audited and which have been duly accepted by the Assessing Officer. He has also given the finding that the payments have been made through banking channels and TDS has been deducted from such payment. Further the parties have shown the amounts received as their income and also confirmed the transactions in response to notice issued by the Assessing Officer. Considering the totality of the facts of the case and in view of the detailed reasoning given by the CIT (A) while deleting addition made by the Assessing Officer we find no infirmity in the order of the CIT (A) on this issue. Accordingly we uphold the same. The ground raised by the revenue is therefore dismissed.

7. Ground of appeal No. 2 by the revenue reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs.41,88,400/- on account of Professional Consultancy Charges ignoring the fact that the assessee could not produce relevant documents to substantiate the claim of the expenses ? Moreover the recipient is not qualified for providing such professional & consultancy services and it cannot be considered as incurred for legitimate business ?”

8. Facts of the case, in brief, are that the assessee has claimed professional and consultancy charges at Rs. 46,09,566/-. From the ledger copy of the same filed before the Assessing Officer, he noted that most of the payments aggregating to Rs. 33,52,330/- have been shown to have been made through, Kotak Mahindra Bank, C. A. No. – 1177. However, the name of the person to whom the amount has been paid has not been given in the ledger account. The Assessing Officer, therefore, asked the assessee to furnish the details of the persons to whom such payment has been made and to file the copies of the bills. The assessee gave the present postal address of the persons to whom the payments have been made. However, assessee did not file the copies of the bills raised by them and the nature of professional and consultancy services provided by them. He, therefore, asked the assessee to furnish the details. However, the assessee failed to produce the bills raised in respect of some of the parties for which the Assessing Officer doubted the genuineness of such payment and, therefore, made addition of Rs. 41,88,400/- out of the payment of Rs. 46,09,566/-

9. In appeal, the Ld. CIT (A) deleted the addition by observing as under :-

“ The submissions of the appellant have been considered in alongwith the observations of the Assessing Officer as appearing in the assessment order as well as position of law. The claim of the appellant need to be examined as per the provisions of section 37 (1) of the Act. Again the Assessing Officer has not specified any defect in the submissions of the appellant or the Books of accounts.

The observations of the Assessing Officer are general and further the Assessing Officer has ignored the fact that the parties have confirmed the transactions. It is submitted by the appellant that the geographical span of the business of the appellant is all across the country in all the States and UT and running into approx 70,000 kms. The Assessing Officer has not considered all these facts and simply presumed that expenses are bogus. Thus, there is no reason for disallowance of any of the expenses as bogus. Therefore, appellant's appeal on this ground stands allowed."

10. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

11. After hearing both the sides we do not find any infirmity in the order of the CIT(A). We find the assessee before the Assessing Officer has filed documentary evidences such as Form No. 16A and copies of bills etc to discharge the burden cast on it. Further the books of account of the assessee were audited and no defect has been pointed out by the auditors. Assessing Officer has also not specified any defect in the submission of the assessee or the books of account. In view of the above and in view of the detailed reasoning given by the CIT(A) on this issue we find no infirmity in the same. Accordingly the same is upheld and the ground raised by the revenue is dismissed.

12. The ground of appeal No. 3 by the revenue reads as under :-

"Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 11,50,000/- on account of Rent Charges ignoring the fact that the assessee's company has been providing Management Consultant Services from its Regd. Office at C-7/227, Sector-7, Rohini, Delhi-110085 only and the company has no godown, branch office and its sister concerns and claimed to have paid rent expenses for eight premises ?"

13. Facts of the case, in brief, are that the assessee has claimed an amount of Rs. 21.70 lacs as rent expenses being rent given to 8 parties. The Assessing Officer asked the assessee to furnish the names of the premises for which rent has been paid and also file the rent agreements. The assessee, in reply to the same, submitted the bills of rent of Rs. 21.70 lacs with name of the premises and postal address of the landlords along with their PAN numbers. Since the company has no godown or branch office or sister concern as stated by the assessee, the Assessing Officer doubted the purpose of the other 7 premises taken on rent. He further noted that out of the rent expenses of Rs. 21,70,000/- TDS has been deducted only on Rs. 10,90,0000/- and no TDS has been deducted on the balance of Rs. 10,80,000/-. In view of the above the Assessing Officer held that rent expenses of Rs. 8,40,000/- are only admissible and the balance rent expenses of Rs. 13,30,000/- was disallowed.

14. In appeal the Ld. CIT (A) restricted such disallowance to Rs.1,80,000/- and deleted balance amount by observing as under :-

"7.3 The submissions of the appellant have carefully been considered in conjunction with the observations of the AO as appearing in the assessment order as well as position of law. It is submitted by the appellant that, the appellant has engaged more than 100 employees to perform various duties assigned to them. The nature of work allocation is as usual as in any organization comprising front office cum reception, administration, sales and marketing, HR, support staff, technical staff etc. and proper infrastructure and related facilities and working condition/environment are must for any organization. All these aspects are totally ignored by the AO while completing the assessment. It is evident that the disallowance is made on a presumption of appellant not having any Godown, branch office and sister

concern. The table showing premises wise use of the rented properties clearly establish that all the premises have a dedicated use and have been used for that purpose only and without such space/premises, the appellant could not have executed the business. The AO did not verify existence or non-existence of any single premise. Thus, except the case where applicable TDS has not been deducted, there is no reason for disallowances of any of the expense incurred by the appellant. Hence the disallowance is restricted to Rs.1,80,000/-.”

15. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

16. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer made disallowance of Rs.13,30,000/- on the ground that assessee could not justify the payment of rent for 8 premises when it does not have any godown or Branch office or sister concern. We find the Ld. CIT (A) deleted the same on the ground that the Assessing Officer ignored the business requirement of the assessee and has made the addition on flimsy ground. He accepted the submission of the assessee showing the premises wise use of the rental premises, which according to him clearly establish that all the properties are used for the purpose of business. The Assessing Officer according to him did not verify the existence or non existence of any single premises. In view of the above and in view of the detailed reasonings given by the CIT (A), we find no infirmity in the same. Accordingly, the same is upheld and the ground raised by the revenue is dismissed.

17. Ground of appeal No. 4 by the revenue reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs.18,65,896/- on account

of Computer Maintenance Charges ignoring the fact that the expenses claimed to have been paid to the persons who do not have proper qualification for the maintenance of computer ?”

18. After hearing both the sides we find the Assessing Officer disallowed the computer maintenance expenses of Rs.20,68,472/- on the ground that the WDV of the computers were shown at Rs.1,24,177/- whereas assessee has shown huge computer maintenance expenses of Rs.20,68,472/-. It is also his allegation that in the reply to notice u/s. 133 (6) of the IT Act, the persons to whom such payments have been made did not furnish their educational qualification. He, therefore, disallowed the expenses treating the same as not genuine. We find the assessee before CIT (A) submitted the party wise details including name and address, PAN numbers of the persons to whom the payments were made as well as the copy of the bills and copy of their bank statements. It was submitted that all these documents were filed before the Assessing Officer. It was further submitted that because of large number of employees and due to the wide spread infrastructure facilities to be provided, such expenditures are incurred in small amount on various occasions depicted by the relevant ledger account.

19. Based on the arguments advanced by the assessee, the Ld. CIT (A) restricted the disallowance to Rs. 96211/- by observing as under :

õ8.3 The submissions of the appellant have carefully been considered in conjunction with the observations of the AO as appearing in the assessment order as well as position of law. At page 37 of the assessment order, AO has mentioned that the WDV of the computers is only Rs. 1,24,177/- but has ignored the additions made during the year under consideration. Further, the copy of the ledger a/c clearly reveals that the payments are related to day to day operation and petty in quantum. Regarding the major payments to two parties, AO has issued notices u/s 133(6) to the parties who have confirmed the transaction and filed copy of bills raised by them, their copy of ITR with computation of income and their bank statements.

The AO did not examine all the relevant facts regarding the nature of business

the appellant is engaged in. The kind of infrastructure and geographical distances explained by the appellant cannot be ignored as justification for the expenses claimed. For rejection of such documentary evidence and explanation, the AO need to establish the facts contrary to the explanation from his own enquiry process. Such effort is not seen in the assessment proceeding. The copy of the ledger a/c though clearly reveals that the payments are related to day to day operation and petty in quantum. However, in order to cover up the element of overstating and avoid 100% verification of each and every bill and voucher, (the disallowance is restricted to 10% of the petty payments i.e.10% of Rs.9,62,107/- which comes to Rs. 96,211/-. The AO also mentioned about disallowance of Rs.26,600/- as depreciation on printer and laptop which is confirmed. Therefore, appellant's appeal on this ground stands partly allowed."

20. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

21. After hearing both sides we find the assessee during the course of assessment proceedings has filed the full details giving the name of the persons to whom payments have been made with their addresses and PAN numbers and the copy of the bills raised by them alongwith the bank statements. The persons to whom payments have been made have also confirmed to have received the payment and have filed the copies of the bills raised by them, their income tax return copy alongwith their bank statements. The Assessing Officer has not given any cogent reason for rejecting the documentary evidences filed before him. The finding given by the CIT (A) that the payments are related to day to day operation and petty in quantum could not be controverted by the Ld. DR. In view of the above and in view of the detailed reasonings given by the CIT (A) on this issue we find no infirmity in the same. Accordingly the same is upheld and the ground raised by the revenue is dismissed.

22. Ground of appeal No. 5 reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs.5,25,000/- on account of Advertising Expenses ignoring the fact that the expenses claimed to have been paid have not been confirmed by the person whom notices u/s 133 (6) of the Income – tax Act, 1961 has been issued ?”

23. After hearing both the sides we find the assessee had claimed advertisement expenses of Rs.12,34,056/- paid to 2 parties. In response to notice u/s. 133 (6) one of the party namely M/s. Sam Advertising did not reply for which the Assessing Officer made disallowance of Rs. 5,25,000/-. We find before the CIT (A) it was submitted that assessee during the course assessment proceedings had filed ledger account of the said party alongwith bank statements, Form No.16A and copy of the bill raised by M/s. Sam Advertising. The Ld. CIT (A) deleted the addition on the ground that the bill raised by the said party contains complete details of the advertisement i.e. size, duration etc. The bill also contains the telephone number and mobile number of the party as well as e-mail address. The party is registered under service tax authorities and having PAN number. The payments have also been made through banking channel. Despite all these facts, the Assessing Officer did not conduct any enquiry and made the addition which according to the CIT (A) is not correct. He further observed that assessee was never confronted regarding the non compliance of the notice issued u/s 133 (6) of the IT Act, 1961 before making the addition. In view of the above Ld. CIT (A) deleted the addition. We do not find any infirmity on this issue in view of the above reasonings. The ground raised by the revenue is, therefore, dismissed.

24. Ground of appeal No. 6 by revenue is as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 74,89,976/-, on account of Car Hire Charges, conveyance, petrol and Data Processing Charges,

ignoring the fact that the assessee did not furnish complete details of these expenses ?”

25. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings observed that the assessee has claimed Motor Cab hiring charges of Rs. 10,00,670/-, conveyance expenses of Rs. 73,15,166/- and Data Processing expenses of Rs. 11,33,017/-. He, therefore, asked the assessee to furnish the details of cab hiring charges with names and present postal address of the parties to whom such amount has been paid alongwith evidence of TDS. Similarly, he also asked the assessee to furnish the details of conveyance expenses and Data Processing expenses. On the basis of various details furnished by the assessee the Assessing Officer issued notice u/s. 133 (6) of the IT Act, 1961 to some of the major parties. Since the replies received from the above parties are not complete and lacking in one or the other way in terms of the details asked by the Assessing Officer, he made disallowance of Rs. 74.89 lacs on account of cab hiring expenses conveyance petrol and data processing charges.

26. Before CIT (A), the assessee made elaborate submissions based on which the Ld. CIT (A) deleted the addition by observing as under :-

10.3 *The reason given by AO and the submission of the appellant are considered. The AO did not examine the relevant facts regarding expenses claimed. It is also evident that the parties are scattered at various location. The following conclusion comes out of the available material:-*

- i. Copy of bills clearly describe the work undertaken*
- ii. Payments have been through banking channel*
- iii. Tax has been deducted at source*

- iv. *Notices issued have been replied*
- v. *Parties have filed their ITR and other related documents.*
- vi. *No specific defect has been pointed out*
- vii. *Audited books of accounts has been accepted*

The AO also noted certain discrepancies in the ledger account of 'conveyance and petrol expenses' where data processing expenses have been claimed. The AO found out the difference as Rs. 10,33,604/-. However, these were not confronted to the assessee to give an opportunity to explain such anomalies. The AO should have gone A.Y. 2011-12 further deep into the account and reject the books of accounts if expenses are not properly accounted. The possibility of interchange of account heads cannot be ruled out but that does not empower the AO to make huge disallowance. There should be some tangible material coupled with facts and circumstances of the case which is the deciding factor of allowability or disallowability of any expenditure. All these aspects are totally ignored by the AO while completing the assessment and under these circumstances no disallowances can be sustained."

27. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

28. After hearing both the sides and on perusal of the material available on record, we do not find any infirmity in the order of the CIT (A) deleting the addition. We find Ld. CIT (A) while deleting the disallowance observed that the parties are scattered at various locations. Payments have been made through banking channels after deduction of tax. Parties have raised bills against the assessee and have shown the income in their income tax return. Books of account are also audited. Further, the difference of Rs. 10,33,604/- was not confronted to the assessee by the Assessing Officer. We find the assessee has explained before the CIT (A) with full details for which he observed that the possibility of inter change of accounts heads

cannot be ruled out and there was no tangible material before the Assessing Officer to ignore the various expenses and made such huge disallowance. We do not find any infirmity in the order of the CIT(A) on this issue. The Assessing Officer has also not given if there is excess expenditure incurred by the assessee on account of this head considering its volume of business and expenditure incurred in the preceding and succeeding year. The Ld. DR also could not point out any error in the order of the CIT (A) on this issue. We, therefore, uphold the order of the CIT (A) on this issue and the ground raised by the revenue is dismissed.

29. Ground of appeal No. 7 by the revenue reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs.15,55,557/- on account of Credit Card Expenses ignoring the fact that the assessee has double claimed the expenses under the same head ?”

30. After hearing both the sides and on perusal of the material available on record, we find the Assessing Officer disallowed an amount of Rs.1,55,567/- paid / incurred through credit cards on the ground that huge expenses have been claimed under staff welfare expenses, electricity expenses etc. which according to the Assessing Officer must have been claimed by the assessee under the relevant heads of expenses, and therefore, it amounts to double claim of expenses. He, therefore, made addition of Rs. 1,55,557/-

31. Before CIT(A), the assessee submitted that these expenses remained un-posted through the respective account heads and there is no claim of any double expenses. We find the Ld. CIT (A) after verification of the expenses noted that these expenses are incurred / paid through credit cards and made through banking channels. He,

therefore, deleted the addition. We do not find any infirmity in the order of the CIT (A). The assessee had produced the books of accounts before the Assessing Officer and Assessing Officer has not given any definite finding that any of such expenses has been claimed twice. Not a single instance of claiming of such double expenses has been given. The disallowance made by the Assessing Officer is purely based on surmises. We, therefore, do not find any infirmity in the order of the CIT (A) on this issue. Accordingly the same is upheld and the ground raised by the revenue is dismissed.

32. Ground of appeal No. 8 by the revenue reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs.12,59,745/- on account of Recruitment Expenses ignoring the fact that the assessee has double claimed the expenses under the same head ?”

33. After hearing both the sides and on perusal of the material available on record we find that out of the recruitment expense claimed at Rs. 14,07,121/- the Assessing Officer made disallowance of Rs. 12,59,745/- on the ground that assessee could not substantiate with documentary evidence regarding the nature of services rendered by the 5 parties to whom payments have been made on account of recruitment expenses. Further the bills produced by the parties are computer generated with same print out and without any invoice number, therefore, the genuineness of the same is doubtful.

34. We find the Ld. CIT (A) restricted the disallowance to 10 % which comes to Rs. 1,39,971/- by observing as under :-

%2.3 On examining the submissions as well as the observations of the AO and facts and circumstances of the case it can be seen that major payments have been made through four persons who acted as contractors. Copy of bills of the parties reveals that the persons have executed the work assigned to them for which they might have engaged certain employees and thus the expense has been treated as recruitment expenses. Thus the possibility of improper account head cannot be ruled out but that does not lead to the conclusion that the expenses have not been incurred for business purposes. In the assessment order, the AO mentioned about doubtful nature of the documents submitted. The disallowance cannot be made on the basis of some doubt without having evidences contrary to the submission of the appellant. The AO did not try to crystallize his doubts with further enquires. However in order to cover up the element of overstatement of expenses, the disallowance is restricted to 10% only i.e.10% of Rs.1,99,716/-which comes to Rs. 1,39,971/- .”

35. In our opinion the reasons given by the CIT (A) while deleting the addition is not convincing. He should have called for a remand report on this issue which he has not done. In our opinion this matter requires a revisit to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the allowability of the same. The Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the revenue is allowed for statistical purposes.

36. Ground of appeal No. 9 by the revenue reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 62,97,327/- on accounts of Salaries & Wages ignoring the fact that the assessee has claimed huge expenses which the assessee could not explain the nature of the projects for which the expenses have been paid to the temporary employees ?”

37. After hearing both the sides and on perusal of the material available on record, we find that the assessee has claimed an amount of Rs. 1,07,13,236/- on account of Salary and Wages to regular staff and another amount of Rs. 37,97,327/- on account of Salary and Wages to temporary staff. On being asked by the Assessing Officer the assessee filed the details of salary paid to each person exceeding Rs. 2,00,000/-. The assessee filed the details giving the name and designation, PAN number, Gross salary, Travelling expenses and TDS etc in respect of 16 persons and balance consolidated amount of Rs. 55,54,403/- was claimed in respect of other employees to whom salary of below Rs.2,00,000/- was given. The assessee did not furnish the names and designation of each person to whom salary of below Rs. 2,00,000/- was paid. The assessee did not furnish the full details of the same and simply stated that such payment have been made to small contractors and debited to “New PV Project”. Payments were made through banking channels and TDS was deducted and deposited. The Assessing Officer, therefore, disallowed an amount of Rs. 62, 97,327/- which consists of Rs.25,00,000/- out of the salary in respect of permanent employees and Rs. 37,97,327/-paid to temporary staff.

38. In appeal the Ld. CIT (A) deleted the addition by observing as under :-

“13.3 The reason given by AO and the submission of the appellant are

considered. It was found that complete details were furnished to the AO. It is pertinent to note that the entire payment of salaries has been made by account payee cheques barring one payment of Rs. 2,056/-. Further TDS has duly been deducted where ever applicable.

The above submissions clearly establish the genuineness of the expenditure incurred by the assessee. Moreover, for disallowance out of salaries below 2.00 lacs, no query was raised and disallowance has been on ad-hoc basis. As far as other employees exceeding Rs.2.00 lacs is concerned, copy of ledger a/c along with copy of Form 16 were furnished to the AO. The doubt and presumptions however may be deeper cannot replace the requirement of evidences to make such an addition. Looking to the size and nature of expenses, disallowance of Rs.62,97,327/- is being deleted.”

39. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

40. We have considered the arguments made by both the sides and perused the material available on record. We find the Assessing Officer made the disallowance on the ground that the assessee did not furnish the full details of the persons whom salary of less than of Rs. 2,00,000/- has been paid in case of regular employees and assessee did not give the full details of the salary and wages to the temporary employees. However, a perusal of the assessment order at page 51 shows that the Assessing Officer had asked the assessee to give the details of the salary and wages paid to persons where it exceeds to Rs. 2,00,000/-. Therefore, when the assessee gave the consolidated amount of salary and wages paid to regular staff where the amount does not exceed to Rs. 2,00,000/- per employee. the Assessing Officer should not have made any addition without confronting the same to the assessee. Similarly there is no justification for disallowance of the entire salary paid to temporary staff especially when the

assessee had submitted before the Assessing Officer that such amount was paid to small contractors and debited to "New PV Project". In view of the above and in view of the detailed order passed by the CIT (A) on this issue we do not find any infirmity in the same. Accordingly, the same is upheld and the ground raised by the revenue is dismissed.

41. Ground of appeal No. 10 by the revenue reads as under :-

"Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 45,93,756/- on accounts of Tour and Travel Expenses ignoring the fact that the assessee has not filed either the copy either the copy of ledger account or the other documentary evidence in this regard ?"

42. After hearing both the sides and on perusal of the material available on record, we find the Assessing Officer, during the course of assessment proceedings, asked the assessee to furnish the details of tour and travels expenses of Rs. 45,93,756/- and to furnish the details of the persons on whom such expenses have been incurred with bill number, date, amount etc and designation of the same. However, the assessee, according to the Assessing Officer, did not file the details in the required format. He further noted that the assessee has deducted TDS on amount of Rs. 15,80,000/- and the same has been claimed against TDS made u/s 194 J for expenses incurred on tour and travelling. This according to the Assessing Officer does not inspire any confidence because tax is not required to be deducted u/s 194 J of the Act on account of Tour & Travelling expenses. Hence he disallowed the entire expenses.

43. Before CIT (A) it was submitted that the area of operation of the assessee company geographically very wide running into around 70,000 kms, throughout all the states and UT of the country. Under these facts

and circumstances, expenses on account of tour and travel are bound to occur. It was argued that the Assessing Officer, completely ignoring the entire back ground, has disallowed the entire expenditure claimed under the head Tour and Travel. It was submitted that due to interchange of accounts head, the expenses incurred on account of Professional charges were booked under the head Tour and Travel. Since the assessee had debited TDS on those Professional Charges but booked under Tour and Travel, the Assessing Officer, disallowed the entire expenditure claimed under the head Tour and Travel.”

44. Based on the arguments advanced by the assessee the Ld. CIT (A) deleted the addition by observed as under :-

“14.3 The reason given by AO and the submission of the appellant are considered. It was found that due to change of account head, the TDS on payments related to tour & travel has been deducted u/s 194J. It has been further observed that the appellant has also earned revenue from Bharti Airtel, Africa, BV. Considering the nature of business, it cannot be held that there will not be any expenditure under tour and travel. Regarding non applicability of appropriate section of TDS, the AO could have ascertained the actual amount of TDS made on this account and deposited by the appellant. It is prejudice to come to a conclusion that no expenditure should be allowed under tour and travel without verifying the relevant facts. In view of this, and looking to the size, nature and complexity of business of the appellant, disallowance of Rs.45,93,756/- is being deleted.”

45 Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

46. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer

disallowed an amount of Rs.45,93,756/-out of Tour and Travelling expenses of Rs. 45,93,756/- on the ground that assessee did not furnish the ledger account of tour and travelling expenses giving specific narration against each amount of the person for whom expenses have been incurred giving bill number and date, amount and designation etc. Further it is also his allegation that assessee had wrongly deducted TDS u/s. 194 J in respect of Tour and Travelling expenses. We find the Ld. CIT (A) deleted the addition on the ground that due to change of account head the TDS on payments related to Tour and Travelling expenses has been deducted u/s. 194 J. Considering the nature of business it cannot be held that there will be no expenses on Tour and Travelling. The relevant observation of the CIT (A) is already given in the preceding paragraph. Although he has deleted the entire addition looking to the size, nature and complexity of the business, however, under the facts and circumstances of the case full deletion in our opinion, is not justified. At the same time the Assessing Officer was also not justified in disallowing the entire amount. Considering the totality facts of the case, disallowance of Rs.5,00,000/- on estimate basis in our opinion will meet the ends of justice. We hold and direct accordingly. The ground raised by the revenue is accordingly partly allowed.

47. Ground of appeal No. 11 by revenue reads as under :-

“Whether on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 1,76,663/- on account of depreciation ignoring the fact that the assessee has claimed depreciation on the cars which do not belong to the assessee company ?”

48. After hearing both the sides and on perusal of the material available on record, we find the Assessing Officer disallowed Rs. 1,76,663/- being depreciation on motor cars which was purchased in the name of the director and the assessee is not the owner of the

vehicles. We find the Ld. CIT(A) deleted the addition on the ground that registration under the Motor Vehicles Act was not an essential pre-requisite for the acquisition of the ownership of the motor vehicles but was only an obligation cast upon an owner of the vehicle for the purpose of running the vehicles in any public place. Relying on various decisions, he held that depreciation will be allowable on motor vehicles purchased by the assessee and used for business purposes, although the same were not registered in the name of the assessee. He accordingly deleted the addition.

49. Aggrieved with such order of the CIT (A) the revenue is in appeal before the Tribunal.

50. After hearing both the sides and on perusal of the material available on record, we do not find any infirmity in the order of the CIT (A). It has been held in various decisions that the provisions of the Motor Vehicle Act do not prevent a person from becoming the owner of the motor vehicle without registration. Depreciation is allowable on motor vehicles purchased out of funds of the assessee and used for business purposes although the same were not registered in his name. In the instant case it is an admitted fact that although the 2 motor cars were held in the name of the directors of the company, however, the payment has been made by the company. There is also nothing on record that motor cars have not been used for the business of the assessee company. Merely because the motor cars are not in the name of the company disallowance of depreciation cannot be made especially when the payment for acquisition of the same has been made by the assessee company, the running and maintaining expenses are borne by the assessee company and cars are utilised for the business of the assessee company. In view of the above and relying on various decisions filed before the CIT (A) we do not find any infirmity in the order of the CIT (A) deleting the

addition. Accordingly, the same is upheld and ground raised by the revenue is dismissed.

51. The ground No. 12, 13 and 14 being general in nature are dismissed.

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52. The Ld. Counsel for the assessee did not press the grounds raised in the cross objection for which the Ld. DR has no objection. Accordingly, the grounds raised by the assessee in the cross objection are dismissed.

53. In the result, the appeal filed by the revenue is partly allowed for statistical purposes and Cross objection filed by the assessee is dismissed.

Pronounced in the open court on 31.05.2018.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

NEHA

Date:- 31.05.2018

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	28.05.2018 & 29.05.2018	PS
2.	Draft placed before author	30.05.2018	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		