



आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.5538/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2010-11)

ITO-6(1)(3) R. No.508, 5 th Floor, Aaykar Bhavan, M. K. Road, Mumbai-400 020	बनाम/ Vs.	M/s AMO Communications Pvt. Ltd. Ashok Steel Building, 1 st Floor Amar Brass Compound, 159 CST Road, Kalina, Santacruz(E) Mumbai-400 098
स्थायी लेखा सं./ जीआइआर सं./ PAN/GIR No. AADCA-0247-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Satish Chandra Rajore- Ld. DR
Assessee by	:	Shri K.K. Kapadia – Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	30/04/2019
घोषणा की तारीख / Date of Pronouncement	:	16/05/2019

आदश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year [AY] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-14, Mumbai [CIT(A)], *Appeal No. CIT(A)-14/IT.80/Rg.6(1)/13-14*



dated 10/06/2013. The Revenue has filed revised grounds of appeal, which reads as under: -

1. *On the facts and circumstances of case and in law, the Ld.CIT(A) erred in giving relief of Rs. 52,30,000/- out of legal & professional fees.*
2. *On the facts and circumstances of case and in law, the Ld. CIT(A) erred in giving relief out of legal & professional fees based on mere surmises and conjectures without appreciating that assessee has to prove for each year that services have been rendered during the year for earning business income for which legal & professional fees have been allegedly paid. The Ld.CIT(A) allowed the deductions without any evidence to back the claim of the assessee or in alternative admitted fresh evidence in the course of appeal proceedings in violation of Rule 46A of the I.T. Rule and without giving reasonable opportunity of rebutting the fresh evidence to the A.O.*
3. *Without prejudice to the plea taken in ground No. 02, on the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in giving relief of Rs.52,30,000/- out of legal & professional fee without considering applicability of section 37(1) of the I.T. Act.*
4. *On the facts and circumstances of case and in law, the Ld.CIT(A) erred in allowing the relief to the assessee on account of credits in its book of accounts to the tune of Rs. 3,14,66,127/-.*
5. *On the facts and circumstances of case and in law, the Ld.CIT(A) erred in accepting the contention of the assessee without any data of evidence that large number of these entities [(i) Dev Creations (ii) Khushi Ad. Productions. (iii) Kshitiji Films (iv) Sunrise Advertising Associates (v) Sofine Advertising (vi) R2D2 (vii) Electocraft, (viii) Time Production etc.] to whom these payments have been allegedly paid /payable, rendered services, in reality even when these entities were not traceable at the addresses supplied by the assessee and the assessee also failed to produce them before the A.O. despite being specifically asked for by the A.O. during the course of assessment proceedings.*
6. *On the facts and circumstances of case and in law, the Ld.CIT(A) erred in not confirming the additions out of Rs. 3,14,66,127/- u/s 41(1) of the I.T. act when the tenor of the assessment order clearly showed that A.O. doubted the genuineness of the "credits" some of which were squared of during the course of previous year, in the books of accounts of the assessee.*
7. *On the facts and circumstances of case and in law, the Ld.CIT(A) erred in fresh evidence with regard to the genuineness of "credits" appearing in the books of account some of which were squared of during the course of previous year, in violation of Rule 46A without giving reasonable opportunity to the A.O. of rebutting this fresh evidence admitted during the course of appeal proceedings".*
8. *On the facts and circumstances of case and in law, the Ld. CIT(A) erred in giving relief of Rs. 3,14,66,127/- for non-genuine payments merely because A.O. in his assessment order has erroneously used section 41(1) of the I.T. act in connection with this payments".*



2.1 Briefly stated, the assessee being *resident corporate entity* stated to be engaged in the business of *advertising* was assessed u/s 143(3) on 26/03/2013, wherein the income of the assessee was determined at Rs.333.46 Lacs after certain additions & disallowances and after set-off of brought forward losses of earlier years as against *Nil* return e-filed by the assessee on 13/10/2010. As evident from grounds of appeal, following quantum additions as made by the Ld. AO but deleted by Ld. first Appellate Authority are the subject matter of present appeal before us: -

No.	Nature of additions	Amount (Rs.)
1	Legal & Professional expenses u/s 37(1)	52,30,000/-
2	Unexplained Sundry Creditor u/s 41(1)	3,14,66,127/-

2.2 Facts *qua* the additions are that during assessment proceedings, it transpired that the assessee paid legal & professional charges to certain concerns as per the following details: -

No.	Name of the Party	Amount (Rs.)
1.	Key management personnel Ms. Sharon Dias	32,85,000/-
2.	M/s Percept Limited (Holding Co. of Assessee)	19,45,000/-
	Total	52,30,000/-

Upon perusal, the assessee, in the opinion of Ld. AO, failed to substantiate the fact that the stated expenditure was incurred wholly and exclusively for business purposes as per the mandate of Section 37(1). At the same time, the quantum assessment order, at *para 6.1*, record a finding that the assessee has not earned any business income during the year and therefore, the question of allowing the same u/s 37(1) did not arise. Further, since none of the expenses



could be directly attributable to the receipts shown under the head *Income from other sources*, the expenditure could not be allowed even u/s 57(iii). Therefore, the aforesaid expenditure aggregating to Rs.52.30 Lacs was disallowed and added to the income of the assessee.

2.3 The root of second addition lies in the fact that upon perusal of financial statements, it transpired that the assessee reflected an amount of Rs.165.15 Lacs as payable to *Sundry Creditors*, the details of which was called from the assessee. To verify the genuineness of the same, notices u/s 133(6) were issued to all these parties. However, the status of the same has not been enumerated in the quantum assessment order. Proceeding further, Ld. AO form an opinion that the assessee could not file any details regarding the name and addresses of persons from whom these deposits were purported to have been received and it is not known whether the amount of Rs.314.66 Lacs represented the deposits or the unaccounted money of the assessee. Therefore, an amount of Rs.314.66 Lacs was added back u/s 41(1) with an observation that any subsequent payment / appropriations would be allowed as deduction to the assessee.

3.1 Aggrieved, the assessee agitated the same with success before Ld. CIT(A) vide impugned order dated 10/06/2013. Regarding allowance of legal and professional charges, it was submitted that the assessee was advertising agency rendering services such as artwork, making creative designs, planning and layout of ads, overseas exhibitions and release of ads in various print & electronic



media on behalf of the customers. Ms. Sharon Dias was a marketing and PR consultants of the assessee company and the assessee generated a business of Rs.386.23 Lacs on account of services provided by her as against payment of Rs.32.85 Lacs. Regarding payment to its holding company, it was submitted that the Assessee was a group company of *Percept Group* which consisted of various companies in the field of *Advertising, Sales Promotion & Marketing*. It was further submitted that various management services were provided by *Percept Ltd.* for which professional fees of Rs.19.45 Lacs was paid. In the above background, it was submitted that the professional fees were paid for services rendered against projects undertaken by the assessee and therefore, the same were allowable as business expenditure. The attention was drawn to the fact that similar payments made in AY 2009-10 was accepted by revenue in an assessment made u/s 143(3). The said arguments found favor with Ld. first appellate Authority who allowed assessee's claim by making following observations: -

7.5. I have considered the above submissions of the appellant as well as the observations of the AO made in the assessment order. I have also considered the facts of the case. The appellant is an advertising agency rendering services in the said field to its customers. Payment of Rs.32,85,000/- has been made to Ms. Sharon Dias for services rendered by her as a Marketing & PR Consultant of the appellant. Further payment of Rs.19,45,000/- was made to the appellant's holding company Percept Limited for various management services provided by Percept Ltd. It is also seen that the revenue from various projects for which the Professional Fees were paid to Ms. Sharon Dias and Percept Limited in respect of services rendered by them, has also been accounted for by the appellant. In view of these circumstances, therefore, the expenses incurred by the appellant as professional fees to Ms. Sharon Dias and Percept Limited were rightly claimed and could not have been disallowed by the AO.

7.6. It is also seen that such Professional Fees to Ms. Sharon Dias and Percept Limited are being paid and claimed as deduction by the appellant year after year for services being rendered by them and in the preceding assessment year i.e. Assessment Year 2009-10, the AO had himself allowed



the profession fees paid to both the above parties as business expenditure and there has been no change in the facts in the current year. It is thus evident that the AO has wrongly disallowed the expenditure of Rs.52,30,000/-. Same is hereby deleted.

3.2 Assailing addition u/s 41(1), the assessee submitted that there was no remission or cessation of liability within the meaning of Sec.41(1) and therefore the additions were not justified. It was submitted that entire outstanding liability was squared off by the assessee in the very next financial year. The party wise details of Sundry Creditors, outstanding balances and subsequent payment made to them was placed on record. The Ld. CIT(A) observed that although the assessee placed these details before Ld.AO, however, no inquiry whatsoever, was made by Ld.AO and the additions were made simply on the basis of *The Limitation Act* without demonstrating the fulfilment of primary conditions of Sec.41(1) i.e. that there was remission or cessation of a trading liability. An observation was also made that the assessee had already paid an amount of Rs.249.24 Lacs to the Sundry Creditors out of Rs.314.66 Lacs during the impugned AY itself whereas the balance amount was paid in the subsequent year and therefore, there could be no question of adding the same to the income of the assessee.

Aggrieved, the revenue is in further appeal before us.

4. The Ld. AR drawing our attention to the documents placed in the *paper book* supported the stand taken by Ld. CIT(A) whereas Ld. DR submitted that the assessee filed additional evidences during appellate proceedings which were not confronted to Ld. AO.

5.1 We have carefully heard the rival submissions and perused relevant material on record including the documents placed in the



paper book. So far as the disallowance of legal / profession expenses u/s 37(1) is concerned, we find that Ld. AO proceeded wholly on wrong footing that the assessee was not carrying on any business during the impugned AY and therefore, the question of allowing the same u/s 37(1) did not arise. The same was factually incorrect since assessee's computation of income as placed on record reveal that the assessee reflected business income of Rs.46.49 Lacs during the impugned AY.

5.2 Proceeding further we find that the assessee, during assessment proceedings, had placed on record the copies of bills issued by *Ms.Sharon Dias* indicating the nature of expenditure etc. The copy of agreement entered into with *Percept Ltd. for provision of services* was also placed before Ld. AO. However, the Ld. AO, completely disregarding the same, proceeded on wrong footing that the assessee had not carried out any business during the year and therefore, the expenditure was not allowable either u/s 37(1) or u/s 57(iii). The stated facts also controvert the argument of the revenue that the Ld. first appellate authority erred in admitting additional evidences.

5.3 Another undisputed fact is that the assessee has made similar payments to these payees in AY 2009-10 which has been allowed as business expenditure by revenue in an assessment u/s 143(3) and therefore, the additions, in our opinion, on similar facts, was not justified.



5.4 Keeping in view the totality of factors, we find no infirmity in the stand of Ld. first appellate authority, in this regard. Accordingly, ground Nos. 1 to 3 stands dismissed.

6. Regarding addition u/s 41(1), the undisputed position that emerges is the fact that substantial accounts of Sundry Creditors have been squared off by the assessee during impugned AY itself. The balance amount has been paid in subsequent years. Therefore, under the circumstances, nothing would suggest that there was remission or cessation of liability within the meaning of Sec. 41(1), in any manner. In fact, Ld. AO, in the process of making addition u/s 41(1), has disallowed entire expenditure claimed by the assessee against those Sundry Creditors, which was never the case of Ld. AO. No material has been brought on record to establish that the assessee's liability with respect to Sundry Creditors ceased to exist, in any manner. Further, during assessment proceedings, the assessee had placed on record most of the account confirmations from these parties. This being the case, no infirmity could not be found in the impugned order with respect to this addition. By upholding the stand of Ld. first appellate authority, we dismiss the revenue's grounds of appeal.

7. Resultantly, the appeal stands dismissed in terms of our above order.

Order pronounced in the open court on 16/05/2019.

Sd/-
(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



मुंबई Mumbai; दिनांक Dated : 16/05/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.