

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. No.438/Coch/2018
Assessment Year : 2011-12

M/s. Vertex Commodities & Finpro (P) Ltd. , Thottathil Towers, IInd floor, Market Road, Ernakulam, Kochi-682 018. [PAN:AABCV 4863C]	<b>vs.</b>	The Income Tax Officer, Ward-4(1), Kochi
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Jameskutty Antony, FCA
<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR

<b>Date of hearing</b>	07/03/2019
<b>Date of pronouncement</b>	07/03/2019

### ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A)-II, Kochi dated 05/06/2018 and pertains to the assessment year 2011-12.

2. The assessee has raised the following grounds of appeal:

1. The Appellant and its holding company M/s Vertex Securities Limited are having common directors and is sharing common infrastructure, including office, telephone, internet etc. The Managing Committee of the both the companies (comprising of directors and other top management officers) decided to apportion a part of the common expenses to the Appellant and an inter-office note was issued based on that. Copy of the Inter Office Note is attached as Annexure 1.

1.1. The Appellant was formed as a separate company only because of statutory compulsion. As per the SEBI regulations, a company who is into equity broking cannot do Commodity broking. Hence the appellant was formed as subsidiary of Vertex Securities Limited (which is into equity broking)

1.2. The Appellant has brought in specialised managerial persons to the commodity business as the new market needed to be penetrated. They were dedicated professionals specialised in this segment.

1.3. A considerable amount of study and a fair analysis of expenses were made and sharing was fixed based on the consideration of all aspects.

1.4. The Appellant has claimed the managerial remuneration of those persons who are entrusted with the business of the Appellant exclusively. Similarly, Connectivity Charges, Rent, Telephone, Electricity and Travelling are also allocated based on the proportionate usage of such facilities/infrastructure.

1.5. The allocation of expenditure is based on a fair estimate of such usage arrived by the management depending on the factual situations.

2. The Appellant continued this practice of sharing of expenses till such time, the Appellant was able to do its business on its own, without the support of the holding Company. Accordingly, the Appellant had debited shares expenses in future also as below:

Assessment Year	Amount of Shared Expenses	Remarks
2012-13	89,62,755.00	Assessment completed u/s 143(3)
2013-14	86,50,520.00	Assessment completed u/s 143(3)
2014-15	48,99,790.00	Assessment completed u/s 143(3)

It may be noted that the sharing of expenses for all subsequent years was accepted by the department and completed the assessment without any addition on this account during the scrutiny.

2.1. From the above, it may be noted that the Appellant is consistently following this accounting policy which is accepted by the Department also.

3. On the basis of the above grounds, it is humbly prayed that the addition of Rs. 19,00,800/- on account of shared expenses be deleted.

3. The facts of the case are that in the Profit and Loss Account, the assessee had claimed an expenditure of Rs.95,04,000/- under the head 'Expenses on Shared Services'. The assessee stated that it had reimbursed some common expenses incurred by its Holding Company of the assessee, M/s. Vertex Securities Ltd. which was into broking services. The common expenditure met by the holding company included (i) Managerial Remuneration, (ii) Communication Expenses, (iii) Travelling & Conveyance Expenses, (iv) Connectivity Charges and (v) Rent. The assessee had reimbursed 50% of all these expenses to the holding company. The profit and loss account of the holding company, M/s. Vertex Securities Ltd. and the assessee company are summarized below:

Description	Holding Company	, Assessee Company
Brokerage Income	6,84,05,554	2,09,96.506
Other direct income	24, 31,676	0
Other income (excluding income Shared)	1,22,96,931	27,06,354
Total Receipts	8,47,40,558	2,37,02,860
Total Expenditure (excluding Expenses shared)	9,35,85,783	1,92,79,478

Net income (before including expenses shared)	-88,45,225	44,23,382
Expenses shared	-95,04,000	-95.04,000
Net income (after including expenses shared)	6,58,775	-50,80,618

3.1 From the above, the Assessing Officer noticed that the holding company was doing more than three times the business of the subsidiary company(assessee). The expenditure which was shared @ 50% was Rs.95,04,000/-. According to the Assessing Officer, the total turnover of both the companies taken together was Rs. 9,34,40,133/- (excluding other income) which meant that the assessee's percentage of turn over to the total turnover of both the assesseees taken together was 22.47%. Therefore, the Assessing Officer was of the view that the percentage of expenditure that can be attributed to the assessee from the common expenditure cannot be more than the percentage of turnover of the assessee. The total shared expenditure of both the assesseees taken together was Rs. 1,90,08,000/- ( Rs.95.04,000 x 2). The Assessing Officer rejected the explanation of the assessee that this being the initial years of the formation of the company, the holding company had to give more managerial attention to the company to get business on the reason that all the above mentioned expenses had been shared equally whereas the share of business of the assessee company was less than 23%. Considering all the circumstances, the Assessing Officer allowed the shared expenditure @ 30% of the total expenditure of

Rs. 1,90,08,000/- which comes to Rs.57,02,400/- Thus, the Assessing Officer made the disallowance on this account at Rs.38,01,600/-( Rs. 95,08,000 -Rs. 57,02,400).

4. Against this, the assessee went in appeal before the CIT(A). The CIT(A) observed that the size of the assessee and its holding company are not same and the turnover of the holding company was approximately three times higher than the assessee company. The CIT(A) observed that neither during the course of assessment nor during the course of appellate proceedings, the assessee had explained the method on which these expenses were apportioned. The CIT(A) found that 30% of the rent was apportioned to the assessee and all other expenses like service charge, connectivity charges, Telephone & Electricity had been apportioned at 50% each. From the payment of rent, the CIT(A) found that the holding company was occupying at least 3 times the space occupied by the assessee. In view of this fact, the CIT(A) opined that sharing of electricity and telephone cannot be at the rate of 50% each. The CIT(A) rejected the assessee's contention that no such disallowance was made in subsequent years as every year is a different year. However, taking into consideration the judicial pronouncements relied upon by the assessee, the CIT(A) was of the opinion that, if 40% of the expenses were apportioned to the assessee, it shall meet the ends of justice. The CIT(A) observed that the assessee's reliance on the decision of the Delhi High Court in the case of CIT vs. EHTP India Pvt. Ltd. (350 ITR 41) (Delhi) was misplaced, as in the instant case, there was no method of apportionment, there is no basis, it is simply 50 – 50 and the size of two concerns was different and the turnover was also

different. According to the CIT(A), an arbitrary method, which is capable of distorting the profits cannot be said to be a method of accounting which would lead to substantial variation in the income. Thus, in view of above discussion, the CIT(A) allowed 40% of the expenses claimed in place of 30% allowed by the Assessing Officer and directed the AO to recalculate the disallowance.

5. Against this, the assessee is in appeal before us.

6. We have heard the rival submissions and perused the record. In this case, the assessee had apportioned common expenses at 50% in respect of service charges, connectivity charges, telephone & electricity. However, the Assessing Officer apportioned the expenses only at 30% of the share of the assessee. The CIT(A) considered it at 40% of the share of the assessee. The allocation of expenses was made by the assessee on estimate basis. The apportion of the expenses at 50% was consistently made by the assessee on continuous basis in subsequent years, i.e., A.Ys 2012-13 to 2014-15. This was not disturbed by the Assessing Officer in the subsequent years. In the assessment year under consideration, the Assessing Officer disturbed the allocation of shared expenses, however, there was no re-allocation of such shared expenses in the hands of the holding company, M/s. Vertex Securities Limited. The Assessing Officer disturbed the allocation of shared expenses only in the hands of the assessee which, in our opinion, would amount to double taxation. In other words, if the Assessing Officer wants to reduce the allocation of the shared expenses in the hands of the assessee, consequently, the

balance amount of the shared expenses is to be allowed in the hands of the holding company, M/s. Vertex Securities Limited which was not done by the Assessing Officer which is inappropriate. In our opinion, the allocation of expenses was made by the assessee on fair and reasonable basis and there is no basis for re-allocation by the Assessing Officer. Hence, we are not in a position to agree with the order of the CIT(A). Accordingly, we allow this ground of appeal taken by the assessee and allow the shared expenditure as claimed by the assessee.

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

Order pronounced in the open Court on this 7<sup>th</sup> March, 2019

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 7<sup>th</sup> March, 2019

GJ

Copy to:

1. M/s. Vertex Commodities & Finpro (P) Ltd. , Thottathil Towers, IInd floor, Market Road, Ernakulam, Kochi-682 018.
2. Income Tax Officer, Ward-4(1), Kochi.
3. The Commissioner of Income-tax(Appeals)-II, Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin

