

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'G': NEW DELHI)**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1939/Del/2017
(Assessment Year: 2012-13)**

M/s Sietz Technologies India Pvt. Ltd., New Delhi.	Vs.	Dy. Commissioner of Income-Tax Circle 23(2), C.R. Building, New Delhi.
PAN No: AAACN0153A		
APPELLANT		RESPONDENT

Assessee by : Shri R.M. Mehta, CA
Revenue by : Shri N.K. Bansal, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-8, New Delhi, ["Ld. CIT(A)", for short], dated 20.01.2017 for Assessment Year 2012-13. The grounds of appeal are as under:

"1. On the facts & circumstances of the case & in law, the learned CIT(A) has erred in confirming the disallowance of Rs. 8,14,050/- out of expenditure under the head 'Gifts and Presents'.

2. *On the facts & circumstances of the case & in law, the learned CIT(A) has erred in confirming the disallowance of Rs. 3,26,020/- out of expenditure under the head 'Diwali Expenses'.*

3. *On the facts & circumstances of the case & in law, the learned CIT(A) has erred in confirming the disallowance of Rs. 2,30,330/- out of expenditure under the head 'Entertainment Expenses'.*

4. *That the learned CIT(A) confirmed the above disallowance without appreciating the fact that such expenses are incurred by the assessee for the purposes of business & for strengthening relationship with business associates.*

5. *The appellant reserves to itself, the right to add, alter, amend, substitute, withdraw and or any Ground(s) of appeal on or before the date of hearing."*

(2) Assessment Order U/s 143(3) of Income Tax Act, 1961 ("I.T. Act," for short) was passed on 07.01.2015 wherein a total addition of Rs. 13,70,400/- was made, breakup of which is as under:

<i>i) Disallowance out of Gifts and Present Expenses</i>	<i>Rs. 8,14,050/-</i>
<i>ii) Disallowance out of Diwali Expenses</i>	<i>Rs. 3,26,020/-</i>
<i>iii) <u>Disallowance out of Entertainment Expenses</u></i>	<i><u>Rs. 2,30,330/-</u></i>
<i><u>Total</u></i>	<i><u>Rs. 13,70,400/-</u></i>

(2.1) The Assessee filed appeal before the Learned Commissioner of Income Tax (Appeals)-8, New Delhi. Vide order dated 20.01.2017, the Ld. CIT(A) confirmed the above additions. The present appeal in Income Tax Appellate Tribunal ("ITAT", for short) has been filed by Assessee against the aforesaid impugned order dated 20.01.2017. During the appellate proceedings in ITAT, Paper Book was filed from assessee's side containing the following particulars:

- "i) Chart showing the status of Diwali, Gifts & Presents and Entertainment Expenses for various years in assessment and appeals.*
- ii) Order of CIT(A)-8 dated 28.06.2018 for A.Y. 2013-14 in Appeal No. 10197 /16-17 passed by following the order of Hon'ble ITAT Delhi in ITA No. 3951/Del/2014 and ITA No. 4910/Del/2014 for A.Y. 2010-11 & 2011-12.*
- iii) Order of ITAT, Delhi in ITA No. 3951/Del/2014 and ITA No. 4910/Del/ 2014 for A.Y. 2010-11 & 2011-12.*

(2.2) At the time of hearing before us, the Ld Counsel for assessee drew our attention to consolidated order dated 23.03.2018 of Co-ordinate Bench of ITAT, Delhi; in assessee's own case, for Assessment years 2010-11 and 2011-12 in ITA Nos.- 3951/Del/2014 and 4910/Del/2014. He submitted that in identical facts and circumstances, vide the aforesaid consolidated order dated 23.03.2018, the Co-ordinate Bench of ITAT, Delhi had restricted the overall disallowance out of the aforesaid three heads namely, Gifts and Presents Expenses, Diwali Expenses and Entertainment Expenses; to Rs. 1,00,000/- in Assessment Year 2011-12 and Rs. 50,000/- in Assessment Year 2010-11. The relevant part of the aforesaid consolidated order dated 23.03.2018 of Co-ordinate Bench of ITAT, Delhi, is reproduced as under for ease of reference:

"12. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO allowed all the expenses which were below Rs.10,000/- and considered those as genuine but made the disallowance @ 50% of the expenses which were

exceeding Rs.10,000/- in each category. However, nothing is brought on record to substantiate that these expenses were not related to the business of the assessee or those were not incurred in the regular course of business. In such type of expenses, although personal element cannot be ruled out, however, the disallowance had been made by the AO on ad-hoc basis. We, therefore, considering the totality of the facts are of the view that the disallowance made by the AO and sustained by the Id. CIT(A) is excessive, therefore, to meet the ends of justice, we deem it appropriate to sustain the disallowance of Rs.50,000/- which will cover up the leakage, if any.

13. In the assessment year 2011-12 in ITA No. 4910/Del/2014, the identical issues are involved. The only difference is in the figure of disallowances made by the AO and sustained by the Id. CIT(A) which is Rs.6,95,657/-, Rs.2,67,458/- and Rs.1,76,113/- under the head "gifts and presents", "Diwali expenses" and "entertainment expenses" respectively. Therefore, our findings given in the former part of this order for the assessment year 2010-11 shall apply mutatis mutandis. Since, the expenses incurred in the earlier year under these heads were Rs.13.24 lakhs while in this year the expenses incurred are approximately Rs.22.78 lakhs. Therefore, the disallowance of Rs.1 lakh for the assessment year 2011-12 will meet the ends of justice to cover up the leakage of revenue, if any."

(2.3) The Ld. Counsel for assessee, however, submitted that in Assessment Year 2012-13 (relevant to the present appeal before us); the entire disallowances amounting to total of Rs. 13,70,400/-, should be deleted. The Learned Departmental Representative ("Ld. DR", for short) appearing for Revenue, however, submitted that facts and circumstances being identical for this year as compared to Assessment Years 2010-11 and 2011-12 and overall disallowances of Rs. 1,00,000/- should be sustained, consistent with aforesaid order dated 23.03.2018 of ITAT, in assessee's own case, for

Assessment Year 2011-12. In rejoinder, the Ld. Counsel for assessee did not dispute that facts and circumstances for this year (Assessment Year 2012-13) are identical to facts and circumstances of Assessment Years 2010-11 and 2011-12. While pleading for deleting the entire additions amounting to Rs. 13,70,400/-, the Ld. Counsel for assessee, however, left it to the discretion of the Bench whether some part of the disallowances is to be confirmed.

(3) We have heard both sides. We have perused the materials available on record. Neither side has brought any materials to our attention to distinguish the facts and circumstances of this year from facts and circumstances of Assessment Years 2010-11 and 2011-12 for which Co-ordinate Bench of ITAT, Delhi has already passed aforesaid consolidated order dated 23.03.2018. In the aforesaid consolidated order dated 23.03.2018 of Co-ordinate Bench of ITAT, Delhi; a view has already been taken that a part of the disallowances under the aforesaid heads namely, Gifts and Presents Expenses, Diwali Expenses, and Entertainment Expenses is to be sustained. Neither side has brought any convincing material for our consideration for taking a view different from the aforesaid view already taken by Co-ordinate Bench of ITAT, Delhi, in aforesaid consolidated order dated 23.03.2018 for Assessment Years 2010-11 and 2011-12. Having regard to facts and circumstances of this case, and aforesaid consolidated order dated 23.03.2018 of Co-ordinate Bench of ITAT, Delhi, in assessee's own case for Assessment Years 2010-11 and 2011-12 and in a view of the foregoing discussion, we are of the view that the overall disallowance of Rs. 1,00,000/- for

Assessment Year 2011-12 will meet the ends of justice, to cover up the leakage of Revenue, if any, and we consider it appropriate, therefore, to sustain an overall disallowances of Rs. 1,00,000/- out of the aforesaid total disallowance of Rs.13,70,400/. The Assessing Officer is accordingly directed to retain an overall disallowance of Rs. 1,00,000/- and further, to delete the remaining amount of Rs. 12,70,400/- out of the aforesaid total disallowance of Rs. 13,70,400/- . This appeal of Revenue is disposed off in accordance with the aforesaid directions. In the result, appeal of Revenue is partly allowed.

Order pronounced in the open court on First day of August, 2019.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 01.08.2019
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	31/07/2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	