

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7488/Del./2018
Assessment Year 2015-2016

M/s. Vasudev Infrastructure Pvt. Ltd., A-151, Club Road, Sainik Farm, New Delhi- 110062. PAN AACCV3268Q	vs.,	The ACIT, Circle-26(1), C.R. Building, New Delhi – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri V.K. Jain, C.A. And Shri Vikas Singh, C.A.
For Revenue :	Shri Pradeep Singh Gautam, Sr. D.R.

Date of Hearing :	13.11.2019
Date of Pronouncement :	15.11.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-9, New Delhi, Dated 13.09.2018, for the A.Y. 2015-2016, challenging the Order of the Ld. CIT(A) in confirming adhoc disallowance of Rs.35,18,868/- being 6/7 portion of Rs.41,05,346/- claimed as business promotion expenses.

2. Briefly the facts of the case are that assessee is a Private Limited Company and filed return of income

declaring loss of Rs.51,53,551/-. During the year under consideration, the assessee company was engaged in the business of trading in properties, property commission and advisory income etc. The A.O. examined the details and documents produced on record and noticed that assessee claimed and debited Rs.42,98,352/- on account of business promotion under the head of administration and other expenses. The assessee company, submitted that Business Promotion expenses incurred for the business purpose of assessee company. The assessee company with its sister concern company namely M/s Delite Buildwell Pvt. ltd. has made arrangement with Lodhi Property company Ltd. for providing accommodation for the business of the company. The assessee company with sister concern company as above will pay the charges for whole year. As per mutual consent the assessee company and the Delite Buildwell Pvt. Ltd., has paid 6 months charges each. In this respect we are enclosing herewith the copy of ledger account of business and promotion expenses and copies of 6 month hotel bills in the name of the assessee company. The A.O. issued notice

under section 133(6) of the I. T. Act, 1961 to the Lodhi Hotel to verify the details of the facilities availed by the assessee company, duration, purpose and other details during the financial year. When no reply has been filed by the hotel, another notice under section 133(6) was issued. The Counsel of the Lodhi property company Ltd. submitted part information. Finally, summons under section 131 issued to the Hotel. In response thereto, Mr, Dheeraj Gupta, appeared and submitted a reply stating the details of guest, agreement along with ledgers. The A.O. issued show cause notice to assessee as to why the business promotion expenses should not be disallowed as expenses were not incurred for business purpose during assessment year under appeal. The assessee company in its reply has stated the relation of the persons staying in the hotel and the business of the company for three guests namely Mr. Rajiv Poddar, who is the Director, Sh Tavinder Dhalla and Dr. Ruby Dhalla, to whom the company has advanced the amount. The A.O. noted that however, it is to be stated that merely mentioning that the parties have been advanced

money does not prove any linkage with expenses been made and then there is no nexus with the expenses and business of the assessee company. Therefore, in the absence of relation to be explained, the remaining 6/7th of the expenses i.e., Rs.35,18,868/- was disallowed.

3. The assessee challenged the addition before the Ld. CIT(A) and same facts were reiterated. It was submitted that copies of the bills and other documentary evidences were filed to show business expenses were incurred for business expediencies. It was further submitted that business guests who visited Delhi for business arrangement with assessee company, the assessee company since having registered office in Sainik Farms, which is quite far from the Central Delhi, therefore, assessee finding it difficult for business associates to visit Sainik Farm. The meeting point has been arranged in Central Delhi i.e. M/s Lodhi Hotel, just to facilitate the business of the company. In a few cases the business associates, Directors stayed in Hotel, it does not mean that the hotel is not used for business purpose. The assessee company has filed all the relevant documents

and Management Certificate etc., to prove that accommodation in the Hotel was used for business purpose. It was submitted that statement of Shri Dheeraj Gupta, Authorised Representative of Lodhi Hotel was recorded in the absence of assessee without allowing for cross-examination, therefore, such statement cannot be read in evidence against the assessee. The assessee relied upon decision of Hon'ble Supreme Court in the case of Kishanchand Chellaram 125 ITR 713 (SC). The Lodhi Hotel has confirmed user of the accommodation by the assessee company for business purpose, therefore, disallowance is wholly unjustified. The Ld. CIT(A), however, did not accept the contention of assessee and noted that assessee has not established in as much as the facilities even claimed as business promotion has not been reflected or demonstrated through any cogent evidence indicating such premises as business address of the assessee company. The claim of the assessee has been disallowed.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and

submitted that since assessee wanted to have a Central Office in Delhi, therefore, accommodation in Lodhi Hotel was taken for business purposes with associate company. Accommodation is taken wholly and exclusively for business purpose only. The A.O. cannot step into the shoes of a businessman as to how to conduct business. He has referred to PB-26 which is copy of the ledger account of business promotion expenses etc., along with hotel bills issued by Lodhi Hotel. Pb-43 is details furnished before A.O. explaining the reasons for taking premises for business purpose. PB-45 is copy of Management Certificate and other replies received from Lodhi Hotel. PB-59 is reply under section 133(6) Dated 15.12.2017 by Lodhi Property Co. Ltd., in which it is explained the assessee company had entered into a long staying guest agreement with Lodhi Property Company Ltd., vide Original Agreement Dated 05.04.2013 which was renewed time to time. The assessee has been provided one – two bed room apartment in Lodhi Hotel. The payment made by assessee has been confirmed. Copy of the sample bill and agreement Dated 05.04.2013 is filed at

page-74 of the PB. Learned Counsel for the Assessee submitted that payment to Lodhi Hotel is not in dispute. He has submitted that on the basis of the same agreement in A.Y. 2013-2014, A.O. disallowed 10% sale promotion expenses of Rs.4,57,205/- in the Order under section 143(3) Dated 14.03.2016, copy of the same is placed on record. He has submitted that in A.Y. 2014-2015 no disallowance have been made as return is processed under section 143(1). In subsequent A.Y. 2016-2017, A.O. passed Order under section 143(3) Dated 09.12.2018 in which no similar disallowances have been made. He has submitted that in A.Y. 2013-2014 assessee accepted 10% disallowance as no further appeal have been filed.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. I have considered the rival submissions. It is not in dispute that assessee has entered into long staying guest agreement Dated 05.04.2013 with its associate company M/s. Delite Buildwell Pvt. Ltd., with Lodhi Property Company Ltd., copy of which is filed at page-74 of the PB

through which accommodation is provided to the assessee and its associates. The charges are paid in equal share. It is provided in the agreement that to ensure that all non-registered guests should leave the suite before mid-night. The agreement also provides user of the facilities by the assessee and installation of business equipment etc., The same agreement is renewed time to time. On the basis of the same agreement, the assessee claimed business promotion expenses in preceding A.Y. 2013-2014 in which the A.O. in the Order under section 143(3) disallowed 10% out of sale promotion expenses. No disallowance have been made in A.Ys. 2014-2015 as well as 2016-2017 of the similar nature. Lodhi Hotel has confirmed taking of the premises by assessee and payment which is supported by copy of Management Certificate as well as in the reply submitted vide letter Dated 15.12.2017 PB-59. These facts clearly show and supports the explanation of assessee that the assessee company since having registered office at Sainik Farm, which is quite far from Central Delhi, therefore, it was difficult for assessee company to have business

transaction with the guests, therefore, accommodation is taken in Lodhi Hotel for business purpose only. The assessee produced all the bills/vouchers etc., that assessee made genuine payment to Lodhi Hotel which are not in dispute. Considering the totality of the facts and circumstances of the case and in the light of long staying guest agreement and other material on record which is also confirmed by the owner of the property in question, it is clear that assessee had taken the accommodation in Lodhi Hotel for business purposes only and used it for wholly and exclusively for the business purposes. In preceding A.Y. 2013-2014 A.O. disallowed 10% out of total expenses only. Therefore, considering the rule of consistency, the A.O. at best should have disallowed 10% out of sale promotion expenses instead of making the impugned addition in the assessment year under appeal. In view of the above discussion and material on record, I set aside the Orders of the authorities below and restrict the disallowance out of total sale promotion expenses in 10% only. The addition is

restricted to Rs.4,10,534/-. Appeal of assessee is partly allowed.

7. In the result, appeal of the assessee partly allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 15th November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "SMC" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.