

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

BEFORE SHRI N.K. BILLAIYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 127/RPR/2015
Assessment Year: 2009-10**

M/s Yami Associates, Yalsco Carrier Building, Ridhi Sidhi Colony, Rajnandgaon (C.G.) PAN: AAIFY7073P	Vs.	The Income Tax Officer-I, F.C.I. Road, Near Raipur Naka, Rajnandgaon (C.G.)
(Appellant)		(Respondent)

Assessee by : None
Revenue by : Shri D.K. Jain (DR)

Date of Hearing: 08/03/2018
Date of Pronouncement: 25/05/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against order dated 05.06.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-II, Raipur, for the assessment year 2009-10, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed by the AO u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *"The Ld. CIT (A) erred in confirming disallowance of Rs. 20,000/- out of commission expense account.*

2. *Ld. CIT (A) erred in confirming disallowance of Rs. 30,000 out of travelling expense account.”*

3. This case was fixed for hearing on 06.03.2018, however, on the request of both the parties the case was adjourned to the next day. On 07.03.2018 again on the request of the counsel for the assessee, hearing was adjourned to 08.03.2018. On 08.03.2018 when the case was called out for hearing none appeared on behalf of the assessee. Even no application was received for adjournment. In view of the conduct of the assessee, we decided to dispose of the appeal on the basis of material on record after hearing the Departmental Representative (DR).

4. Before us, the Ld. Departmental Representative (DR) submitted that the assessee did not appear before the Ld. CIT (A) during the appellate proceedings despite service of notice. Hence, the Ld. CIT (A) has rightly confirmed the additions made by the AO. We have perused the orders passed by the authorities below, the Ld. CIT (A) has dismissed the appeal ex-parte on the basis of material on record. The relevant paras of the order of the Ld. CIT (A) are reproduced as under:-

“2. In the instant case, return of income filed for Rs. 41,120/- was assessed at Rs. 91,120/-. The additions made to the total income relate to disallowance of Rs. 20,000/- out of commission expenses of Rs. 46,07,172/- and disallowance of Rs. 30,000/- out of travelling expenses of Rs. 3,55,035/-. The reasons for disallowance are narrated in the order of assessment i.e. non-availability of proper bills and vouchers, cash payments, absence of proper evidence of service rendered by the commission agents, etc.

On the other hand, the onus of proving necessary facts in order to claim deduction is on assessee and burden is on him to prove that the expenses were laid out wholly and exclusively for the purpose of business as has been held in plethora of cases like CIT Vs. Kolkata Agencies Limited 19 ITR 191 (SC), Lakshimaratan Cotton Mills Co. Ltd. Vs. CIT 73 ITR 634 (SC), Assam Pesticides & Agro Chemicals Vs. CIT (Gau). 227 ITR 846, Goodlas Nerolac Paints Ltd. Vs. CIT (Bom) 137 ITR 58. In case expenses are not supported by proper bills and vouchers, reasonable addition can be made out of partial disallowance of expenses, though books of accounts are audited and auditor has not made any adverse comment as held in Goodyear India Ltd. Vs. CIT 246 ITR 116, Shri Khushal Prasad Manhar Vs. CIT 236 CTR 192, Asstt CIT vs. Agility Logistics P. Ltd. (2012) 19 taxman. Com 159/136 ITD 46 (Mum), ACIT vs. Niko Resources Ltd. (2009) 123 TT] (Ahd) 310, etc.

The appellant has paid commission of Rs. 46,07,172/- and incurred travelling expenses of Rs. 3,55,035/-. The necessary documents proving services rendered by the commission agents, tickets, conveyance and hotel bills etc. towards travelling expenses were not produced, neither before the AO nor before the undersigned in spite of the fact that sufficient opportunities were given at both the stages and in the given facts and circumstances of the case and the legal propositions discussed above, the reasonable additions made out of such expenses are confirmed.

3. In the result, the appeal is dismissed.”

5. We find that the Ld. CIT (A) has decided the case after discussing the evidence on record and following the law laid down by the Hon'ble Supreme Court, High Courts and the decision of different Benches of the ITAT. Since, the assessee has failed to produce the necessary bills and vouchers and further failed to establish that the expenses were laid out wholly and exclusively for the purpose of business, the Ld. CIT (A) has rightly dismissed the appeal of the assessee and confirmed the addition made by the AO. We accordingly uphold the order passed by the Ld. CIT (A) and dismiss the appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 25th May, 2018.

Sd/-

Sd/-

(N.K. BILLAIYA)

(RAM LAL NEGI)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Raipur, दिनांक Dated: 25/05/2018

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय
अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)/PS
आयकर अपीलीय अधिकरण, Raipur / ITAT, Raipur