



आयकर अपीलीय अधिकरण "डी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

माननीय श्री संदीप गोसाई, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लष्ठा सदस्य का समक्ष।
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.7032/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

&

आयकर अपील सं./ I.T.A. No.7033/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2010-11)

R.M. Investment & Trading Pvt. Ltd. 9, Rowdon Street, Udyanchal Building Flat No. 20, 5 th Floor Kokatta-700 017	बनाम/ Vs.	DCIT- Central Circle-1(2) Room No.906, 9 th Floor Old CGO Complex, MK Road Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCR-6026-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Chetan Karia- Ld.AR
Revenue by	:	Shri D.G. Pansari- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	22/04/2019
घोषणा की तारीख / Date of Pronouncement	:	25/04/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeals by assessee for Assessment Years [AY] 2009-10 and 2010-11 contest separate orders of first appellate authority on common



grounds of appeal. Since common issues are involved, the appeals are being disposed-off by way of this common order for the sake of convenience & brevity.

ITA No. 7032/Mum/2017, AY: 2009-10

2.1 The appeal contests the order of Ld. Commissioner of Income-Tax (Appeals)-47, Mumbai, [CIT(A)], Appeal No. CIT(A)-47/AP.12888/16-17 dated 25/09/2107 on following grounds of appeal: -

1. Learned Commissioner of Income Tax (Appeals) erred in confirming the assessment order passed u/s. 143(3) r.w.s 254 of Income Tax Act, 1961 determining total income at Rs. 18,41,901/-.
2. The Learned Commissioner of Income Tax (Appeals) erred in not discussing the Ground No. 1 containing grounds from Item No. 1.1 to 1.4.
3. The Learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of the following business expenditure.

Sr.No	Nature of Business Expenditure	Amount (Rs.)
1.	Rent of office premises	2,400
2.	Salaries to staff	93,200
3.	Miscellaneous expenditure	10,973
4.	Audit Fees	2,840
5.	Depreciation (as per IT Act)	74,080
	Total	1,83,493

4. The Learned Commissioner of Income Tax (Appeals) erred in enhancing the disallowance of Rs.74,080/-
5. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.15,99,886/- made on account of cession of outstanding liabilities
6. Appellant prays that,
 - a. Modify the assessment order passed u/s. 143(3) r.w.s 254.
 - b. Delete the addition made of Rs.1,83,493/- on account of disallowance of expenditure incurred.
 - c. Delete the addition made of Rs.15,99,886/- on account of cession of outstanding liabilities.
 - d. Demand of disputed demand may be stayed till the hearing and disposal of appeal on merit.
 - e. Any other relief your honour may deem fit.



2.2 The assessment for impugned AY was framed u/s 143(3) on 14/12/2011 at Rs.18.41 Lacs after certain additions which was contested up to the level of this Tribunal. However, the matter of addition was remitted back by Tribunal to the file of Ld. AO for fresh adjudication vide ITA Nos. 731-32/Mum/2013 order dated 09/09/2015. However, it is noted that the assessment has again been reframed at Rs.18.41 Lacs after making similar additions. The following additions as confirmed by Ld. first appellate authority are under challenge before us: -

Sr.No.	Nature of Additions	Amount (Rs.)
1.	Disallowance of expenditure	1,22,015/-
2.	Enhancement by Ld. CIT(A) by way of depreciation disallowance	74,080/-
3.	Cessation of Liability	15,99,886/-

We have carefully perused the rival submissions and perused relevant material on record including documents placed in the *paper-book*. Our ground wise adjudication follows in succeeding paragraphs.

3.1 During assessment proceedings, it transpired that the assessee debited expenditure of Rs.1,22,015/- as *rent, salaries to staff & misc. expenses*. However, in support of the same, the assessee only produced self-made vouchers and could not provide the source of payment thereof since all expenses were incurred in cash. Resultantly, these expenditures were disallowed. The Ld. first appellate authority, while confirming the same, enhanced the same by disallowing depreciation of Rs.74,080/- in view of the fact that no business activity was being carried out by the assessee during impugned AY.



3.2 Upon perusal of *page no.24* of the *paper-book*, we find that these expenditures are in the nature of audit fees, bank charges, salaries to two employees and rent paid by the assessee. These expenses, in our opinion, were necessary routine expenditure so as to maintain the corporate personality of the assessee. So far as the source of the same is concerned, it is found that books of accounts were duly audited and the assessee was having closing cash balance of Rs.22,894/-. Therefore, there could be no justifiable reason to disallow the same. Similarly, the disallowance of depreciation was not justified since the business had not closed down and the block of asset continue to exist in the books. Therefore, by deleting both these additions, we allow ground nos. 3 & 4.

4.1 The last addition of Rs.15,99,886/- represent addition of *Sundry Creditors*, being reflected in the assessee's financial statements. The same has been disallowed for want of proper explanation. The stand of Ld.AO, upon confirmation by first appellate authority, is under challenge before us.

4.2 Upon perusal, we find that the break-up of these liabilities is as follows: -

Sr.No.	Head	Amount (Rs.)
1.	New Liabilities incurred during the year	28,280/-
2.	Kashinath Tapuriah	13,21,606/-
3.	Raghav Corporation	2,50,000/-
	Total	15,99,886/-

Upon perusal of the details, we find that new liabilities incurred during the year represent audit fees payable to auditors, outstanding staff salary &



professional tax. These are current liabilities and nothing on record suggest that these liabilities have ceased to exist. The stand of lower authorities, therefore, could not be sustained to that extent.

The amount of Rs.13,21,606/- represent amount due towards one of the directors of assessee company. The assessee had already filed confirmation of the concerned director. It is noted that the assessee has received further sum of Rs.1.20 Lacs from the said director during the year which was added to the income of the assessee. However, the same has already been deleted by Ld. first appellate authority upon finding that the assessee fulfilled the onus of providing identity, genuineness and creditworthiness of the said director. Nothing on record suggest that the liability of the assessee company has ceased to exist and therefore, no addition would be warranted on this account.

The amount of Rs.2.50 Lacs shown to be due against *M/s Raghav Corporation* has been confirmed by the said party as evident from *page no 88* of the *paper-book*. Therefore, the addition to that extent could also not be sustained.

4.3 In nutshell, ground no. 5 as well as assessee's appeal stands allowed.

ITA No. 7033/Mum/2017, AY: 2010-11

5. The assessee has similarly been assessed for AY 2010-11 and saddled with expense disallowance of Rs.1,81,315/- and addition on account of cessation of liability for Rs.28,810/-. Identical grounds have been raised under the appeal. Material facts being *pari-materia* the same, our observation, conclusion as well as adjudication as for AY 2009-10 shall



mutatis-mutandis apply to this year also. Resultantly, both the additions stand deleted and the appeal stands allowed.

Conclusion

6. Both the appeals stand allowed in terms of our above order.

Order pronounced in the open court on 25th April, 2019.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/04/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.