

आयकर अपीलिय अधिकरण “D” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 4957/Mum/2016

(निर्धारण बर्ष / Assessment Year 2007-08)

Hotel Commerce Solutions Pvt. Ltd (Previously Travellocity.com Pvt. Ltd.) Him & Kays House, Bungalow No.1, Powai Vihar Complex, Powai, Mumbai-400 076	Vs.	The Dy. Commissioner of Income Tax, 7(3), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AACCT4903A		

Assessee by : Shri Ramakrishna Lingsur, AR

Revenue by : Shri Ram Tiwari, DR

Date of hearing: 24-05-2018 Date of pronouncement : 15-06-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-14, Mumbai [in short CIT(A)], in appeal No. CIT(A)-14/IT-384/09-10 dated 22.02.2016. The Assessment was framed by the DCIT, Circle-7(3), Mumbai (in short 'DCIT') for the A.Y.



2007-08 vide order dated 31.12.2009 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the personal expenses of Rs. 18,32,983/-. For this assessee has raised the following ground: -

"1. The DCIT erred in disallowing the following expense & CIT Appeals erred in sustaining the said disallowances in respect of the following:-

a. Disallowance of Personal Expenses of ₹ 18,32,983/- "

3. Briefly stated facts are that the AO noted from the schedule 10 of the accounts of the assessee that it has claimed personal expenditure of Rs.24,43,977/-. The assessee in the accounts filed notes of accounts, which states that the personal expenses represent the expenses reimbursed to M/s Sabre International on account of salary of employees, staff bonus, Leave encashment, employer contribution to PF, staff welfare expenses etc. As there was no justification the AO disallowed 75% of the expenses as excessive amounting to Rs. 19,32,983/-. The AO accepted 25% of the expenses as genuine. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the AO by pointing out that the expenses on services provided by such personal for the business operation of the assessee are not very clear and hence, he confirmed the disallowance. Aggrieved, now assessee is in appeal before Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that the



assessee has filed complete details of expenses before CIT(A) but it is not clear whether these details were filed before AO or not? We find from the orders of the lower authorities they have not examined these details. Hence, in the interest of justice, we restore this issue to the file of the AO for fresh adjudication. This issue of assessee's appeal is allowed for statistical purposes.

5. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing legal and professional expenses of Rs. 12,04,032/-. For this assessee has raised the following ground No: -

"1. The DCIT erred in disallowing the following expense & CIT Appeals erred in sustaining the said disallowances in respect of the following: -

b. Disallowance of Legal & Professional Expenses of ₹ 12,04,032/-."

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has claimed legal expenses of Rs. 12,04,032/0 paid to RSM and CO (CA firm). The assessee before AO filed submissions dated 11.02.2009 and explained the purposes and the claim of these expenses as under: -

Total fees paid for providing professional advice and consultancy with regard to various ongoing advices sought on proposed agreements to be entered with various vendors with help of whom the Company offers travel products on the website, different type of registrations to be obtained, ongoing statutory compliances and advisory services.



7. The AO has not accepted the claim by observing that these expenses are in the nature of preliminary expenses and did not pertain to day to day business activity of the assessee company. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the AO by observing that the assessee could barely start his business and accordingly, such expense falls under preliminary category as the assessee has incurred this expenses to ascertain as to the applicability of this various acts for running of the business of assessee. Aggrieved, assessee came in appeal before Tribunal.

8. We find from the orders of the lower authorities that the assessee before CIT(A) has given explanation but neither CIT(A) nor AO has considered any explanation. In the interest of justice, we restore this issue back to the file of the AO for fresh adjudication who will decide this issue after considering of the facts. This issue of the assessee's appeal is set aside to the file of the AO.

9. The last issue of this appeal of assessee is against the order of CIT(A) confirming the action of the AO in short grant of TDS credited to Rs. 2,43,626/-. For this assessee has raised following ground: -

“1. The DCIT erred in disallowing the following expense & CIT Appeals erred in sustaining the said disallowances in respect of the following: -

C. short grant of TDS credit of ₹ 2,43,626/-.”

10. At the outset, it is to be mentioned that since both the issues are resorted back to the file of the AO, this short credit also can be examined by AO. The AO will go into the necessary details filed by the assessee



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and after verifying the TDS details, he will verify credit and will allow the claim of the assessee as per law. This issue of assessee's appeal is allowed for statistical purposes.

11. In the result, the appeal assessee is allowed for statistical purposes.

Order pronounced in the open court on 15-06-2018.

आदेश की घोषणा खुले मे दिनांक 15-06-2018 को की गई ।

Sd/-
(G MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 15-06-2018
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI