

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.1092/Bang/2018
Assessment Year : 2012-13

The Assistant Commissioner of Income-tax, Circle – 1, Vijayapur.	vs.	M/s. Sadashiv Sugars Limited, 1/2, 3 <sup>rd</sup> Floor, Venus Building, Kalyanamantappa Road, Jakkasandra, Koramangala, Bangalore. <b>PAN: AAICS8468F</b>
APPELLANT		RESPONDENT
Appellant by	:	Shri C.H. Sundar Rao, CIT (DR)
Respondent by	:	None
Date of hearing	:	20.02.2019
Date of Pronouncement	:	22.02.2019

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the revenue and the same is directed against the order of Id. CIT(A), Belagavi dated 05.02.2018 for Assessment Year 2012-13.

2. The grounds raised by the revenue are as under.

*“(1) Whether the ld. CIT(A) is right in law and on facts in deleting the disallowance of expenditure of Rs. 1,26,84,500/- considering the expenditure is genuine and incurred for the purpose of business whereas the assessee could not furnish proper supporting evidences to substantiate the claim of expenses*

*(2) Whether the ld. CIT(A) is right in law and on facts in allowing the expenditure u/s 37(1) of the I.T. Act, 1961 treating the expenditure as genuine and incurred for the purpose of business whereas the assessee was not able to produce the evidence to substantiate the exact requirement of expenses incurred vis-a-vis business receipts of the assessee.*

*(3) The ld. CIT(A) failed to appreciate the fact that it is the primary onus of the assessee to substantiate its claim of any expenditure with proper supporting documents, whereas in the instant case the assessee has only tried to justify the payments but failed to furnish the proper supporting evidence to substantiate the claim of expenses.*

*(4) for these and other grounds that may be urged at the time of*

*hearing, the order of the ld. CIT(A) may be set aside and that of the AO be restored.”*

3. This appeal was fixed for hearing earlier on 14.11.2018. On this date, none appeared on behalf of the assessee in spite of notice. Hence, hearing was adjourned to 20.02.2019 and the notice was sent to the assessee through DR. On the next date i.e. 20.02.2019, it was submitted by ld. DR of revenue that notice has been served on the assessee by the AO and the AO has sent a letter dated 10.12.2018 directly to the Tribunal in which it is stated by the AO that the notice is duly served on the assessee. He also submitted that it is also stated by AO in the said letter that the said notice has been received by Mr. K. Harinath Naidu, the Finance & Accounts (Manager). He also submitted that the AO has also enclosed the copy of Power of Attorney dated 06.12.2018 as per which Shri K. Harinath Naidu, Manager – Finance & Accounts of assessee was also authorized in addition to two other persons Shri A.K. Dora, General Manager – Corporate Accounts & Taxation and Shri N.R.S. Sekhar, Manager – Taxation. He pointed out that as per the Power of Attorney, these persons were authorized by assessee company to individually or jointly to receive all the correspondences in connection with Income tax proceedings in respect of the assessee M/s. Sadashiv Sugars Ltd.
4. He submitted that the notice was duly served on the assessee and hence, the appeal should be decided by hearing him and as per material available on record. He submitted that as per page no. 24 of the assessment order, it is noted by the AO that the AO asked the assessee to furnish the details of services rendered along with supporting documents and benefit which the assessee company has received by taking the services of M/s. Anushka Business consulting to whom this amount of Rs. 1,26,84,500/- was paid. He submitted that the reply was submitted by assessee before the AO and it is reproduced by him on page nos. 24 and 25 of the assessment order. He submitted that thereafter it is observed by AO on page no. 25 of assessment order that this reply is considered but the same is not acceptable in view of the fact that this reply is not supported by any documentary evidence.

Thereafter he drawn our attention to page no. 4 of the impugned order of CIT(A) and in particular, our attention was drawn to paras 8 and 8.1 to 8.3 of his order and pointed out that in paras 8 to 8.2 of his order, Id. CIT(A) has noted the submissions of assessee before him and in Para 8.3 of his order, he has deleted the disallowance made by the AO without any finding in respect of evidence regarding rendering of services by that party to assessee company. He submitted that under these facts, the order of CIT(A) should be reversed and that of AO should be restored.

5. We have considered the submissions of Id. DR of revenue and gone through the orders of authorities below. First, we reproduce paras 8 to 8.3 from the order of CIT (A).

***“8. Disallowance of expenses of Rs.1,26,84,500/-:***

*From the details submitted by the assessee during the course of Assessment proceedings A.O had noticed that the assessee has paid an amount of Rs.1,26,84,500/- to Anushka Business Consulting. During the Assessment A.R of the assessee submitted the bills in respect of payments made and stated that required TDS has been made on such payments but the AR failed to furnish the extract details of services provided by the said party for which the payments have been made. As AR failed to substantiate the claim of expenses incurred with proper supporting documents, A.O has disallowed of Rs.1,26,84,500/- claimed by the assessee as an expenses made towards consultancy.*

*8.1 The A.R of the appellant in his representation stated that the appellant appointed M/s. Anushka business Consulting who has hands on expertise on cane farming activities with the following scope of work:*

- i. Conduct the camps to farmers in order to increase the cane cultivation land.*
- ii. Create awareness for the advantages towards cane harvesting.*
- iii. carry out programmes for better cane yield with latest farming methods.*
- iv. Promote awareness towards benefit for using different irrigation methods to crop improved cane yield with less water utilization.*
- v. Also liaison with Government/ Statutory authorities and other institution in order to promote the cane harvesting and other business requirements.*

*8.2 AR of the appellant further stated that expenditure claimed by the assessee is an eligible expenditure and he gave the payments details, in which tax have been deducted on the payments and the same has been offered for taxation by the consultants. The AR had relied on the following decisions:*

*1. The Hon'ble Supreme Court in the case of DT Vs. S. A. Builders Limited 288 ITR 1. In the said decision, the Hon'ble Apex Court also agreed with the view taken by the Delhi High Court in the case of CIT Vs. Dalmia Cement (Bharat) Ltd 254 ITR 377.*

*2. The Apex Court in the case of Cit Vs. Rajendra Prasad Moody, Calcutta ETC.*

*8.3 Assessee had incurred the expenditure for the purpose of business. It was paid to unrelated party. TDS provisions were also complied to. A.O has not made out any case with evidence to show that expenditure is not incurred, nor A.O brought any evidence on record to show that expenditure incurred is not for the purpose of Business. I am unable to accept the view of A.O c expenditure is genuine and incurred for the purpose of business, if such expenditure is not prohibited by law, the same should be allowed as deduction u/s.37(10) of the I. T. Act. Considering the facts I am of the opinion that assessee is eligible to claim expenditure in relation to Anushka Business consulting. Hence addition made by the A.O of Rs.1,26,84,500/- is deleted.”*

6. From the above paras reproduced from the order of CIT(A), it is seen that in Para 8 of his order, Id. CIT(A) has noted that this was the objection of the AO that the AR failed to furnish the exact details of services provided by the said party for which the payments have been made. This is also noted by CIT(A) in same para that this is the finding of AO that AR failed to substantiate the claim and expenses incurred with proper supporting documents. As per para 8.3 of the impugned order reproduced above, it is seen that there is no mention about any evidence in respect of rendering of services by the said party M/s. Anushka Business consulting to the assessee company. This is the only finding of CIT(A) that the expenditure in question is not prohibited by law and therefore, the same should be allowed as deduction u/s. 37(1) of IT Act. In addition to it, there is one more finding of CIT(A) that the payment was made to that party and TDS provisions were also complied with. There is one more finding of CIT(A) that the AO has not made out any case with evidence to show that the expenditure is not incurred and no evidence was brought on record by AO to show that expenses incurred is not for purpose of business. In our considered opinion, this is for the assessee to show and establish that the expenses incurred is for the purpose of business and the AO has given a categorical finding that the assessee has not established this aspect of the

matter. Hence, in our considered opinion, the order of CIT(A) is not sustainable. But still in the interest of justice, we feel it proper to restore the matter back to the file of CIT(A) for fresh decision with a categorical finding as to whether the assessee has been able to establish that any services were rendered by said party to the assessee company and therefore, it can be accepted or not that the expenditure in question is incurred for business purpose. The Id. CIT(A) should provide reasonable opportunity of being heard to both sides and pass a speaking and reasoned order with a categorical finding on this aspect as to whether the assessee has been able to establish or not that any services were rendered by said party to the assessee company.

7. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(LALIET KUMAR)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 22<sup>nd</sup> February, 2019.  
/MS/

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.