

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 649/Del/2016
(Assessment Year: 2011-12)

Ester Industries Ltd, 33, Dakshineswar Building, 10, Hailey Road, New Delhi PAN: AAACE0119K (Appellant)	Vs.	Addl. CIT, Range-11, New Delhi (Respondent)
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Assessee by :	Shri R Santharaman, Adv
Revenue by:	Shri SR Senapati, Sr. DR
Date of Hearing	08/05/2018
Date of pronouncement	16/07/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-3, New Delhi dated 04/11/2015 for the Assessment Year 2011-12.
2. The assessee has raised the following grounds of appeal:-
 - "1. *On the facts and in the circumstances of the case, the authorities below have erred both on facts and in law, in making/ sustaining illegal addition of Rs. 2926000/- out of travelling expenses ignoring the fact that the details required were duly furnished and the revenue nature of the business expenditure was explained and failure to properly appreciate the same, cannot justify the addition which is liable to be deleted as the expenditure is not also personal expenditure of the company."*
3. In this appeal the only issue involved is disallowance of travelling expenses.
4. Brief facts of the case is that the assessee is a company engaged in the business of manufacturing and selling of polyester chips, film and engineering plastics. It filed its return of income on 29.09.2011 declaring total income of Rs. 1,61,17,87,703/-. While making the assessment order

u/s 143(3) of the Act on 18.03.2014 the Id AO made disallowance of Rs. 2926000/- vide para no. 3 of the assessment order as under:-

"3. *Disallowance on account of Travelling not for the purpose of business.*

3.1 *During the course of assessment proceedings, it has been noticed that the assessee company had incurred an expense of 38.61 lacs on account of travelling by chartered flights. The assessee company was asked to provide the details and the purpose of the traveling by chartered flights. It was submitted that out of 10 visits by chartered flights 5 visits are by Chairman & Managing Director of the company Sh. Arvind K Singhania to the manufacturing units at Khatima and these visits was entirely for the purpose of business. This contention of the assessee has been accepted.*

3.2 *But there are chartered flights which have been booked for going to the places, like Bangalore, Mumbai, Kanpur & Tirupati. It has been submitted by the assessee company that these visits are to meet the customers and Bank. The details submitted for these visits are as under:*

Details of Travelling (Chartered Plane)

Date of travelling	Rs. In Lacs	Place and date	Person & Purpose
21.03.2011	6.14	Visit to DEL-BLR-DEL, 26.02.2011 to 28.02.2011	Arvind Kumar Singhania and Finance Team to meet Senior Executive of a Bank.
19.01.2011	5.05	DEL-MUMBAI-DELHI 06.01.2011	Arvind Kumar Singhania and other Senior Executive to meet various customer and Bank.
22.12.2010	5.00	DEL-MUM-DEL 02.12.2010 to 03.12.2010	Chairman & Managing Director of the Company Arvind Kumar Singhania and Ashok Newala (Director) has to undertake visit Khatima by Chartered Plane.
11.02.2011	1.80	DEL-KAN-DEL 25.01.2011	Arvind Kumar Singhania and other Senior Executive to meet Customer.
31.08.2010	11.27	DEL-TIRUPATI-DEL 20.08.2010	Arvind Kumar Singhania (Chairman) with customer & Senior Executive.
Total	29.26		

3.3 *The onus is on the assessee to establish that the above travelling expense had been incurred for the purpose of business. Since, the assessee has failed to discharge this*

onus and could not establish that this travelling is for the purpose of business with any documentary evidence, an addition of Rs. 29.26 lacs is made to the total income of the assessee on account of travelling expenses. These expenses have been claimed to meet customers but no documentary evidence was furnished to substantiate this claim. Further, the assessee has all his banks at Delhi therefore, the purpose to meet Senior Executives of Banks at Bangalore and Mumbai is not acceptable and it is not supported by any proofs. The visit to Tirupati was entirely for the personal purpose and cannot be allowed as business expenditure. In light of the above facts, a disallowance of 29.26 is made out of travelling expenditure of the assessee company. I am satisfied that the assessee has furnished inaccurate particulars of income. Hence, penalty u/s 271 (1) (c) is separately initiated for furnishing inaccurate particulars of income and concealment of income.

(Disallowance of Rs. 2926000/-)"

5. Consequently, total income of the assessee was assessed at Rs. 1612943525/-. The assessee preferred an appeal before the Id CIT(A) on the above issue, who confirmed the disallowance holding that as the assessee did not produce the bills, despite several opportunities granted, the disallowance of Rs. 29.26 lacs was confirmed. Therefore, the assessee is in appeal before us.
6. The Id AR submitted that the assessee has given complete details about the expenditure incurred on travelling expenditure. He stated that the expenditure have been incurred on chartered flight for various trips for the purposes of business. He stated that the expenditures have been incurred by the proper bills by the service provider and to whom the payments are made by the account payee cheques. He further referred to para No. 3.2 of the order and stated that the details are given of such expenditure stating the purpose. The Id AO has disallowed the above expenditure without pointing out that how the assessee has not proved the purposes of the expenditure as business expenditure. He therefore, submitted that above expenditure is allowable as business expenditure u/s 37(1) of the Act.

7. The Id DR supported the orders of the lower authorities. He submitted that expenditure incurred by the assessee is not for the purpose of business as it is evident that expenditure has been incurred for chartered flight expenditure for Kanpur and Triputi.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. The details of such expenditure which are disallowed by the Id AO are at page No. 2 of the assessment order, wherein, the Id AO disallowed the chartered flight expenditure on five dates. The assessee has incurred the above expenditure for Mr. Arvind Kumar Singhania who travelled from Delhi to Mumbai on 26.02.2011 to 28.02.2011 for meeting the Sr. executives of a bank. On 06.01.2011 Mr. Arvind Kumar Singhania and other executives travelled from Delhi to Mumbai and back and the purposes of the meeting was with the customers and banks. Once again on 02.12.2010 to 03.12.2010 he travelled at the plant of the assessee at Khatima, Uttrakhand along with other directors. On 11.12.2011, the expenditure were incurred for Delhi Kanpur trip with the Managing Director to meet the customers. Therefore, all these expenditures are stated for the purpose of the business of the company. The submission of the assessee was not controverted by the Id AO but merely held that the assessee has failed to discharge its onus that travelling expenditure have been incurred for the purposes of the business of the company. The assessee supported the expenditure with the proper bills of the aviation company and the payments are also made by account payee cheques. In view of this, to this extent, we find that the assessee has given adequate evidence for incurring of those expenditure for business. In view of this the same cannot be disallowed. Hence, we direct the Id AO to allow the expenditure of Rs. 17.99 lacs as business expenditure u/s 37(1) of the Act. With respect to the balance expenditure of Rs. 11.27 lacs, which are incurred by the assessee for the visit of Chairman and Managing Director to Triputi to Delhi, no business case was shown that same is incurred for the purpose of business of the

company. To that extent the disallowance is confirmed. In the end, out of total disallowance of Rs. 29.26 lacs, disallowance of Rs. 11.27 lacs is confirmed and balance disallowance is deleted. Accordingly, the orders of the lower authorities are reversed to that extent.

9. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 16/07/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 16/07/2018
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi