

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI B. R. BASKARAN, AM AND SHRI AMARJIT SINGH, JM

I.T.A. No.1293/M/2017
(Assessment Year: 2011-12)

ACIT, Circle-1, 1 st Floor, Mohan Plaza, Wayale Nagar, Kalyan West-421301.	Vs.	M/s. Georgia Gullini Fashions Pvt. Ltd. L-2, Jai Matadi Compound, Opp, Rajlaxmi Complex, Kalher, Bhiwandi-421302.
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AADCG7409F		
(Appellant)	..	(Respondent)

Assessee by:	Shri Rakesh Joshi
Department by:	Shri V. Vidhyadhar (DR)

Date of Hearing: 26.06.2018
Date of Pronouncement: 07.09.2018

ORDER

PER AMARJIT SINGH, JM:

The present appeal has been filed by the revenue against the order dated 22.11.2016 passed by the Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2011-12.

2. The revenue has raised the following grounds: -

1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition on account Advertisement Expenses claimed (on account of Foreign tour of potential customers and agents to Hong Kong) as the assessee could not justify the period to which pertains and as to how the same is allowable since it was incurred by its holding company.

2. On the facts and circumstances of the case, the Ld, CIT(A) has erred in allowing the expense incurred by the holding company based on a MOD entered into prior to the incorporation of the assessed company.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred by accepting fresh evidences in the course of appellate proceeding without calling for the opinion of AO through remand report as specified u/s 250 of the IT Act.”

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2011 declaring total loss to the tune of Rs.2,05,36,972/- for the A.Y.2011-12. The return was accepted u/s 143(1) of the I.T. Act, 1961. Thereafter, the assessee revised the return of income on 30.03.2013 wherein loss of Rs.2,05,36,972/- was claimed. The said return was also accepted u/s 143(1) of the Act, 1961. Thereafter, the case was selected for scrutiny under CASS. Notices u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of trading and wholesaler of fabrics. The assessee has shown the turn-over to the tune of Rs.10.72 crores and purchase to the tune of Rs.13.86 crores. However, the profit from the business has been shown at loss of Rs.2,05,36,973/-. Thereafter, the assessment was completed u/s 143(3) of the Act by assessing the income to the tune of Rs.2,98,32,135/-. Thereafter, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NOS. 1 & 3:-

4. Issue nos. 1 to 3 are inter-connected, therefore, are being taken up together for adjudication. Under these issues, the revenue has challenged the allowance of the claim of the assessee by the CIT(A) in sum of Rs.1,07,60,179/- on account of advertisement expenses. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.: -

“22. I have carefully considered the appellant's submissions, observations of the AO in the assessment order and the facts of the case. As submitted by the appellant an amount of Rs. 1,07,60,1797- had been incurred by M/s. Global Wool Alliance Pvt. Ltd. in respect of foreign tour expenses of prospective customers and agents. At the time of transfer of business of M/s. Global Wool Alliance Pvt, Ltd. to the appellant, this amount was mentioned as recoverable from the appellant in the schedule of Assets and Liabilities" to be transferred to be appellant in Schedule-A of the business transfer agreement. The appellant has placed on record copies of bills of M/s Cox and Kings (India) Pvt Ltd who had arranged this tour. Names and mobile no. of 53 persons who left from Delhi to HK.,42 persons who left from Banagalore, 47 persons who left from Mumbai and 54 persons who left from Kolkatta have also been placed on record. From the details of these expenses it is seen that these expenses have been incurred on tickets / stay of various prospective customers and agents of the appellant and were revenue expenses in nature and these expenses have been recovered from the appellant in terms of the business transfer agreement. The same were mentioned in the schedule of Assets and Liabilities to be transferred to the appellant. As these expenses are revenue in nature therefore there is no question of capitalizing the same and were required to be allowed to the appellant. The AO is directed accordingly.”

5. The main contention of the revenue is that the CIT(A) did not certify the period of the claim of the assessee. The contention of the assessee is that the expenses on account of advertisement was incurred by holding company, therefore, the same was allowable. On appraisal of the above mentioned finding, we noticed that there is no specific period explained in the order with regard to the expenses incurred. Since the period has not been specified in the finding of the CIT(A). Therefore, we are of the view that it is necessary to ascertain the period in which the advertisement expenses have been incurred, therefore, we set aside the finding of the CIT(A) on this issue and remand this issue before the AO to verify the claim of the assessee in connection with advertisement expenses and period relating to. Accordingly, needless to say that the fair and reasonable opportunity to the assessee is required to be given before deciding the matter of controversy. Accordingly, these issues are decided in favour of the assessee against the revenue.

6. In the result, appeal filed by the revenue is hereby ordered to be **Allowed for statistical purpose.**

Order pronounced in the open court on 07.09.2018.

Sd/-

(B.R.BASKARAN)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :07.09.2018.

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

v.p. singh

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai