

**आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष ।**

**BEFORE SRI MAHAVIR SINGH, JM AND SRI NK PRADHAN, AM**

**आयकर अपील सं./ ITA No. 8144/Mum/2011**

**(निर्धारण वर्ष / Assessment Year 2007-08)**

**आयकर अपील सं./ ITA No. 8145/Mum/2011**

**(निर्धारण वर्ष / Assessment Year 2008-09)**

**आयकर अपील सं./ ITA No. 756/Mum/2013**

**(निर्धारण वर्ष / Assessment Year 2009-10)**

M/s The NRK Co. NRK House, Kamla Mills Compound Senapati Bapat Marg, Mumbai-400 013	Vs.	The Addl. Commissioner of Income-tax Range 15(1), Mumbai
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AADFT5351L</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri M. Subramanian, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Ms. Jothi Lakshmi Nayak, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	10-06-2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	10-06-2019

**आदेश / ORDER**

**महावीर सिंह, न्यायिक सदस्य/**  
**PER MAHAVIR SINGH, JM:**

These three appeals filed by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-26, Mumbai [in short CIT(A)], in appeal Nos. CIT(A)-26/IT-143/Addl. CIT 15(1)/09-10, CIT(A)-



**ITAs No. 8144 & 8145/Mum/2011  
756/Mum/2013**

26/IT/JCIT 15(1)/10-11& 11-12, vide dated 02.09.2011,02.11.2012. The Assessments were framed by the Addl. CIT Range. -15(1) Mumbai (in short ACIT/ITO/ AO) for the A.Ys. 2007-08 to 2009-10 vide order dated 17.12.2009, 13.12.2010, 29-12-2011 under section 143(3) read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee in ITA No. 8144/Mum/2011 for AY 2007-08 is against the order of CIT(A) confirming the disallowance of administrative expenses at ₹ 1,87,895/-. For this assessee has raised the following ground No. 1: -

*“1. On facts and in law, the learned CIT(A) had erred in confirming the disallowance of Rs.1,87,895/- out of administration expenses instead of a part of Rs.60,000/- being rent of NRK House. Under the facts and circumstances of the matter, he ought not to have confirmed the same.”*

3. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has claimed administrative expenses of ₹ 1,36,73,491/-. But according to the AO, from the same premises there are 4 firms carrying on the business namely Buda Kapra Pvt. Ltd, NRK Investment Pvt. Ltd, M/s NRK, M/s KKC. According to AO, the assessee is incurring almost all the expenses for the running of office of other concerns having the same address and expenses are debited in the P&L Account of the assessee company. Therefore, the AO disallowed 10% of the expenses amounting to ₹ 13,67,349/-. The CIT(A) restricted the disallowance at 10% of ₹ 18,78,955/- being administrative expenses of NRK house, as that is the only premises used by other concerns out of the 8 business premises belonging to the assessee. The assessee contended that no disallowance is to be made since commercial interest is involved being



**ITAs No. 8144 & 8145/Mum/2011  
756/Mum/2013**

sister concerns. Apart from this, it was also contended that out of the 4 concerns, two are partners in the assessee firm and do not have any other activity and the remaining two concerns do not have any activity. It was further argued that the expenses, if any, incurred by the other concerns have not been claimed by the assessee. The assessee without prejudice argued that only part of the rent of ₹ 60,000/- of NRK house incurred by the assessee, the NRK company can be disallowed.

4. We have considered the arguments of both the sides, we noted that the assessee has not claimed or incurred the expenses of the other concerns. Even, the expenses incurred by the other concerns have not been claimed by assessee. Only point of dispute is that the rent incurred by the assessee of ₹ 60,000/- being rent of NRK house. The AO can disallow the rent i.e. 15,000/- only. Thereby, we restrict the disallowance at 15,000/- and direct the AO accordingly. This issue of assessee's appeal is partly allowed.

5. Similar are the facts and issues are identical in ITAs No. 8145/Mum/2011 & 756/Mum/2013 for AY 2008-09 and 2009-10, taking a consistent view, we restrict the disallowance at 15,000/- in these year also. This issue of assessee's appeal is partly allowed in these years also.

6. The next issue in this appeal of assessee is in restricting the disallowance of foreign expenses of assessee's wife amounting to ₹ 3,98,700/-. For this assessee has raised the following ground No.2: -

*"2. On facts and in ow, the learned CIT(A) had erred in directing the Assessing Officer to disallow Rs.3,98,700/- out of foreign travelling expenses. Under the facts and circumstances of the matter, he ought not to have directed so."*



**ITAs No. 8144 & 8145/Mum/2011  
756/Mum/2013**

7. The AO perused the P and L account and noted that the assessee is debiting foreign travel expenses of personal and his wife at ₹ 20,48,781/-. The AO disallowed the travelling expenses incurred on account of the assessee's wife being 50% of foreign travel expenses incurred on account of travelling by assessee's wife at ₹ 10,24,390/-. However, the CIT(A) agreed that the partners wife is actively involved in the business of the assessee, as she is handing the ladies garments department of the assessee's firm. However, he noted that she is neither employee nor a partner of the assessee firm, given any other reasons as to why she is handling this section. Hence, the CIT(A) restricted the disallowance at 10% of the foreign expenses wife at Rs.3,95,700/-.

8. After hearing both the sides and going through the facts, we noted that the Revenue is not in appeal against the findings of CIT(A)'s that partner's wife was not actively involved in the assessee's firm. Hence, it is presumed that she was actively engaged in the business of the firm and so looked after the arrangements of the assessee firm. However, at the most, as not contested by the learned Counsel for the assessee only 50% of the ticket costs could be disallowed. The ticket cost informed by the learned Counsel for the assessee was ₹ 1,18,726/- thereby 50% comes to ₹ 59,363/-. Therefore, we restrict the disallowance to the extent of ₹ 59,363/-. We direct the AO accordingly. This issue of assessee's appeal is partly allowed.

9. Similar are the facts and issues are identical in ITAs No. 8145/Mum/2011 & 756/Mum/2013 for AY 2008-09 and 2009-10, taking a consistent view, we restrict the disallowance at 50% in these year also. This issue of assessee's appeal is partly allowed in these years also.



10. The next issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of society charges. For this assessee has raised the following ground No. 3: -

*“On facts and in law, the learned OI(A) had erred in confirming the disallowance of Rs.56,141/- out of society charges. Under the facts and circumstances of the matter, he ought not to have confirmed the same.”*

11. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO has disallowed the society charged paid to Blooming Heights co-op Hsg. Soc., which is a residence of the partner Mr. N.R. Kapoor, the AO noted that this is purely residence of the assessee and no way connected with the business, the CIT(A) also confirmed the disallowance.

12. Before us, the learned Counsel for the assessee contended that the working partner Mr. N.R. Kapoor, work from residence and therefore, claimed 2/3<sup>rd</sup> of society charges as business expenditure. We do not find any force in the arguments of learned Counsel for the assessee. We noted that this residence is purely residence of partner and expenditure incurred is purely personal in nature. Therefore, we confirmed the disallowance.

13. Similar are the facts and issues are identical in ITAs No. 8145/Mum/2011 & 756/Mum/2013 for AY 2008-09 and 2009-10, taking a consistent view, we confirm the disallowance in these years also.

14. The next issue in this appeal of assessee is against the order of CIT(A) restricting the disallowance at 50% of the sampling expenses incurred through credit card and business promotion expenses incurred



through credit card. For this assessee has raised the following ground No. 4(1) and 4(ii): -

*“(i) On facts and in law, the learned CIT(A) had erred in directing the Assessing Officer to disallow 50% at the sampling expenses incurred through credit card. Under the facts and circumstances of the matter, he ought not to have directed so.*

*(ii) On facts and in law, the learned CIT(A) had erred in directing the Assessing Officer to disallow 50% of the business promotion expenses incurred through credit card. Under the facts and circumstances of the matter, he ought not to have directed so.”*

15. Similarly, the next issue raised by assessee is against the order of CIT(A) restricting the disallowance of repair and maintenance charges and legal and profession charges. For this assessee has raised the following ground No. 5 (i) and (ii): -

*“(i) On facts and in law, the learned CIT(A) had erred in confirming the disallowance of Rs.98,810/- being expenses on Repairs & Maintenance charges of garden as capital in nature. Under the facts and circumstances of the matter, he ought not to have held so.*

*(ii) On facts and in law, the learned CIT(A) had erred in confirming the disallowance of Rs.2,50,000/. out of legal & professional expenses as capital in nature. Under the facts and circumstances of the matter, he ought not to have held so.”*



**ITAs No. 8144 & 8145/Mum/2011  
756/Mum/2013**

16. On the above grounds, we have noted that the AO while going through the details of expenses noted that the assessee has incurred business promotion expenses of ₹ 15,11,679/-, sampling expenses at ₹ 4,16,592/-. According to AO, these expenses are incurred by making payment of credit card. According to AO, these are not wholly and exclusively for the business purpose, rather some element is in the nature of personal. Therefore, he disallowed the sample expenses and business promotion expenses at 75% amounting to Rs 14,6,553/- on both the counts. Similarly, the AO also noted that the assessee has incurred the repair and maintenance expenses and legal and profession expenses at ₹ 98,800/- and ₹ 2,50,000/-. The CIT(A) restricted the disallowance of sampling expenses and business promotion expenses at 50% instead of disallowance made by CIT(A) at 75%. But CIT(A) retain the addition of repairs and maintenance expenditure and legal and profession expenditure amounting to ₹ 98,800/- and ₹ 2.50 lacs. We have noted that in these expenses, the personal element cannot be ruled out. Hence, we are of the view that a reasonable disallowance would meet the end of justice. We direct the AO to restrict the disallowance at 25% of sampling expenses and business promotion expenses. Similarly, the AO is directed to restrict the disallowance of repair and maintenance at 50%. However, in terms of legal and profession expenses, the assessee could not prove that this is for business purposes, hence, we confirm this addition. This issue of assessee's appeal is partly allowed.

17. Similar are the facts and issues are identical in ITAs No. 8145/Mum/2011 & 756/Mum/2013 for AY 2008-09 and 2009-10, taking a consistent view, we direct the AO to restrict the disallowance at 25% of sampling expenses and business promotion expenses. This issue of assessee's appeal is partly allowed.



**ITAs No. 8144 & 8145/Mum/2011  
756/Mum/2013**

18. The next issue in this appeal of assessee is charging of interest under section 234C of the Act. For this assessee has raised the following ground No. 6: -

*“On facts and in law, the learned CIT(A) had failed to appreciate that interest u/s.234C is chargeable on returned come and not assessed income. Under the facts and circumstances of the matter, he ought to have directed the Assessing Officer to charge interest u/s.234C on returned income.”*

19. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the interest under section 234C of the Act can be chargeable only on the return income as per the provisions. Hence, we direct the AO to charge the interest on the return income. The appeal of the assessee is partly allowed.

20. Similar are the facts and issues are identical in ITAs No. 8145/Mum/2011 for AY 2008-09, taking a consistent view, we direct the AO to restrict the disallowance at 25% of sampling expenses and business promotion expenses. This issue of assessee's appeal is partly allowed.

**21. In the result, all the appeals of the assessee's are partly allowed in term of the above.**

Order pronounced in the open court on 10.06.2019.

Sd/-

(एन. के. प्रधान/ NK PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 10.06.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



**ITAs No. 8144 & 8145/Mum/2011  
756/Mum/2013**

**आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai