

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "G", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1316/Del/2016
Assessment Year: 2011-12

M/s. Caliber Outsourcing Services, I-1784, Chittaranjan Park, New Delhi	Vs.	ACIT, Circle-23(1), New Delhi
PAN : AADFC7461J		
(Appellant)		(Respondent)

Appellant by	Shri Sudatto Sen, CA
Respondent by	Shri N.K. Bansal, Sr.DR

Date of hearing	28.01.2019
Date of pronouncement	14.02.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 30/10/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-10, New Delhi [in short the 'Ld. CIT(A)'] for assessment year 2011-12 raising following grounds:

- 1. That the Ld CIT (A)-10 , New Delhi erred on facts and in law by his appeal order dt 30.10.2015 holding that relief should be given only at 50% of the total amounts disallowed ,on ad hoc basis, by the Ld ACIT Cir 23(1) in his order dt 26.12.2013, and thereby sustaining the disallowance of Tours and Travel expenses of Rs*

4,48,643, Telephone Expenses of Rs 41,539 and Meeting and Workshop Expenditure of Rs 1,27,378.

2. That the holding of the Ld CIT (A) that the "contention of the assessee is found factual in nature and not verifiable and made out of compulsion to substantiate its claim during the appellate stage to cover up the fact that during the assessment stage it was agreed for ad hoc disallowances.
3. And that some of the expenses remained to verifiable as held by the AO" is factually incorrect and in our opinion prejudiced against the assessee.
4. That the holding of the Ld CIT (A) that the assessee contention of the appellant is not verifiable and it was agreed (by the Appellant) for ad - hoc disallowance and some expenses remained to be unverifiable as held by the AO is totally incorrect and is also not borne out by the record and by the copy of the Order Sheet of the Assessment placed before the Ld CIT (A).
5. That the Ld CIT (A) erred in not appreciating that the Assessee firm was incurring expenditures on account telephone, travel and Tour Expenses and Meeting Expenses on behalf of these clients and these were being reimbursed by the clients and there is no logic to disallow portion of expenses which were being reimbursed , on the ground of non business use.
6. That the Ld CIT (A) chose to ignore that out of the total of Tours and Travelling Expenditure of Rs 1,79,45,721 a sum of Rs 1,78,54,936 was on account of reimbursable expenditure and the balance of Rs 90,785 was the in house expenditure of the Assessee . Similarly out of Total Expenditure of Telephone of Rs 8,30,586 a sum of Rs 6,20,259 was reimbursable expenditure and balance Rs 2,10,326 was for in house expenditure Further out of Total expenditure of Rs 25,47,567 on account of Meeting and Workshop Expenditure the total amount was on account of reimbursable expenditure. Thereby the Ld CIT (A) erred in not giving relief at least on the portion pertaining to the reimbursed amounts.

7. *That the Ld CIT (A) has completely failed to appreciate that in the case of Workshop and Meeting Expenditure of Rs 25,47,567 , the total amount was reimbursable and all spent on behalf of the client and there were no "in house" expenditure during the year . Therefore assuming for the moment but not conceding the point , that if some amounts of vouchers/ bills were unverifiable as is made out by the AO , the tax should really not be impacted as the same amounts were also shown on the income side of the profit and loss a/c and therefore it was really revenue neutral and therefore the action of the AO needs in making a disallowance for "alleged" unverifiable amounts needs to be totally struck down.*

The Appellant craves leave to add; alter, amend or vary from aforesaid grounds of appeal before or at the time of hearing.

2. Briefly stated facts of the case are that, the assessee firm was engaged in business of outsourcing of employees to various Multinational Companies. For the year under consideration, the assessee filed return of income on 29/09/2011 declaring total income Rs.69,26,960/-. The case of the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In assessment completed under section 143(3) of the Act on 26/12/2013, the Assessing Officer made disallowances, which included disallowance of Rs.9,49,869/- on account of non-business use under the head "tours and travelling", "vehicle maintenance", "telephone" etc. and Rs.2,54,756/- on account of non-maintenance of part of the voucher under the head "meeting and workshop expenses". On further appeal, the Ld. CIT(A) verified the details of expenses incurred by the assessee and observed that some of the expenses were not supported with vouchers,

however, to meet the ends of the justice, he restricted the disallowance on “tour and travelling expenses”, “vehicle maintenance”, “vehicle fuel expenses” and “telephone expenses” to Rs.4,74,934/- and disallowance on “meeting and workshop expenses” at the rate of 5% to Rs.1,27,378/-. Thus, total disallowance of Rs.6,02,312 (4,74,934/- + 1,27,378/-) was sustained by the Ld. CIT(A). Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal, raising the grounds as reproduced above.

3. In the grounds raised, the assessee has challenged the disallowance sustained by the Ld. CIT(A) on the issue of tour and travelling, vehicle maintenance, vehicle fuel charges and telephone charges amounting to Rs.4,74,934/-and on the issue of meeting and workshop expenses amounting to Rs.1,27,378/-.

3.1 The Assessing Officer found debited a sum of Rs.1,79,45,721/-, on tour and travelling expenses, Rs.81,235/-on vehicle maintenance, Rs.1,39,855/- on vehicle charges (fuel), and Rs.8,30,186/-on telephone. The Ld. Assessing Officer has mentioned in the assessment order that the issue of non-business use of car and telephone was discussed with the Ld. counsel who agreed that the non-business use of these items cannot be ruled out completely. Accordingly, the Assessing Officer estimated the disallowance at the rate of 5%, which was worked out to Rs.9,49,869/-. Similarly, under the head “meeting and workshop expenses” claimed at Rs.25,47,567/-by the assessee, the Ld. Assessing Officer noted that that part of the bills were not verifiable and few vouchers were handmade and few vouchers not presented. Further the Assessing Officer noted that assessee stated of having misplaced some small vouchers and others not

properly maintained. In view of the observation, the learned Assessing Officer made disallowance at the rate of 10% of the expenses, which was worked out to Rs.2,54,756/-.

3.2 Before the Ld. CIT(A), the assessee submitted that counsel of the assessee did not agree for the disallowance under the above heads. The Ld. CIT(A) held this contention been of factual nature and not verifiable, however on the merit of the expenses, he noted that the assessee failed to support the claim of the expenses with evidence and the expenses were not fully verifiable. Accordingly he justified the disallowance, however, restricted the total disallowance to Rs.6,02,312/-.

3.3 Before us the Ld. counsel of the assessee filed paper-book in two volumes containing pages 1 to 470 and submitted that under the above two heads, the majority of the expenses have been incurred on behalf of various companies and the assessee raised bills on them. He submitted that these expenses have been reimbursed to the assessee by those companies and, therefore, disallowance cannot be made on the entire expenses under above heads debited in the profit and loss account. The Ld. counsel referred to page 21 to 23 of the Paper Book, which is a copy of the order sheet of the assessment proceeding and submitted that nowhere it is mentioned that the authorised representative of the assessee admitted the disallowance in assessment proceedings. He also referred to page 25 of the paperbook, which is chart of party wise various expenses incurred by the assessee. He referred to the chart and submitted that out of the total "tour and travel expenses", expenses of Rs.1,78,54,936/- were incurred on behalf of M/s Family Health International and in-house expenses of Rs.90,785/- was only incurred by the assessee. Similarly out of

total "telephone expenses", expenses of Rs.6,20,259/- were incurred on behalf of M/s Family Health International and in-house expenses of Rs.2,10,326/- was only incurred. According to him, all the bills and vouchers have been properly maintained in respect of meeting and workshop expenses, which were incurred mainly for M/s Family Health International. In view of Ld. counsel, no disallowance should have been made in respect of the expenses which have been reimbursed to the assessee by the companies, being incurred on behalf of them. He submitted that income corresponding to those expenditure amount has been realized and credited in P&L Account and disallowance in respect of such expenses is not justified particularly when the other party has already verified and acknowledged the expenses.

3.4 The Ld. DR, on the other hand, relied on the order of the Ld. CIT(A) and submitted that in view of the non-maintenance of the vouchers properly, he was justified in restricting the total disallowance to Rs.6,02,312/-.

3.5 We have heard the rival submissions and perused the relevant material on record. The assessee is engaged in business of providing outsourced employees to various companies and multinational. In the profit and loss account, the assessee has shown income from monthly salary bill raised on client companies and expenses comprised of salary and other related expenses like PF, ESI etc. paid to outsource employees. The assessee has raised bills on the clients after adding a markup of 7 to 8% on average basis on the salary etc. incurred. In addition to above, expenditure on travel, telephone, workshop and meeting expenses have been paid to outsourced employees, which in turn charged to expenditures and corresponding bills have been raised

for reimbursement on client companies. The bills raised on clients have been credited to the income side of profit and loss account. The assessee also explained before the Ld. CIT(A) that service tax was also charged on reimbursement expenses in accordance with service tax law and rules.

3.6 The assessee has made detailed submission before the Ld. CIT(A) and claimed that majority of the expenses under the head tour and travels and telephone and meeting and workshop expenses have been incurred on behalf of M/s Family Health International and those expenses have been reimbursed to the assessee. There is no dispute between the parties on this factual information.

3.7 The Ld. CIT(A) recorded in the impugned order that on verification of the party-wise details of the expenses incurred by the assessee, he found that all the expenses were not fully supported with evidences and to meet the end of the Justice, he restricted the total disallowance to Rs.6,02,312/- which comprised of Rs.4,74,934/-under Tours and Travels, vehicle maintenance, telephone etc and Rs.1,27,378/-under the head meeting in workshop expenses.

3.8 In our opinion, when the assessee has already shown income corresponding to majority of expenses on credit side of the profit and loss account, the net amount of expenses incurred in-house by the assessee in respect of telephone expenses are Rs.2,10,326/- and on travelling expenses are Rs.90,785/-, on vehicle maintenance are Rs.81,235/- and vehicle fuels are Rs.1,39,855/-. Thus, if any non-business use or personal use by the partners of the firm has been made than any disallowance could have been made in respect of these in-house expenses only.

3.9 In view of the facts and circumstances of the case, we restrict the disallowance for non-business use or personal use by the partners of the firm at Rs.1,00,000/- and delete the balance addition out of the addition of Rs.4,74,934/-which was sustained by the Ld. CIT(A). No disallowance required in respect of the meeting and workshop expenses, as same have been incurred fully on behalf of M/s Family Health International and reimbursed to the assessee. In view of the aforesaid discussion, the grounds of the appeal are partly allowed.

4. In the result, the appeal of the assessee is allowed partly.

Order is pronounced in the open court on 14th February, 2019.

Sd/-
[BHAVNESH SAINI]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 14th February, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi