

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.437/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2011-12)

Rising Sun Insurance Agency Pvt. Ltd.	Vs.	DCIT, Circle-12, Kolkata
2F, Bose Pukur Road, Kolkata-700042.		
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AADCR 2290 R		
(Appellant)	..	(Respondent)

Appellant by : Shri Vigyaneshwar Nath Datta, Advocate

Respondent by : Shri Shankar Halder, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 12/03/2019

घोषणाकीतारीख/Date of Pronouncement : 15/05/2018

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee , pertaining to Assessment Year 2011-12, is directed against an order passed by the Commissioner of Income Tax(Appeals)-15, Kolkata which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 05.02.2014.

2. The appeal filed by the assessee is barred by limitation by 13 days. The assessee filed a petition for condonation of delay before the Bench. Having regard to the reasons given in the petition for condonation of delay and after hearing the Id. DR for the revenue we condone the delay and admit the appeal for hearing.

3. However, in this appeal, the assessee has raised a multiple grounds of appeal, but at the time of hearing, the solitary grievance of the assessee has been confined to the issue of disallowance of Rs. 23,35,179/- under the head meeting and development expenses and further enhanced by the Id. CIT(A) to Rs. 53,00,078/-.
4. Ground no. 4 raised by the assessee is not pressed by the Id. Counsel for the assessee therefore we dismiss this ground as not pressed.
5. Brief facts qua the issue are that the during the assessment proceedings, the Assessing Officer noted that the assessee had debited to its profit & loss account a sum of Rs. 53,00,078/- on account of meeting and development expenses. These expenses were excessive in view of Assessing Officer which came to 15.39% of the total turnover. The Assessing Officer considered these expenses to be excessive and made a disallowance of Rs. 23,53,179/-.
6. On appeal, the Id. CIT(A) enhanced the disallowance made by the Assessing Officer under the head meeting and development expenses to Rs. 53,00, 780/- observing the following:

“3. Only one issue is taken in appeal. Assesee had debited a sum of Rs. 53,00,780/- on account of "Meeting and Development Expenses". Assessing Officer considered it to be excessive and made a disallowance of Rs. 23,35,179/-. On 30/06/2016, AR of the assessee attended the hearing and filed written submission. He was requested to furnish ledger account of 'Meeting Development Expenses' and copy of bank statement. Next date of hearing was fixed on 05/07/2016. On the appointed date appellant submitted copy of bank statement and sought adjournment in the 3rd week of July. Subsequently, on 27/09/2016, the AR filed audit report and balance sheet and sought another date for hearing. Notice for hearing dated 03/10/2016 was issued fixing the date of hearing on 20/10/2016. However, nobody attended on the appointed date. Another notice dated 22/11/2016 was issued fixing date of hearing on 18/11/2016. There was no compliance to this notice as well. On 21/11/2016 a letter was issued asking the assessee to furnish explanation on certain issues and also asking the assessee to produce the cash book and bank book for verification. Several discrepancies were pointed out and it was also intimated that enhancement of income may be made if assessee failed to satisfactorily explain the queries raised. Hearing was fixed on 29/11/2016. However, nobody attended on the appointed date nor has the assessee filed any written submission till date.

4. Appellant has been granted various opportunities to produce ledger account of meeting and development expenses, cash books and bank statement. However, appellant produced only bank statement and no reasons were assigned for not furnishing ledger accounts for meeting and development expenses and cash book.

Vide letter dated 21/11/2016, appellant was asked to explain the purpose of incurring meeting and development expenses. It was asked for providing details of tax deducted at source on these expenses. It was also asked to furnish cash book and bank book for verification and the ledger account of Meeting and Development Expenses. However, there has been no compliance from appellant's side till date. It is worthwhile to take note that Meeting and Development Expenses of Rs 53,00,780/- was not paid during the year and entire amount remained outstanding on the end of the year. Documents submitted by the appellant shows that Meetings and Development Expenses was payable to M/ s. Commercial Services, which appears to be a related party. But nothing has been mentioned in the audit report. Whether tax has been deducted at source is not verifiable because assessee has not submitted anything in this regard and audit report shows vague comments, 'Showing on Accounts', against the column for compliance to TDS provisions. Perusal of the bank statement shows that almost 3 crores of cash has been withdrawn from the bank purportedly towards office expenses and other liabilities. Small amounts of money have been paid to individuals through cheques. However, purpose is not known. Some of the names are repetitive and-it appears that they are the employees of assessee company. Perusal of the P&L Acct. shows that assessee has claimed expenses of Rs. 3,13,46,167/ - out of which Rs. 53,00,780/- is on account of Meeting and Development Expenses which has not been paid. It is not ascertainable as to how much of current expenses have been paid in cash and how much of current payment in cash relates to liabilities of earlier years. Genuineness of the entire expenses cannot be vouched. Payments through cheques are very small in comparison to the cash withdrawn from the bank for settling expenses. Appellant has not explained the purpose of Meeting and Development Expenses nor has it furnished relevant ledger accounts for verification. It is not known whether tax has been deducted at source on the amount credited to M/ s. Commercial services, which is showing this receipt in its P & L A/c, as contractual receipt. Under the circumstances book results are not acceptable.

Under the facts and circumstances, it appears that claim of expenses towards 'meeting and development' are not genuine and are debited in the accounts only to inflate expenses. Genuineness of other expenses also cannot be verified, as almost all the expenses are in cash but assessee has not produced the cash book and relevant ledger accounts for verification. Besides there may be issues w.r. to section 40A(3). However, in the absence of any proof in this regard, benefit of doubt is given to assessee. However, in respect of meeting and development expenses, it is certain that there are not genuine. Assessing Officer has disallowed only Rs. 23,53,179/- out of Meeting and Development expenses. However, in view of the facts discussed above, entire claim is considered as non-genuine. Hence, disallowance is enhanced to Rs. 53,00,780/-."

7. Aggrieved by the order the Id. CIT(A), the assessee is in appeal before us.

8. The Id. Counsel for the assessee submitted that the Id. CIT(A) enhanced the assessment without any cogent reason. Besides, the Id. Counsel submitted that entire expenses should be allowed, as it incurred by assessee for business purpose. On the other hand, The Id. The Id. DR has primarily reiterated the stands taken by the Assessing Officer which we have discussed in our earlier para and the same is not being repeated for the sake of brevity.

9. We have heard both the parties and perused the material available on record. We note that the assessee has incurred the meeting and development expenses for the purpose of business activity. During the assessment proceedings, the Assessing Officer has failed to demonstrate any cogent reason that the expenses claimed by the assessee is bogus or the expenses claimed by the assessee is inflated by the assessee to reduce the profit. Section 37 of the Act provides that any expenditure made by the assessee during the course of business and not being a capital expenditure will be allowable as deduction while computing the profit. The expenditure incurred by the assessee on account of meeting and development activities were there in the previous year and it is not a new expenditure claimed in the current assessment year. Therefore, we note that the expenditure was incurred by the assessee for the purpose of business and hence it is allowed u/s 37 of the Act and therefore we delete the addition made by the Assessing Officer.

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

Order is pronounced in the open court on 15.05.2019.

Sd/-
(S.S.GODARA)

न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

दिनांक Dated 15/05/2019

SB, Sr. PS

Copy of the order forwarded to:

1. Rising Sun Insurance Agency Ltd.
2. DCIT, Circle-12, Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches