

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (A), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri A.T. Varkey, JM]**

**I.T.A. Nos. 1448-1450/Kol/2017
Assessment Years: 2012-13 to 2014-15**

ACIT, Circle - 31 Kolkata.....Appellant
10B, Middleton Row, 4th Floor,
Kolkata - 700 071.

M/s. AB Capital.....Respondent
14/1, Paul Mansion,
6, Bishop Lefroy, Maidan,
Kolkata - 700 020.
[PAN: AAMFA 0255 D]

Appearances by:

Shri C.J. Singh, JCIT, Sr. DR appearing on behalf of the Revenue.
Shri S.K. Tulsyan, Advocate appearing on behalf of the Assessee.

Date of concluding the hearing : January 14, 2019

Date of pronouncing the order : March 15, 2019

ORDER

Per P.M. Jagtap, Vice President

These three appeals are preferred by the revenue against three separate orders passed by the Ld. CIT(A) - 9, Kolkata all dated 31.03.2017 for A.Y. 2012-13, 2013-14 and 2014-15 and since issues involved therein are common, the same have been heard together and are being disposed of by a single consolidated order.

2. First we shall take up the appeal of the revenue for A.Y. 2012-13 being ITA No. 1448/Kol/2017 which is directed against the order of the Ld. CIT(A) - 9, Kolkata dated 31.03.2017.

3. In Ground No. 1, the revenue has challenged the action of the Ld. CIT(A) in deleting the addition of Rs. 75,59,235/- made by the AO

on account of disallowance interest expenses u/s 36(1)(iii) of the Income Tax Act, 1961.

4. The assessee in the present case is a partnership firm which is engaged in the business of trading in shares and securities and commission agents. In the assessment originally completed u/s 143(3) vide an order dated 12.01.2015, the total income of the assessee for the year under consideration i.e. A.Y. 2012-13 was determined by the AO at Rs. 1,02,97,057/-. The said assessment was subsequently reopened by the AO and a notice u/s 148 was issued by him to the assessee after recording the reasons. In response to the said notice, a letter was filed by the assessee stating that the return originally filed may be treated as the return filed in response to the notice u/s 148. As noted by the AO during the course of reassessment proceedings, a total sum of Rs. 7.35 crores was borrowed by the assessee during the year under consideration and interest thereon amounting to Rs. 75,59,235/- was paid. He also noted that the said loan amount was utilised by the assessee for paying interest free advances to various parties. He, therefore, required the assessee to explain as to why interest expenditure of Rs. 75,59,235/- should not be disallowed. In reply, it was submitted by the assessee that the entire amount of unsecured loans taken during the year under consideration was utilised for business purposes and interest thereon was allowable as deduction. The Assessing Officer did not find the submission made by the assessee to be acceptable. According to him, the commercial expediency of the interest free loans and advances given by the assessee to its sister concerns was not established and

the interest paid on the borrowed amount which was utilised for giving such loans and advances was not allowable as deduction. He, therefore, disallowed the interest expenditure of Rs. 75,59,235/- claimed by the assessee.

5. The disallowance made by the AO on account of interest expenses was challenged by the assessee in the appeal filed before the Ld. CIT(A) and following submissions were made on behalf of the assessee before the Ld. CIT(A) in support of its case on this issue.

"The appellant submitted that interest free advances as on 31.03.2012 was as follows:

<i>Advances</i>	<i>Amount (Rs.)</i>
<i>Elite Wealth Creators</i>	<i>10,00,000/-</i>
<i>Arun Kedia</i>	<i>25,00,000/-</i>
<i>Meghna Bhattar</i>	<i>2,57,30,000/- (Partner)</i>
<i>Padma Bhattar</i>	<i>2,17,50,000/- (Partner)</i>
<i>Savitri Enterprises</i>	<i>24,44,663/-</i>
<i>Vipul Ltd.</i>	<i>2,41,000/-</i>
<i>Advance – Salary</i>	<i>4,108/-</i>
<i>Advance to Others</i>	<i>34,173/-</i>
	<i>5,37,03,944/-</i>

A copy of the letter submitted before the learned AO is enclosed at page 34-36 of the Paper Book.

Advance to Elite Wealth Creators, Arun Kedia, Saviri Enterprises and Vipul Ltd. amounting to Rs. 61,85,663/- to total was carried forward from previous year. No new advances were given to these parties in the current year. Therefore, the question of utilization of interest bearing loan fund for these parties in the current year is ruled out.

Advance salary and Advance to Others was given in the normal course of business and are part of business activity. Therefore, there can be no interest disallowance in this case.

Further, out of total advances of Rs. 5.37 crores, an amount of Rs. 2.57 crores was advanced to partner, Meghna Bhattar and an amount of Rs. 2.17 crores was advanced to partner, Padma Bhattar. As such, Rs. 4.74 crores were advanced to the partners of the firm.

A part of the interest free advance given to the Meghna Bhatler and Padma Bhatler was financed out of their respective Capital A/c balance standing in the books as on 01.04.2011 on which no interest was paid. The advance account ledger copy of the partners of the firm and Capital A/c of the partners was also submitted. The same is again enclosed at page 1-2 of the Paper Book."

6. It was also pointed out on behalf of the assessee that major amount withdrawn by the partner was towards the fag end of the year and interest pertaining thereto as worked out by applying rate of 16% at Rs. 27949/- was already disallowed in the assessment originally completed u/s 143(3). The Ld. CIT(A) found merit on the submissions made on behalf of the assessee and deleted the interest disallowance made by the AO.

7. The learned DR invited our attention to the relevant portion of the assessee's balance sheet placed at page No. 27 of the Paper Book and pointed out that the interest bearing unsecured loans of Rs. 7.35 crores were utilised by the assessee for giving loans and advances to its sister concerns. He contended that the commercial expediency of the loans and advances so given was not established by the assessee and since it was the case of utilisation of borrowed funds by the assessee for non business purpose, the interest paid on such loans was rightly disallowed by the AO.

8. The learned counsel for the assessee, on the other hand, strongly supported the impugned order of the Ld. CIT(A) allowing the claim of the assessee for interest expenses. He submitted that the major amount of loans and advances was given to the partners of the

assessee firm and since the same was partly withdrawn by them against the capital and partly given at the fag end of the year in respect of which interest was disallowed, the disallowance made by the AO on account of interest was rightly deleted by the Ld. CIT(A).

9. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the interest expenditure incurred by the assessee amounting to Rs. 75,59,235/- was disallowed by the AO on the ground that the corresponding loans availed by the assessee were diverted for giving interest free advances to the sister concerns for non business purpose. As submitted on behalf of the assessee before the Ld. CIT(A) as well as before us, out of the loans and advances so given totalling to Rs. 5.37 crores, a sum of Rs. 4.75 crores was given to the two partners of the assessee firm namely Meghna Bhattar and Padma Bhattar. As further explained on behalf of the assessee, the remaining advances were given for the purpose of business. As regards the advances of Rs. 4.75 crores given to the partners, it is observed that this entire amount was withdrawn by them at the fag end of the previous year and interest calculated @ 16% on the said amount was disallowed in the assessment originally completed u/s 143(3). Moreover a sum of Rs. 2.20 crores was available in the partners Capital A/c at the relevant time which was also available with the assessee to give interest free advances. Keeping in view all these facts and circumstances of the case, we are of the view that the disallowance of interest made by the AO was not sustainable and the Ld. CIT(A) is fully justified in deleting the same. We accordingly uphold the impugned order of the Ld.

CIT(A) giving relief to the assessee on this issue and dismiss Ground No. 1 of the revenue's appeal.

10. In Ground No. 2, the revenue has challenged the action of the Ld. CIT(A) in deleting the addition of Rs. 29,65,949/- made by the AO on account of disallowance of business promotion expenses.

11. During the course of reassessment proceedings, the assessee was required by the AO to file the details of business promotion expenses amounting to Rs. 98,86,498/-. In reply, it was submitted by the assessee that the business promotion expenses have been incurred on payments made to various parties who are channel partners and assist in marketing and procurement of insurance business. It was also submitted by the assessee that all these payments have been made to the parties by cheques after deducting tax at source. A copy of ledger account was also filed by the assessee to support and substantiate its claim. The AO was not satisfied with the submissions made by the assessee on this issue and held that the expenses claimed by the assessee on business promotion were not fully verifiable in the absence of proper details furnished by the assessee. He accordingly made a disallowance of Rs. 29,65,949/- being 30% of the total business promotion expenses claimed by the assessee.

12. The disallowance made by the AO out of business promotion expenses was challenged by the assessee in the appeal filed before the Ld. CIT(A). It was brought to the notice of the Ld. CIT(A) by the

assessee that the actual business promotion expenditure claimed by the assessee was only to the extent of Rs. 56,34,227/- and not Rs. 98,86,498/- as taken by the AO. The assessee also made further submission in support of its case on this issue as under:

“The appellant has duly substantiated the reasons for such payments in the preceding paras. As such, the action of the learned AO in disallowing 30% of the expenses on adhoc basis is not justified. At no point of time in the course of reassessment proceedings the appellant was asked to produce the bills of such payments. No pains were taken by the learned AO in examining the details submitted by the appellant. No defects were pointed out in the accounts of the assessee. The disallowance was made purely on surmises and conjectures as evident from the assessment order itself wherein the learned AO has held that ‘therefore for sake of natural justice and protection of revenue, 30% of the amount claimed as deduction being 29,65,949/- is disallowed while computing the business income of the assessee’.

No cogent reasons were provided by the learned AO in disallowing the claim of the assessee.”

The Ld. CIT(A) found merit in the submissions made on behalf of the assessee on this issue and deleted the adhoc disallowance of 30% made by the AO out of business promotion expenses.

13. The learned DR submitted that the relevant details of business promotion expenses as required by the AO were not furnished by the assessee and in the absence of the same, the AO was not in a position to verify the claim of the assessee for the said expenses. He contended that some disallowance out of business promotion expenses for such unverifiable element was warranted and the same to the extent of 30% made by the AO being fair and reasonable, the Ld. CIT(A) was not justified to delete the same.

14. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the nature of business promotion expenses incurred during the year under consideration was explained by the assessee before the Assessing Officer and the details of parties to whom the said expenses were paid were also furnished by the assessee. The relevant ledger accounts showing that the said payments were made after deducting tax at source were also filed by the assessee. The AO however treated the business promotion expenses claimed by the assessee as unverifiable for want of supporting bills and vouchers and made a disallowance of 30% without making any enquiry whatsoever from the parties to whom the said expenses were paid by the assessee. He also did not point out even a single instance to show any unverifiable element involved in the business promotion expenses claimed by the assessee. Keeping in view all these facts and circumstances of the case, we find ourselves in agreement with the Ld. CIT(A) that the adhoc disallowance of 30% made by the AO out of business promotion expenses is not sustainable. We accordingly uphold the impugned order of the Ld. CIT(A) giving relief to the assessee on this issue and dismiss Ground No. 1 of the revenue's appeal.

15. In Ground No. 3, the revenue has challenged the action of the Ld. CIT(A) in deleting the addition of 73,09,758/- made by the AO on account of disallowance of salary expenses.

16. During the course of reassessment proceedings, the assessee was required by the AO to substantiate its claim for expenses of Rs.

9,13,71,970/- incurred on account of salary and wages. In reply, the copy of ledger account of salary and wages was submitted by the assessee. It was submitted by the assessee that all the payments towards salary and wages have been made by account payee cheques and the copy of bank statement for the month of April, 2002 was also filed in support. It was further submitted by the assessee that its business of sale of insurance products required huge manpower for marketing and personal interaction with the customers and completing the entire process for issuance of insurance policy from the concerned insurance company. It was also contended that insurance commission income of Rs. 14.27 crores was earned by the assessee during the year under consideration and salary expenses of Rs. 9.35 crores incurred for earning the said income was fair and reasonable. Not fully satisfied with these submissions made by the assessee, the AO held that the assessee was unable to establish that the entire salary expenses claimed by it were wholly and exclusively for the purpose of its business. He accordingly made a disallowance of Rs. 73,09,758/- being 8% of the total expenses claimed by the assessee on account of salary and wages.

17. The disallowance made by the AO out of salary expenses was disputed by the assessee in the appeal filed by the Ld. CIT(A) and the following submissions were made on behalf of the assessee in support of its case on this issue:

“During the year, the appellant had claimed an expense of Rs.9,13,71,970/- on account of salary payments. In support of the said expense, the appellant filed detailed ledger copy of salary and wages and bank statement showing payment by normal banking channels. A copy of

the ledger of Salary is enclosed at page 37-39 of Paper Book. However, the learned AO was not satisfied with the submissions of the appellant and accordingly held that the appellant has not been able to establish 100% the salary expenses and therefore for the sake of natural justice and protection of the interest of the revenue, he disallowed 8% of the total sum of Rs.9,13,71,970/- i.e. Rs.73,09,758/-.

In this regard, it is submitted that the appellant is an agent of Reliance Life Insurance Co. Ltd and extends its assistance to it in marketing of products. It is further submitted that sale of insurance products need huge manpower for marketing.

It is further submitted that sale of insurance products is based on the direct relationship with the customer by the employees. Most of the policies are sold solely on the basis of relationship between the employees and the customers. Employees have to interact with customers, need to understand their requirement with respect to investment, financial and tax planning. According to their requirement, the employee has to convince the customer to purchase tire insurance product. More so, the employee has to keep one to one relation with the customer till the form gets signed along with the cheque and ensure that the policy is issued to the customer. The requirement of human resources in this type of business is very high as the entire business depends upon the marketing skills, efficiency and capability of human resource only. Further, the firm employed experienced senior employees well versed with the insurance business whose salary was on the higher range. More so, these senior employees also brought ur their team of insurance agents and they were also recruited by the appellant. Hence, it is quite obvious that the salary component would be high.

It is further submitted that the appellant had earned Rs.14.27 crores as insurance commission during the year. Salary paid during the year under review of Rs.9.13 crores is much lower as compared to income generated of Rs.14.27 crores.

However, the learned AO did not appreciate the submissions of the appellant and disallowed 8% of the salary expense which comes to Rs.73,09,758/-. Tire disallowance was made by the learned AO on an ad hoc basis and no proper reasoning was provided in support of the same. The learned AO has not disputed the payment made in respect of salary. No enquiry was made by the learned AO with the employees of the appellant. Complete details of salary payment were provided to the

learned AO along with the details of TDS deduction. The appellant has duly substantiated the reasons for salary payments in the preceding paras. As such, the action of the learned AO in disallowing 8% of the salary expenses is not justified.”

The Ld. CIT(A) found merit in the submissions of the assessee and deleted the disallowance made by the AO out of salary expenses.

18. The learned DR submitted that the relevant details of salary and expenses as required by the AO were not fully furnished by the assessee and in the absence of the same, the AO was right to hold that the salary expenses claimed by the assessee were not fully verifiable. He contended that the disallowance of 8% made by the AO out of salary expenses for such non verifiable element was fair and reasonable and the Ld. CIT(A) was not justified to delete the same.

19. The learned counsel for the assessee submitted that the assessee is an agent of Reliance Life Insurance Co. Ltd. and carries on the activities of marketing its products. He submitted that the sale of insurance products needs huge manpower for marketing since the employees have to interact with customers, understand their requirement regarding investment, financial and tax planning and convince them to purchase the insurance products. He submitted that all these aspects were clearly brought to the notice of the AO by the assessee while explaining the business expediency of the salary expenses claimed and the copies of ledger accounts were also filed giving the entire details of the said expenses. He contended that insurance commission of Rs. 14.27 crores was earned by the assessee during the year under consideration and since the salary expenses of Rs. 9.13 crores incurred for earning the said income was fair and

reasonable, the AO was not justified in making adhoc disallowance of 8% without giving any cogent and convincing reasons. He, therefore, strongly supported the impugned order of the Ld. CIT(A) deleting the disallowance so made by the AO on adhoc basis and urged that the same may be upheld.

20. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the salary expenses of Rs. 9.13 crores incurred during the year under consideration were justified by the assessee by explaining the nature of its business as well as the necessity of incurring the said expenses for the purpose of such business. As rightly contended by the learned counsel for the assessee, the business expediency of the salary expenses thus was duly established by the assessee and even the reasonableness of the quantum of such expenses incurred during the year under consideration for earning insurance commission of 14.27 crores was also established by the assessee. It is observed that even the AO did not dispute the same but still made a disallowance of 8% out of salary expenses on adhoc basis on the ground that the claim of the assessee for the salary expenses was not fully justified. It is observed that no reason whatsoever was given by the AO to come to this conclusion and there was no basis whatsoever given by him to make an adhoc disallowance of 8% without disputing the business expediency of the salary expenses claimed by the assessee or the reasonableness thereof. Keeping in view all these facts and circumstances of the case, we are of the view that the adhoc disallowance of 8% made by the AO out of salary expenses was not

sustainable and the Ld. CIT(A) was fully justified in deleting the same. We therefore uphold the impugned order of the Ld. CIT(A) giving relief to the assessee on this issue and dismiss Ground No. 3.

21. Now we take up the appeal of the revenue for A.Y. 2013-14 being ITA No. 1449/Kol/2017 which is directed against the order of the Ld. CIT(A) – 9, Kolkata dated 31.03.2017.

22. As regards Ground No. 1 raised by the revenue in this appeal, it is observed that the issue involved therein relating to the deletion by the Ld. CIT(A) of the addition of Rs. 1,17,60,005/- made by the AO on account of disallowance of interest expenses is similar to the one involved in Ground No. 1 of revenue's appeal for A.Y. 2012-13. Since all the material facts relevant to this issue as involved in A.Y. 2013-14 are similar to A.Y. 2012-13, we follow our conclusion drawn in AY 2012-13 and uphold the impugned order of the Ld. CIT(A) deleting the disallowance made by the AO on account of interest expenses. Ground No. 1 is accordingly dismissed.

23. As regards Ground No. 2, it is observed that the issue involved therein relating to the deletion by the Ld. CIT(A) of the addition made by the AO on account of disallowance of business promotion expenses is similar to the one involved in Ground No. 2 of the revenue's appeal for A.Y. 2012-13. Since the material facts relevant to this issue as involved in A.Y. 2013-14 are similar to A.Y. 2012-13, we follow our conclusion drawn on this issue in A.Y. 2012-13 and uphold the impugned order of the Ld. CIT(A) deleting the disallowance made by

the AO out of business promotion expenses. Ground No. 2 is accordingly dismissed.

24. As regards Ground No. 3, it is observed that the issue involved therein relating to the deletion by the Ld. CIT(A) of the addition of Rs. 2,21,74,998/- made by the AO on account of disallowance of salary expenses is similar to one involved in Ground No. 3 of the revenue's appeal for A.Y. 2012-13. Since all the material facts relevant to this issue as involved in A.Y. 2013-14 are similar to that of A.Y. 2012-13, we follow our conclusion drawn on this issue in A.Y. 2012-13 and uphold the impugned order of the Ld. CIT(A) deleting the disallowance made by the AO out of business promotion expenses. Ground No. 3 is accordingly dismissed.

25. Now we take up the appeal of the revenue for A.Y. 2014-15 being ITA No. 1450/Kol/2017 which is directed against the order of the Ld. CIT(A) – 9, Kolkata dated 31.03.2017.

26. As regards Ground No. 1 raised by the revenue in this appeal, it is observed that the issue involved therein relating to the deletion by the Ld. CIT(A) of the addition of Rs. 1,17,60,005/- made by the AO on account of disallowance of interest expenses is similar to the one involved in Ground No. 1 of revenue's appeal for A.Y. 2012-13. Since all the material facts relevant to this issue as involved in A.Y. 2014-15 are similar to A.Y. 2012-13, we follow our conclusion drawn in AY 2012-13 and uphold the impugned order of the Ld. CIT(A) deleting

the disallowance made by the AO on account of interest expenses. Ground No. 1 is accordingly dismissed.

27. As regards Ground No. 2, it is observed that the issue involved therein relating to the deletion by the Ld. CIT(A) of the addition made by the AO on account of disallowance of business promotion expenses is similar to the one involved in Ground No. 2 of the revenue's appeal for A.Y. 2012-13. Since the material facts relevant to this issue as involved in A.Y. 2014-15 are similar to A.Y. 2012-13, we follow our conclusion drawn on this issue in A.Y. 2014-15 and uphold the impugned order of the Ld. CIT(A) deleting the disallowance made by the AO out of business promotion expenses. Ground No. 2 is accordingly dismissed.

28. As regards Ground No. 3, it is observed that the issue involved therein relating to the deletion by the Ld. CIT(A) of the addition of Rs. 55,64,110/- made by the AO on account of disallowance out of salary expenses is similar to one involved in Ground No. 3 of the revenue's appeal for A.Y. 2012-13. Since all the material facts relevant to this issue as involved in A.Y. 2014-15 are similar to that of A.Y. 2012-13, we follow our conclusion drawn on this issue in A.Y. 2014-15 and uphold the impugned order of the Ld. CIT(A) deleting the disallowance made by the AO out of business promotion expenses. Ground No. 3 is accordingly dismissed.

29. In the result, all the three appeals of the revenue are dismissed.

Order Pronounced in the Open Court on 15th March, 2019.

Sd/-
(A.T. Varkey)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 15/03/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. AB Capital, 14/1, Paul Mansion, 6, Bishop Lefroy, Maidan, Kolkata – 700 020.
2. ACIT, Circle – 31, 10B, Middleton Row, 4th Floor, Kolkata – 700 071.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata