

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CAMP BENCH AT JALANDHAR**

**Before Sh. N. K. Saini, Hon'ble Vice President  
and  
Sh. Ravish Sood, Judicial Member**

**ITA No.354/Asr./2014 : Asstt. Year : 2010-11  
ITA No.126/Asr./2015 : Asstt. Year : 2012-13**

M/s Bright Enterprises Pvt. Ltd., MBD House, Railway Road, Jalandhar	Vs	Deputy Commissioner of Income Tax, Central Circle-II, Jalandhar
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACB9469K</b>		

**Assessee by : Sh. Sudhir Sehgal, Adv.  
Revenue by : Sh. Pawan K. Kumar, CIT DR**

<b>Date of Hearing : 08.01.2019</b>	<b>Date of Pronouncement : 17.01.2019</b>
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**ORDER**

**Per N. K. Saini, Vice President:**

These two appeals by the assessee are directed against the orders dated 08.05.2014 and 15.01.2015 of the Id. CIT(A)-5, Ludhiana for the assessment years 2010-11 and 2012-13 respectively.

2. Since, the issues involved are common and the appeals were heard together, so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 354/Asr./2014. This appeal was earlier disposed off by the ITAT Amritsar Bench vide order dated 20.08.2016 and the impugned addition was deleted by following the earlier order dated 27.06.2016 passed in ITA No.126/Asr./2015 in assessee's own case

for the assessment year 2012-13. Against the said order dated 28.10.2016, the department preferred an appeal to the Hon'ble Jurisdictional High Court in ITA No. 178/2017 wherein vide order dated 15.02.2018, the issue was set aside to the ITAT for fresh decision. The relevant findings have been given in paras 4 & 5 of the said order dated 15.02.2018 which read as under:

*4. We find that neither the Assessing Officer nor the CIT nor the Tribunal have considered any relevant facts. Prima facie, the amount does seem excessive. A certain amount of excess has been accepted by the authorities themselves on the ground that the assessee, in the hotel industry, was bound to be aggressive in its campaign for promoting the 5-star hotel that it runs. The amount, however, is enormous considering that there are only a 120 rooms. That by itself, however, would not be a ground for the reduction. None of the authorities have considered the nature of the publications purchased and made available. Nor have they considered the manner in which the publications have been used. There are 120 guest rooms in the hotel. We will assume that there are another 30 offices. According to the assessee's own case, therefore, each room/office was supplied the publications worth Rs.34,000/- per month. Such an expense must require consideration based on the facts.*

*5. In the circumstances, the impugned order is set aside. The matter is remanded to the Tribunal for a fresh decision after affording the parties an opportunity of furnishing evidence in support of the claim for deduction. Needless to clarify that the Tribunal is always at liberty to remand the matter, if it so desires. The second questions of law would also, therefore, be decided afresh relating to the resale of the said publications.23”*

4. To comply with the directions of the Hon'ble Jurisdictional High Court, the appeal was fixed for hearing.

5. The only issue to be adjudicated relates to the sustenance of ad-hoc disallowance of expenditure @ 10% to the tune of

Rs.92,92,170/- under the head ‘ Magazines & Journals’, which was paid by the assessee to its sister concern, M/s MBD Printographics Pvt. Ltd. The AO issued a show-cause and asked the assessee as under:

*“It is seen from your record that you have made payment of Rs. 9,29,21,703/- to M/s MBD Printographics P. Ltd, which is a related party, as major shareholders/directors are common, namely, Monica Malhotra, Sonica Malhotra and Satish Bala Malhotra. Further, Rs. 19,13,48,888/-, has been shown payable to M/s MBD Printographics, P. Ltd. As per copy of party ledger filed by you, it is seen that majority of the bills are dated 31.3.2010. As per sample copies of bills raised by M/s MBD Printographics (P) Ltd., it is seen that the bills are raised very frequently, such as 3.4.09, 6.4.09, 7.4.09. Further, the quantity of magazines supplied is mentioned as (19500), (18880) and (1886C respectively. The rate for magazine is quoted @ 200/- in view of the number of rooms of the hotel, and including spa, gym and other facilities, the expenditure booked by you from a related party u/s 40A(2)(b), is unreasonably high. You are required to show cause why the proportionate excessive or unreasonable expenditure be not disallowed u/s 4GA(2)(a)?.”*

6. In response, the assessee vide letter dated 18.03.2013 submitted as under:

*7. Regarding the justification of magazines purchased of Rs. 9,29,21,703/-from M/s MBD Printographics Pvt. Ltd. our point wise submissions are as under:*

*All the expenses were incurred on account of Magazines and journals to promote the business and also the same are required as necessity in the Hotel Industry. Further it is submitted that magazines play a vital role in the hotel business. There are various*

*magazines like hospitality upgrade magazines, Event Magazines, Tourist Magazines/city Guides, Health & Fitness Magazines, Beauty & Fashion Magazines, Entertainment & Celebrity Magazines, Sports Magazines and Professional Journals etc which serves as a backbone in the hotel industry. To upkeep people about the events hosted by the hotels. Trends in hotel industry, services provided by the hotels, to keep guests more comfortable these magazines are always desirable.*

*Now days, a number of hotel brands are trying to re-invent in room reading experience by producing their own magazines & thus, stock their guestrooms with trendy magazines of the week/travel magazines etc etc. or at least place some localized publication on the desk. Proceedings on the similar lines and to compete with the rivals, the assessee company has got published its own magazines form M/s MBD Printographics Pvt. Ltd.*

*These magazines are published daily, weekly and/or fortnightly and placed in each room in hotel and common areas like lobbies, reception, waiting lounge, Gym, Spa, coffee shop, business centre, banquet halls, swing pool are etc. for the entertainment/ knowledge of guest/ visitors and sometimes, they take away with them.*

*These magazines are also distributed in the open market to promote the brand name of the assessee company's business. Our sales executives of the company also carry the magazine to the business exhibitions and to the big corporate to promote the business of the company. It is mentioned here that the assessee company's Hotel placed in Noida. The assessee has to depend much upon the customers of Delhi. So, the sales executives of the company have also visited the car exhibition and other exhibition in*

*Pragati Maidan, Delhi to attract the rich clients coming over there. Further, the magazines also contained the menu of the food of Hotel, so these magazines are also published frequently as per the requirement of changes in the menu. This practice of the company has benefited a lot in promoting the name and fame of the hotel which' is evident from the revenue of the company that has been increased from 64.44 crores (in current year) to 74.31 crores (in the next year.)*

*Further, the magazines published by the sister concern of the assessee are daily, weekly and / or fortnightly. Thus, the bills of magazines are issued to the assess se are very frequently. The assessee being under the cap of five star rating has to maintain the standard of his hotel. The magazines have to be of such standard to achieve the standard of the hotel. Thus, the purchase rate of the magazines is very much justifiable and comparable.”*

7. The AO after considering the submissions of the assessee observed that the assessee had given only general explanation and had not furnished any specific justification for the huge number of the magazines purchased daily or at very short intervals. It was further observed that if the number of rooms were taken at 120 in hotel, then adding the gym, spa, lobby, recreation rooms, pool and other places, a reasonable number would be 150 or giving more leverage 200. However, the bills and copies furnished by the assessee had shown the number of magazines at 18000 to 20000 which was unreasonable and incomprehensive. The AO accepted that the magazines were very important for hotel industry but was of the view that even if various kinds of magazines were provided

to the clients, the numbers were not justifiable. The AO also observed that even if the explanation of the assessee is to be accepted that sometimes the guests/clients had taken away the magazines with them and 100 magazines were taken away each day, then also what was the justification for remaining 17900 magazines. As regards to the explanation of the assessee that its sales representative had attended the car exhibition and other exhibition in Pragati Maidan, New Delhi and distributed some magazines to attract rich clients, the AO observed that no date wise detail of such exhibitions was provided and no evidence such as business pass of any representative to promote sales in such fair had been furnished and that there was no evidence regarding booking of any stall in any of such fair to promote sales as alleged by the assessee. The AO also observed that the sale of scrap or raddi in the assessee's case was merely at Rs.2,69,289/- which included sale of entire scrap of the hotel i.e. tin boxes, cartons, newspapers and magazines. Therefore, the scrap sale did not support the assessee's claim of such huge expenditure. The AO also observed that in the bills also no description or details of the magazine was provided and that the frequent purchase of such huge number of magazines off Rs.200/- each was unjustified. The AO also mentioned that another hotel carrying the "Radisson" brand i.e. Grand Windsor Resorts Ltd. for a sales turnover of Rs.14,88,03,879/- had shown the expenses on account of Newspapers and magazines at Rs.81,758/- which was 0.05%, however, in assessee's case it was

14.42%. The AO disallowed 10% of the expenses claimed by the assessee and made the addition of Rs.92,92,170/-.

8. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

*"An amount of Rs. 92,921,703 has been incurred and paid to M/s MBD Printographics Pvt. Ltd. for the printing and publishing of magazines, journals.*

*It is submitted before Your Honour that the expenses have been incurred on magazines and journals to promote the business of the appellant. The magazines and journals play a vital role in the hotel industry as they help in advertising and promotion. Further, the appellant is required to keep magazines and journals covering different types of fields like hospitality upgrade magazines, beauty & fashion, entertainment & celebrity, sports, professional, local maps etc. according to that needs of the customers.*

*Nowadays, a number of hotels are trying to re-invent the room reading experience by producing their own magazines & thus, stock their rooms with trendy magazines. The appellant also gets its own /magazine printed and published from M/s MBD Printographics Pvt. Ltd. We have given detailed explanation during the course of assessment proceedings and the Assessing Officer has reproduced in the order itself and if has also been accepted by the Assessing Officer in the order of that such Magazines display important role in advertising in the Hotel Industries, give knowledge to more and more people about the hotel and attract the others. Thus, having acceptor such fact, the Assessing Officer has not justified in making an addition of 10% of the total expenses.*

*The magazines are published daily, weekly and fortnightly and placed in each room in hotel and common areas like lobbies, reception, waiting lounge, gym, spa,*

*coffee house, business centre, banquet halls, swimming pool are etc for entertainment, knowledge of guests/visitors who also take away the magazines with them.*

*The appellant being under the cap of five star rating has to maintain the standard of its hotel. Hence, the appellant has to keep magazines to maintain the standard of its hotel.*

*Further, due to a large number of guests and other customers using various facilities offered by the Hotel like Gym, Spa, coffee house, Restaurants, swimming pool, conference rooms, business centre, banquet halls etc, the consumption of magazines and journals is also huge.*

*It is submitted before Your Honour that the expenses claimed by the company have been incurred wholly and exclusively for the purposes of the business carried on by the appellant during the subject year. The expenses have been duly accounted for and recorded as per duly accepted and recognized accounting principles and standards as well as methods of accounting prescribed u/s 145 of the Income tax Act, 1961. The necessary disallowances where required as per the provisions of the Act have been suo-moto disallowed by the appellant in the return of income.*

*The Assessing Officer while passing the order has categorically stated that said Magazines display an important part in the Hotel Industries and having made the disallowance of. 10% of the expenses in an adhoc manner without any basis is wholly unjustified and even the past history of the case where such expenditure has been allowed year after year.*

*Besides that the following judicial pronouncements state that Income tax Authorities cannot sit in the arm chair of a businessman to decide that how much expenditure is. reasonable and cannot disallow the*

*expenditure in an adhoc manner as per the judgment on the Hon'ble Supreme Court as reported in 288 ITR 1 (SC):*

*The Ld. AO has failed to produce any evidence which shows that the expenditure incurred by the appellant is excessive or unreasonable.*

*(a) The Ld. AO has contended that the appellant is purchasing such large number of magazines and still the sale of scrap is Rs. 269,289 during the year. The appellant would like to submit that most of the guests/visitors who use the facilities of the hotel take away the magazines and journals with them and hence, the appellant is left with very less number to be sold as scrap.*

*(b) Further, The Ld. AO has merely compared the expense to turnover ratio of the appellant with that of Grand Windsor Resorts Limited which is not a correct comparable as percentage of expenditure cannot be compared. The quantum of expenditure cannot be taken as a comparable. The Ld. AO has failed to make any inquiry to determine the fair market value of the magazines and journals and show that the price paid by the appellant is more than the fair market value.*

*(c) Further, it is submitted that there can be no comparison between non-comparables. The Ld. AO has failed to appreciate that the appellant is operating at revenue of Rs. 60 crores (approx.) whereas Grand Windsor Resorts Limited is operating at revenue of Rs. 15 crores (approx.) which is one-fourth of the appellant's revenue. Hence, the expenditure of the two companies cannot be compared.*

*(d) We would like to specifically bring to Your Honor's notice that the opinion regarding excessiveness or unreasonableness of the expense has*

*been formed by the Ld. AO only on the oasis of quantum of amount which reflects nothing but only an individual perception and there is no comparative data which has been considered while coming to the conclusion that the payments are excessive and unreasonable. The Ld. AO did not have any tangible evidence at the time of framing an opinion.*

**Reasonableness and legitimate business need**

*Further, the appellant would like, co bring to the kind attention of your Honour that the Ld. AO has nowhere in the assessment order disputed the genuineness of the expenditure incurred by the appellant. The Ld. AO has questioned the reasonableness and business need o the expenditure. In the regard, the appellant would like to submit the practice of printing and publishing magazines, journals, brochures and pamphlets has benefited the appellant by creating a brand name for the hotel leading to an increase in the revenues.*

*Further, in a plethora of judgments it has been held that the commercial expediency and the reasonableness of expenditure have to be adjudged from the point of the view of the businessman and not the income tax authority. It is not open to the income tax authority to adopt a subjective standard of reasonableness and decide what type of expenditure the assessee should incur and in what circumstances. The income tax authority cannot justifiably claim to put itself in the chair of the businessman and assume the said role to decide how much is a reasonable expenditure having regard to the circumstances of the case. The Income-tax authority has to decide whether the expenditure claimed as an allowance was incurred voluntarily and whether the expenditure was wholly and exclusively laid out for the purpose of the business. Reliance is placed on the following judgments:*

- *Commissioner of Income Tax, Bombay v M/s Walchand & Co. (Pvt.) Ltd., Bombay 65 ITR 381 (1967) (SC) (discussed above)*
  - *CIT v Dhanrajgirji Raja Narasirgirji 91 ITR 544 (1973) (SC) (discussed above)*
  - *CIT v Panipat Woolen and General Mills 103 ITR 66 (1976)(SC) (discussed above)*
- *In the case of Hive Communication (P.) Ltd. v CIT 201 Taxman 99 (2011), the Hon'ble Delhi High Court held as under:*

*"The legitimate business needs of the company must be judged from the viewpoint of the company itself and must be viewed from the point of view of a prudent businessman. It is not for the AO to dictate what the business needs of the company should be and he is only to judge the legitimacy of the business needs of the company from the point of view of a prudent businessman. The benefit derived or accruing to the company must also be considered from the angle of a prudent businessman. The term "benefit" to a company in relation to its business, it must be remembered, has a very wide connotation and may not necessarily be capable of being accurately measured in terms of pound, shillings and pence in all cases. Both these aspects have to be considered judiciously, dispassionately without any bias of any kind from the viewpoint of a reasonable and honest person in business."*

*The appellant submits that the Ld. AO has failed to bring anything on record which proves that the said expenditure has not been incurred for the purposes of business. The Ld. AO did not give any cogent reasons for making the above disallowance. Hence, the above disallowance is based on conjectures and surmises and should not be sustained.*

**No rational basis for arriving at the conclusion of 10% disallowance**

*It is submitted that Ld. AO has not mentioned in the order any basis for arriving at the percentage of disallowance followed in this regard. Further, the appellant would like to submit that it is only the Ld. AO's assumption and there is no reasonable basis of arriving at the percentages mentioned in the assessment order.*

*Further, in a number of judicial precedents, it has been held that no addition shall be made to the income of the assessee on the basis of assumptions, conjectures and surmises. The assessing officer has to bring some material or evidence on record to show and establish that the expenses incurred by the assessee during the year under consideration have not been expended for the purpose of assessee's business. There must be something more than bare suspicion to support the disallowance."*

9. The reliance was placed on the following case laws:

- *Dhakeshwari Cotton Mills Ltd. Vs CIT (1954) 26 ITR 775 (SC)*
- *Nition Sales Corporation Vs ITO (2008) 212 Taxation 49 (Del.)*
- *Friends Clearing Agency (P) Ltd. Vs CIT (2011) 237 CTR 464 (Del.)*
- *Birla Soft (India) Ltd. Vs DCIT (2011) 136 TTJ 505 (Del.-ITAT)*
- *Good Year India Ltd. Vs ITO (2000) 73 ITD 189 (Del. ITAT)*
- *ITO Vs Ethno Financial Research (P.) Ltd. (2010) 36 SOT 207 (Del. ITAT)*
- *ACIT Vs Amtek Auto Ltd. (2006) 112 TTJ 455 ( Del. ITAT)*
- *Om Prakash Joshi Vs ITO (2009) 123 TTJ 246 (Jodhpur ITAT)*

- *Lavrids KnudsenMaskinfabrik (India) Ltd. Vs ACIT (2006) 102 TTJ 882 (Pune ITAT)*
- *Surface Furnishing Equipment Vs DCIT (2003) 81 TTJ 448 (Jodhpur ITAT)*

10. The Id. CIT(A) after considering the submissions of the assessee upheld the disallowance made by the AO by observing in para 14 of the impugned order as under:

*“14. I have considered the facts of the case, the basis of disallowance made by the Assessing Officer and the arguments of the AR on the issue during assessment as well as appellate proceedings. It is a matter of fact that purchases of magazines and journals is a business necessity of the appellant company being in the business of running of a five star hotel. It is also a matter of fact that the appellant company is new in this line of business and therefore expected to be aggressive in marketing itself and could also to be expected to be going substantially over the top in incurring such expenses. But the crucial issue here is the purchases have been effected from a sister concern and no description of kind of magazines that had been bought has been brought on record. It seems that the magazines sold by M/s MBD Printographics to the appellant company have been produced for the specific purpose of the appellant. Still the number of magazines bought seems to be on much higher side as highlighted by the Assessing Officer, the appellant has also not given any case of a competition in the hotel industry and whose expenses under the head "Magazines & Journals" could be at the level as of the appellant company. The twin factors of excessive or over the top purchase of such magazines and the same being purchased from its sister concern whose certain part of income is taxed at lower rate under section 80IB makes it reasonable for the Assessing Officer to make suitable disallowance under this head. In the circumstances, disallowance made by the Assessing Officer is upheld being a reasonable estimate.”*

11. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities

below and further submitted that the AO had not doubted the nature of expenses which were incurred for the business purposes and there was no basis for making the ad-hoc disallowance @ 10%, particularly when in all the earlier years similar expenses had been accepted by the AO. The Id. Counsel for the assessee also furnished a chart from the assessment years 2007-08 to 2012-13 showing therein the total turnover, expenses incurred on advertisement, magazines & journals and the percentage of expenses over turnover as per following details:

S N	Particulars	A.Y.2007-08	A.Y.2008-09	A.Y.2009-10	A.Y.2010-11	A.Y.2011-12	A.Y.2012-13	A.Y.2013-14	A.Y.2014-15
1	SALES TURNOVER	503,731,544	593,125,696	622,316,026	541,779,999	643,224,203	604,494,209	632,757,730	700,918,530
2	OTHER INCOME	35,595,381	52,965,60	44,096,399	58,759,383	63,767,226	55,390,935	51,319,287	49,746,730
	TOTAL OPERATING REVENUE (1+2)	539,326,925	646,091,297	666,412,425	600,539,382	706,991,429	659,885,144	684,077,017	750,665,260
3	MAGAZINE & JOURNAL EXP.	73,963,110	80,088,610	40,103,117	92,921,703	131,934,178	60,840,800	47,222,352	54,067,980
4	% age of Exp. Over Total Revenue	13.71%	12.40%	6.02%	15.47%	18.66%	9.22%	6.90%	7.20%
5	Disallowance Of Magazine Exp.	NIL	NIL	NIL	9,292,170	NIL	6,084,080	4,722,235	8,110,197
6	% age of Disallowance	NIL	NIL	NIL	10.00%	NIL	10.00%	10.00%	15.00%
7	Assessment u/s	U/s 153C	U/s 153C	U/s 143(3)	U/s 143(3)	U/s 143(1)	U/s 143(3)	U/s 143(3)	U/s 143(3)
8	ALLOWED BY CIT(A)	N.A.	N.A.	N.A.	Nil	N.A.	Nil	4,722,235	8,110,197
9	ALLOWED BY ITAT	N.A.	N.A.	N.A.	9,292,170	N.A.	6,084,080	N.A.	N.A.
10	Remark's	N.A.	N.A.	N.A.	Deptt. Appeal Remanded Back by Hon'ble P&H High Court	N.A.	Deptt. Appeal Remanded Back by Hon'ble P&H High Court	Deptt. Appeal is pending in ITAT (Asr.)	Deptt. Appeal' is pending in ITAT 'Delhi.)

Note: No disallowance were made in Assessment made u/s 153C for the A.Y. 2007-08 to 2009-10

12. On the basis of the aforesaid chart, it was submitted that for the assessment years 2007-08 and 2008-09, the percentage of the expenses was 13.71% and 12.40% respectively which had been accepted by the department while framing the assessment u/s 153C of the Act and for the year under consideration, the expenses incurred were at 15.47%, the AO disallowed 10% and accepted only 5.47% but without any basis. It was contended that there is no consistency for incurring the expenses under this head. It was stated that the assessee was running a leading Five Star Hotel in the NCR region and being a relatively new in this type of business and in order to compete with other bigger hotels located in New Delhi, the assessee had adopted an aggressive marketing strategy, therefore, incurred expenses on advertisement and business promotion, for that purpose, it was required to keep and maintain magazines, journals, covering the various types of fields like hospitality, beauty, fashion, entertainment, health, celebrity, sports, professional and local maps etc. to attract and serve its customers. It was pointed out that the magazines were placed in various areas of the hotel property like guest room, lobby, reception, waiting lounge, zim, spa and restaurant etc. to attract the customers which was a fruitful marketing strategy to spread the name of the hotel all over the country. Therefore, the expenditure on the magazines had been incurred purely on the genuine and legitimate business needs of the assessee. It was stated that the books of account were audited and no specific defect in the maintenance of such books of account neither been noted by the AO nor there was any adverse remark by

the auditor in the audit report. Therefore, the disallowance of 10% on ad-hoc basis merely on account of the fact that the quantum of expenditure was huge and purchases were made from the sister concern was not justified. It was further stated that the AO failed to address the basic issue as to how he had arrived at the conclusion that the expenditure incurred by the assessee was excessive and unreasonable. It was emphasized that there was heavy onus on the AO before he could make such a sweeping ad-hoc disallowance without any material on record and mere making heavy purchases from the sister concern could not have been a ground for making disallowance u/s 40A(2)(a) of the Income Tax Act, 1961 (hereinafter referred to as the Act). The reliance was placed on the following case laws:

- *DCIT Vs Sophisticated Marbles & Granite Industries 3 ITR 220 (Del. Trib)*
- *Seasons Catering Services (P) Ltd. Vs DCIT 134 TTJ 554 (Del. Trib.)*
- *Vijay Infrastructure Ltd. Vs ACIT in ITA No.254/Lkw/2015, order dated 30.10.2015*
- *ACIT Vs M/s Kangaro Industries (Regd) in ITA No. 983/Chd./2013, order dated 27.11.2015*
- *CIT Vs Modi Xerox Ltd. 344 ITR 0411 (All.)*
- *Aradhana Beverages & Foods Co. (P) Ltd. Vs DCIT 51 SOT 426 (Del. Trib.)*
- *ACIT Vs Ashok J. Patel 59 SOT 53 (Ahd. Trib.)*
- *M/s Indital Tintoria Ltd. Vs DCIT in ITA NO. 881/Jaipur/2006, order dated 12.09.2014*

13. It was further submitted that when the department has accepted the similar expenses for the assessment years 2007-08 and 2008-09 where the assessments were framed u/s 153C alongwith

143(3) of the Act, then by following the principles of consistency also, no disallowance was called for the year under consideration. Therefore, the ld. CIT(A) was not justified in sustaining the arbitrary disallowance made by the AO. The reliance was placed on the following decisions of the ITAT:

- *MBD Printographics (P) Ltd. Vs DCIT in ITA No. 534/Asr./2014, order dated 13.06.2016*
- *Holy Faith International Pvt. Ltd. Vs ACIT in ITA No. 32/Asr./2015, order dated 13.06.2016*
- *Bright Enterprises Pvt. Ltd. Vs ACIT in ITA No. 126/Asr./2015, order dated 27.06.2016*
- *Jagannath Alloys Ltd. Vs ACIT in ITA No. 1144/Chd./2014, order dated 11.08.2016*

14. In his rival submissions, the ld. CIT DR strongly supported the orders of the authorities below and reiterated the observations made therein. It was further submitted that the AO had not made merely ad-hoc disallowance rather he considered the case of the assessee with a comparable case and thereafter came to the conclusion that the expenses incurred by the assessee were excessive. It was further submitted that the assessee made purchases from the related party but no monthly bills were there and even no evidence was furnished that the magazines were distributed to the customers or in the trade/car fair. It was also submitted that the assessee had not shown the sale of scrap from these magazines etc. Therefore, the AO rightly made the disallowance and the ld. CIT(A) was justified in sustaining the same.

15. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is

an admitted fact that the AO made the disallowance on ad-hoc basis. At the same time, it is also true that the assessee could not furnish all the details as to whom the magazines etc. were distributed and as to whether the customers carried the magazines with them. It is also noticed that the AO did not give any concrete reason or basis to come to the conclusion that 10% of the expenses incurred by the assessee were excessive and remaining 90% were genuine. The contention of the assessee that the books of account were properly maintained and duly audited has not been controverted. It is also a matter on record that the expenses incurred by the assessee @ 13.71% and 12.40% of the turnover for the assessment years 2007-08 and 2008-09 were accepted while framing the assessment u/s 153C r.w.s. 143(3) of the Act and no disallowance has been made for the assessment years 2009-10 and 2011-12. It is also noticed that for the assessment years 2013-14 and 2014-15 similar disallowance made by the AO has been deleted by the Id. CIT(A) which is evident from the comparative chart furnished by the assessee which has been reproduced in the former part of this order. A bare reading of the aforesaid comparative chart will reveal that there was no consistency in incurring the impugned expenses by the assessee. It is also noticed that the percentage of the expenses for the assessment years 2007-08, 2008-09 and 2009-10 to the sales turnover was at 13.71%, 12.40% and 6.02%. The average of those expenses for the preceding three years comes to 10.70% ( $13.71+12.40+6.02=13.13\div 3=10.70\%$ ) and similarly the percentage of the expense over the total turnover in the succeeding assessment years i.e. from 2011-12 to 2014-15 was 10.50% ( $18.66+9.22+6.90+7.20=41.98\div 4=10.50\%$ ). From the above

discussion, it appears that the average of the percentage incurred in the preceding year and the succeeding year was more than 10%. In our opinion, neither the AO has given any basis for making the disallowance @ 10% nor the assessee explained to the satisfaction of the AO. We, therefore, are of the view that in such type of cases expenses can be allowed by considering the past history as well as the average of expenses incurred in the succeeding year. In our opinion, it will be fair and reasonable to estimate the expenses on account of magazines & journals @ 10% of total operating revenue. We, therefore, direct the AO to modify his order and made the disallowance as per above directions i.e. the disallowance can be made to the extent of the expenses exceeding 10% of the total operating revenue.

16. ITA No. 126/Asr./2015 has also been directed by the Hon'ble Jurisdictional High Court to be decided afresh vide order dated 15.02.2018 in ITA No. 28 of 2017, their lordships observed as under:

*“Both parties agree that the result in this appeal would follow the result in ITA No. 178 of 2017 titled as the Pr. Commissioner of Income Tax (Central), Ludhiana Vs M/s Bright Enterprises Pvt. Ltd., which we disposed of today by a separate order and judgment. For the reasons stated therein, this appeal and the cross objections are accordingly disposed of.”*

17. Since, the appeal of the assessee on the direction of the Hon'ble Jurisdictional High Court in ITA No. 178 of 2017 vide order dated 15.02.2018 for the assessment year 2010-11 has been adjudicated in the former part of this order and the issue involved for the year under consideration is also similar, while deciding the appeal for the

assessment year 2010-11, we have directed the AO to allow the expenses on account of magazines & journals to the extent of 10% of the total operating revenue and for the year under consideration i.e. assessment year 2012-13 such percentage was 9.22% i.e. less than 10%. Therefore, no disallowance is called for this year.

18. In ITA No. 126/Asr./2015 for the assessment year 2012-13, there was another issue vide ground nos. 4 & 5 relating to addition of Rs.5,00,000/- on account of sale of scrap/raddi. As regards to this issue the Id. Counsel for the assessee submitted that it has already been decided by the ITAT and no such direction was given by the Hon'ble Jurisdictional High Court to decide it again. The said submissions of the Id. Counsel for the assessee was not controverted by the Id. CIT DR.

19. In the result, the appeal of the assessee in ITA No. 354/Asr./2014 for the assessment year 2010-11 is partly allowed and in ITA No. 126/Asr./2015 for the assessment year 2012-13 is allowed.

(Order Pronounced in the Court on 17/01/2019)

Sd/-  
**(Ravish Sood)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**VICE PRESIDENT**

**Dated: 17/01/2019**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**