

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. No: 817/AHD/2015
(Assessment Years: 2010-11)**

M/s. Jyotindra International Group Highway, Banaskantha-385001	Jyotindra Jyotindra Compound, Palanpur,	V/S	JCIT, B.K. Palanpur	Range,
(Appellant)			(Respondent)	

PAN: AABFJ 6484E

**Appellant by : Shri Bandish Soparkar, A.R.
Respondent by : Shri L. P. Jain, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 13-06-2019
Date of Pronouncement : 21 -08-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-4, Ahmedabad dated 04.03.2015 pertaining to A.Y. 2010-11 and following grounds have been taken:

1. *Ld. CIT (A) erred in law and on facts in confirming action of AO treating expenses incurred in installation of exhaust fan as capital expense without appreciating that the appellant incurred exhaust fan as part of machinery requiring reconditioning. Ld. CIT (A) ought to have allowed the expenses incurred on exhaust fan to be replaced as part of machinery and not independent machinery as revenue expenses. It be so held now.*
2. *Ld. CIT (A) erred in law and on facts in confirming disallowance by AO of milling expenses of Rs. 36,48, 850/- incurred for job work assigned to M/s Jyotindra Industries treating as non genuine. Ld. CIT (A) further erred in not following appellate orders of her predecessor for earlier years holding expenses as genuine appreciating evidences placed on record. Ld. CIT (A) ought to have deleted disallowance of expenses. It be so held now.*
3. *Ld. CIT (A) erred in law and on facts that as per the instruction by CBDT and settled legal position the appellant & payee Jyotindra Industries being assessed at the higher flat rate of tax the expenses incurred for legitimate needs of the business ought not to have been disallowed.*
4. *Ld. CIT (A) erred in law and on facts in confirming disallowance by AO of Rs. 13,18,326/- on account of employees skill enhancement cost treating as not incurred out of commercial expediency for the purpose of business. Ld CIT (A) failed to appreciate that expenditure resulted into actual benefit of the business. Ld. CIT(A) ought to have deleted the disallowance.*
5. *Levy of interest u/s. 234A, 234B, 234C & 234D of the Act is unjustified.*
6. *Initiation of penalty proceedings u/s. 271(1)(c) of the Act is unjustified.*

2. Facts of the case are that the assessee is engaged in the business of manufacturing trading and exporting of psyllium and other agri, Based products.

3. Assessee has taken ground that ld. CIT(A) erred in law and on facts in confirming action of the treating expenses incurred in installation of exhaust fan as capital expenses without appreciating that the appellant incurred exhaust fan as part of machinery requiring reconditioning and further requested that ld.

- CIT(A) to be replaced as part of machinery and not independent machinery as revenue expenses.
4. Now we come to ground relating to expenses incurred on exhaust fans and Id. CIT(A) ought to have allowed the same as revenue expenses.
 5. In support of its contention, Id. A.R. cited a judgment of ITAT, Delhi in the matter of IAC vs. Nuchem Plastics Ltd. (1989) 35 TITJ (Delhi) wherein it is held that expenses on the purchase of exhaust fan and electric motor in the Chemical Division. Similarly, certain amount was spent by the assessee on the purchase of 4 electric motors in the engineering division. The IAC (Asstt.) regarded the expenditure on these items as capital in nature wherein it is held that expenditure in question was in respect of replacement of worn out and obsolete items and was allowable as current repairs in the hands of the assessee.
 6. We have gone through the relevant record and impugned order and also considered the judgment of ITAT Delhi Bench held expenses are allowable u/s. 30, 31 of Income Tax Act.

Sec. 31. In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed—

- (i) the amount paid on account of current repairs thereto;*
- (ii) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof.*

[Explanation.- for the removal of doubts, it is hereby declared the amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.]

7. In this case, assessee has purchased exhaust fans for installation in godown and in our considered opinion, ld CIT(A) has passed reasoned order by allowing the depreciation and we cannot term exhaust fan installed in the factory as revenue expenditure. Thus, this ground of appeal is dismissed.
8. During the year under consideration, ld. CIT(A) confirmed disallowance made by A.O. of milling expenses of Rs. 36,48,850/- incurred for job work assigned to M/s. Jyotindra Industries treating as non genuine, ld. CIT(A) further erred in not following appellate orders of her predecessor for earlier years holding expenses as genuine appreciating evidences placed on record. Assessee requested that ld. CIT(A) ought to have deleted the disallowance of expenses.
9. We have gone through the relevant record and impugned order. Ld. A.R. reiterated even before us that identical disallowance made in earlier year in assessee's own case for similar reason and identical facts and same were deleted by the predecessor of the ld. CIT(A) for assessment year 2008-09 as also in A.Y. 2009-10.
10. In support of its contention, Assessee also filed a copy of the order of the ld. CIT(A). The revenue has not preferred any appeal against the said order, meaning thereby that order of ld. CIT(A) got finality. Thus, on the principle of consistency, we allow this ground of appeal and direct the A.O. to allow milling expenses of Rs. 36,48,850/ incurred for job work assigned M/s. Jyotindra Industries treating them as genuine.
11. Now we come to next ground that ld. CIT(A) erred in law and on facts in confirming disallowance made by A.O. of Rs. 13,18,326/- on account of

employees skill enhancement cost treating as not incurred out of commercial expediency for the purpose of business.

12. In this regard, assessee submitted that entire amount was spent on sponsoring Ms. Mansi J Modh, a key family member for a MBA course abroad. And in the instance case, Ms. Mansi J Modh is a daughter of a partner went to study abroad for a management course of employee. And assessee was only one selected for such course. Since assessee firm has never claimed this kind of expenditure earlier. And Ms. Mansi Modh a daughter of a partner and considering the facts and circumstances of the case, lower authorities disallowed and confirmed the expenses of Rs. 13,18,326/- which was claimed as employee skill enhancement for donation of Ms. Mansi Modh and same was termed as not incurred wholly or exclusively for business purpose.
13. We have gone through the impugned order and relevant record as well as heard both the parties. We can see that since inception of the firm, no employee has gone abroad for study purpose or for employee skill enhancement programme. So far Ms. Mansi J Modh foreign study/employee skill enhancement is concern, assessee failed demonstrate and fruitful contribution to the firm either for productivity or for the benefit of the firm.
14. In our considered opinion, in order to cover personal expenses of a partner's family member, firm made expenditure of Rs. 13,18,326/-. We do not hesitate to mention here if any expenditure of a firm is spent for personal gain of a family member of a partner who does not have, any contribution with regard to productivity and operation of the firm such expenditure cannot be allowed u/s.

37 and be hold to such expenses cannot incur wholly and exclusively for business purpose. Thus, this ground of appeal of the Assessee is dismissed.

15. So far next ground of levy of interest and penalty are concerned, same are consequential and at this stage, we do not want to adjudicate because above said are premature to decide.

16. In the result, appeal filed by the Assessee is partly allowed in the term and condition mentioned therein.

Order pronounced in Open Court on	21- 08- 2019
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Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 21/08/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad