

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 564/Kol/2018
Assessment Year: 2006-07

Warner Multimedia Ltd. (PAN: AABCC0225H)	Vs.	Deputy Commissioner of Income-tax, Circle-8, Kolkata.
Appellant		Respondent

Date of Hearing	21.01.2019
Date of Pronouncement	28.02.2019
For the Appellant	Shri Miraj D. Shah, AR
For the Respondent	Shri Shankar Halder, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-3, Kolkata dated 14.03.2018 for AY 2006-07.

2. At the outset itself, the Ld. AR drew our attention to ground no.1 of the appeal preferred by the assessee and contended that the AO has disallowed Rs.2,85,500/- for non-deduction of TDS to three parties u/s. 40(a)(ia) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”). According to Ld. AR, based on misconception of facts, the AO has taken note that the assessee has paid three persons this amount without deduction of TDS. It was brought to our notice that before the Ld. CIT(A) the assessee has contended with corroborating evidence that the aforesaid amount was paid to different lawyers, clerks in various courts in Pune, Mumbai, Jodhpur etc. and the details of the parties 18 in numbers were furnished before the Ld. CIT(A), who brushed aside the contentions and evidence on the specious plea that it is an after thought by the assessee. We do not countenance to such an action from the part of the Ld. CIT(A). As per the scheme of the Act, tax has to be

levied on right person, right income and in the right year and also it has to be kept in mind that there is no estoppel against law. If the assessee for just cause not able to present its facts properly before the AO then he can be allowed to explain with the support of material/evidence to put the correct facts before the First Appellate Authority who enjoys co-terminus powers as that of AO and the Ld. CIT(A) has the discretion to even admit fresh evidence as per Rule 46A. However, since the assessee is providing the new evidences for the first time before Ld CIT(A), we would like the AO to examine and verify the documents in the light of the contention of the assessee. So, in the interest of justice and fair play, we are inclined to set aside the order of the Ld. CIT(A) and remand the matter back to the AO for de novo adjudication of this issue. The assessee is at liberty to adduce evidence to substantiate its claim and the AO to decide the issue de novo by passing a speaking order. Therefore, this ground of appeal of assessee is allowed for statistical purposes.

3. Ground no. 2 is against the action of the Ld. CIT(A) in restricting the disallowance on account of travelling expenses at 40% from that of 80% as estimated by the AO.

4. Brief facts are that the assessee, a Private Limited Company had claimed expenses incurred of Rs.3,30,266/- on account of travelling and conveyance which the AO disallowed at 80% and made an addition of Rs.2,64,213/-. Against which the assessee preferred an appeal before the Ld. CIT(A), who restricted it to 40%, so the disallowance was restricted to Rs.1,32,106/- i.e. 40% of Rs.3,30,266/-. Aggrieved, the assessee is before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. The Ld. AR assailing the decision of the Ld. CIT(A) contended that the assessee being a Private Limited Company had incurred expenses for its director's travel, which has to be allowed in full and at best the AO could have added it as perquisite of the directors u/s. 17 of the Act and not by estimation and that too without rejecting the books of account, which action itself is arbitrary. We note that the assessee being a Private Limited Company has incurred expenses for the travel of its employees/directors and the disallowance of expenses claimed by the company cannot be based on the reason of personal use of assessee

company. At best the addition could have made as director's perquisite u/s. 17 of the Act. In any way, as per the Act, the AO venturing to estimate the disallowance without rejecting the books of account has no sanction of law and ad hoc disallowance is an arbitrary action. Therefore, the ad-hoc disallowance of 40% restricted by the Ld. CIT(A) is also legally untenable and, therefore, we direct deletion of the entire addition on this ground.

6. Ground nos. 3 and 4 are general in nature, therefore, the same are dismissed.

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

Order is pronounced in the open court on 28th February, 2019.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 28th February, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Warner Multimedia Ltd., 75C, Park Street, Kolkata-700 016.
- 2 Respondent – DCIT, Circle-8, Kolkata
- 3 CIT(A)-3, Kolkata (sent through e-mail)
- 4 CIT , Kolkata.
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,
Assistant Registrar