

आयकरअपीलीयअधिकरण, दिल्ली न्यायपीठ 'जी', नई दिल्ली
IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'G', NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.3193/Del/2017

निर्धारण वर्ष/Assessment Year: 2011-12

Uma Bansal, Unit No.205, Apra North-Ex Plaza, Pitampura, Delhi – 110034. [PAN: AARPB 3141 Q]	Vs .	Asstt. Commissioner of Income Tax, Circle-47(1), New Delhi.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Ms.Rano Jain, Advocate, Ms.Mansi Jain – CA and Pranshu Singhal –CA
राजस्वकीओरसे /Revenue by	Shri S.S.Rana – CIT-DR

सुनवाईकीतारीख/ Date of hearing:	05.11.2019
उद्घोषणाकीतारीख/Pronouncement on:	08.11.2019

आदेश / O R D E R

PER O.P.MEENA, AM:

1. This appeal by the Assessee is directed against the order of Ld.Commissioner of Income Tax(Appeals)-16, New Delhi dated 01.03.2017 for the assessment year 2011-12.
2. Ground No.1 and 2 are general in nature and does not require specific adjudication, hence treated as dismissed as not pressed.

3. Ground No.3 relates to confirming of disallowance of Rs.15,92,993/- in respect of business promotion expenses debited to Profit and Loss Account.

4. Facts apropos of this ground are that the assessee has debited a sum of Rs.23,64,969/- under the head business promotion expenses. On scrutiny, it was found that expenses amounting to Rs.13,35,653/- are incurred by the assessee concern for arranging business conference at Taj Palace Hotel, New Delhi. The Assessing Officer(AO) obtained information u/s.133(6) from the Taj Palace Hotel, who replied vide letter dated 14.02.2014 that payment of Rs.13,50,000/- has been made by the assessee in connection with pre-wedding function lunch on 23.01.2011 for 500 guests. Therefore, the AO held that the claim of the assessee that expenditure was for business conference is incorrect and the expenses are of a personal nature, hence, the amount of Rs.13,50,000/- was disallowed. With regard to balance expenditure of Rs.10,14,969/- debited under the head business promotion expenses, the AO noted that these includes personal element and several payments have been made through the credit cards and narration in 1this regard clearly shows that the payments have been made for the personal usage. Hence, the AO disallowed 1/5th out of these expenses which worked out to Rs.2,02,993/-. In view of this, total disallowances out of business promotion expenses were made at Rs.15,52,993/-.

5. Being aggrieved, the assessee carried the matter before the ld.CIT(A) who uphold the addition made by the AO by observing that the AO has investigated the case properly and collected the evidence to confront the appellant. The ld.CIT(A), further observed that there were 500 delegates is itself is unbelievable as the assessee have no such huge magnitude of the business so as to have 500 business partners, therefore the function having 500 is related to a pre-wedding function is more logical and believable. The argument of the appellant that there has been no wedding in the family of the assessee is of no consequence as the function organizes in the Taj Palace Hotel was a private function, whether it is pre-wedding or some other function is immaterial. What is material is that it was not a business event. Further, the argument of the appellant that in case of pre-wedding bills should have been in the name of bride or groom family was also rejected as the hotel management will issue the bill in the name as desired by the host.

6. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld.Counsel submitted that the assessee is running a proprietorship firm, who organizes a business conference every year and such expenditure have been allowed to the assessee in assessment made u/s.143(3) in earlier years for A.Y. 2008-09[PB-106-109] and

A.Y. 2009-10 [PB-110 to 112]. These expenditures for A.Y. 2007-08 are reflected at sales promotion ledger account PB-page 97 at Rs.3,50,000/- and for A.Y. 2008-09 at Rs.3,71,528/- [PB-104]. The reply given by the Taj Palace Hotel in pursuance to notice u/s.133(6) [PB-73, 75] confirms the fact that the lunch was hosted. However, in the reply, it has been stated to be a pre-wedding function, but there was no wedding solemnized in the family of the assessee during the year or at any nearby date. In support of this, a family tree of the assessee is placed at [PB-90] which shows that the wedding function in the family happened only in the years 2004 and 2014. Further, in the reply, only charges of the lunch are mentioned and there is no charge of any other amenities such as DJ, Flower arrangement, other decorations and stage etc., which is very common in wedding functions of the community to which the assessee belongs, also most of these functions happens in the nights, while it is confirmed that it is a lunch hosted. The fact remain that a staff of the assessee went for the booking and may be could not explain the purpose properly and the hotel staff arbitrary recorded to be a pre-wedding function. The AO has made disallowance of 1/5th of the remaining expenses, he has only pointed out the expenditure of Rs.15,584/-, which is in the nature of personal expenditure. Therefore, without pointing out any specific instances of such personal expenditure no further disallowance is

called-for. Further, ld.CIT(A) has not given any finding on this account.

7. The ld.CIT-(DR) submitted that the assessee is having income of Rs.38 lakhs only whereas it is unlikely that the assessee would incur expenditure of Rs.23 lakhs on business promotion. Further, the reply submitted by the Taj Palace Hotel is self-explanatory which specify pre-wedding function, the same is being third party, why they will give wrong information!, hence the AO and ld.CIT(A) has rightly disallowed the same. With regard to 1/5th disallowance of remaining expenses, the ld.DR relied on the AO, as the ld.CIT(A) has not given specified finding in this regard.

8. In rejoinder to the above, the ld.Counsel for the assessee submitted that the assessee is carrying proprietorship business in the name of Ram Kishore Chemicals and the net taxable income of Rs.38.15 lakhs is shown as per Return of Income whereas, the turnover of assessee is around 25 crores, hence, expenditure on sales promotion is reasonable.

9. We have heard the rival submissions and perused the material available on record. We find that the assessee is running a proprietorship concern and incurring expenses on business promotion every year which is evident from the details filed for A.Y. 2008-09

placed at PB, page 97 to 104 and it is noticed from such details that the assessee has incurred expenses for payment of conference dated 20.01.2007 at Rs.3,50,000/- [PB-97] for the conference organized at the Ashok Hotel and Rs.2,12,376/- for the conference organized on 14.03.2008 at the Imperial Hotel, and expenditure of Rs.3,71,578/- incurred on 26.02.2009 for conference at the Morya, New Delhi. These expenses have been duly examined in the scrutiny assessment by the AO in the relevant assessment years, and no disallowance was made. This goes to suggest that the assessee is organizing regular conferences in the month of January or March to promote its business for which expenses are being incurred. However, the AO has disallowed the said expenditure during year solely based on a letter from Taj Palace Hotel in which pre-wedding function is noted, whereas the fact on record suggest that there was no wedding ceremony took place in the family of the assessee during the year and it was happened only in the years 2004 and 2014. Further, the function was organized for lunch only and the expenditure incurred does not suggest any expenditure on account of DJ, Flower decoration, stage etc., suggesting that there was any marriage function organized in the family. Further, the invoice of Taj Palace Hotel issued and banquette challans does not mention any pre-wedding functions. Further, if there had been wedding in family, the other expenses on various transactions could

have reflected in capital account of the assessee. Therefore, these circumstantial evidences lead to infer that the expenditure was in the nature of business promotion only, hence, such disallowance made by the AO is without corroborating evidences and without cross examining the parties, hence same are deleted. With regards to 1/5th of the disallowance of remaining expenses, we find that the AO has pointed out that some of the expenditure were incurred for personal travelling and are in the nature of personal, therefore, the nature of expenditure is such in which personal element cannot be ruled out. Therefore, we are of the considered opinion that AO was justified in making disallowance of the remaining expenses @1/5th, accordingly the disallowance of Rs.2,02,993/- confirmed. This ground of appeal is partly allowed.

10. Ground No.3 relates disallowance of Travelling Expenses being 1/4th of the total travelling expenses on account of personal element.

11. We have heard the rival submissions and perused the material available on record. We find that the assessee has debited a sum of Rs.12,48,556/- under the head Travelling Expenses and considering the same of personal in nature and gave examples of the journey undertaken by the some of the family members which worked out to Rs.38,379/-. The AO disallowed @1/4th Travelling Expenses debited to

the profit and loss account. The Id.Counsel contended that the AO has only pointed out specific expenses at Rs.38,379/-, therefore, whose disallowance at Rs.3,12,139/- being 1/4th of the total travelling expenses is arbitrary without giving any reasoning, whereas the Id.DR relied on the order of the Lower Authorities.

12. After careful consideration of the facts, we are of the view that the AO has cited some instances of Air Tickets which are definitely personal in nature. It is, further seen that the various family members have travelled in India which are not for the purpose of business, therefore considering the totality of the facts, we are of the considered opinion that disallowances restricted to 1/5th of the total expenses by the Id.CIT(A) are appears to be reasonable, hence this ground of appeal of the assessee is dismissed.

13. Ground No.5 relates to disallowance of vehicle expenses of Rs.2,41,061/-.

14. We have heard the rival submissions and perused the material available on record. We find that the assessee has incurred total car expenses of Rs.12,05,304/- which inter-alia include car depreciation of Rs.8,33,187/-. Further, the AO disallowed 1/5th of the said amount and worked out the disallowance of Rs.2,41,061/-. The Id.CIT(A) has also restricted the disallowances to 1/5th of the vehicle expenses.

However, before us, that the Id.Counsel has argued that the disallowance on account of personal element in respect of car depreciation is not justified and against the Law. We find this argument of the Id.Counsel is valid, therefore 1/5th of the disallowances attributable to car depreciation of Rs.8,33,187/- are deleted. The AO is directed to recalculate the disallowance, accordingly, out of vehicle expense. Remaining disallowances @1/5th restricted by Id.CIT(A) are upheld, accordingly, this ground of appeal is therefore partly allowed.

15. Ground No.6 relates to confirming addition of Rs.19,92,557/- in respect of rate difference on cancellation of contract of purchase of goods in spite of various details and documents furnished by the assessee.

16. Briefly stated facts of this ground are that the assessee has debited a sum of Rs.19,92,557/- under head discount/rate difference. It was explained that the assessee has operated its business activities in the name of Om Exim and booked the purchases of Sodium Nitrate. However, due to some business reasons, the assessee could not take the delivery of the goods booked. In repercussion of the same, and as per the agreement with the selling party, the assessee has to pay the difference of the rate of product. In support of this, copy of bank

statement of Om Exim along with debit note was filed in respect of Usha Chem, Sandeep Organics Pvt. Ltd., and Sanjay Chemicals. The AO observed that these expenses are in the nature of speculative transactions and the name of the Om Exim was not mentioned in the audit report. Therefore, the assessee was asked to show cause as to why these expenses should not be treated as speculative as per section 43(5) of the Act. It was submitted that the assessee in order to guard against loss through future prices fluctuation of such chemicals entered into the contract with the relevant dealer. Since, at the time of actual delivery of chemicals, the assessee noticed that the prices of the chemicals has fallen sharply than the booked amount and she was of bonafide belief that if the actual delivery of the said commodity was taken to make the assessee suffer enormous loss. The assessee paid the difference amount of actual day of delivery to safeguard the future loss of the said commodity. However, the AO observed that this argument of the assessee has no force as in her submissions, the assessee has not furnished any corresponding documentary evidence in supporting of his claim nor the copies of the agreement have been furnished nor details of business activity of Om Exim were furnished. There is no reference of Om Exim in the audit report. Therefore, mere furnishing of the debit notes and written submissions does not support the claim of the assessee, being a business boss in the name of Ram

Kishore Chemicals Company, therefore loss of Om Exim cannot be merged with Ram Kishore Chemicals Company. Thus, the assessee has failed to discharge her primary onus by providing necessary details, hence the loss/discount claim of Rs.19,92,557/- was disallowed.

17. Being aggrieved, the assessee carried the matter before the Id.CIT(A). The Id.CIT(A) observed that the primary evidence with respect to any transaction is order or contract, therefore case law relied upon by the assessee clearly mentioning purchase contract are not applicable. However, in appellants case, the purchase contract is in thin air, apart from the issuing debit notes by the so-called supplier. There is no details regarding when the order of supplied placed and when was decision to pay the rate difference was taken. Everything is in the realm of speculations. The story of the appellant is fantastic but is not supported by the evidences. What and why happened are the questions for which there are no answers. When the appellant was conducting business as proprietorship under the name and stile M/s.Ram Kishore Chemical Company, where was the need for having another proprietorship for the same Business in the name of Om Exim. This argument of appellant is devoid of any logic and evidence, therefore the claim of the assessee was rejected and the findings of the AO were confirmed.

18. Being aggrieved, the assessee filed this appeal before this Tribunal. The Id.Counsel submitted that the assessee is an individual running proprietary concerns in the name of Ram Kishore Chemical Company during the year under consideration but a unit of Ram Kishore Chemical Company was opened in Mumbai by the name of Om Exim. In order to do business sale/purchase of Sodium Nitrate for which the assessee had earlier experience. The assessee has entered into the oral agreement with the three concerns during the year under consideration for purchase of Sodium Nitrate. However, as a prudent business decision, it was decided not to take the deliver of these items. The prices of these items are falling drastically and taking delivery would have entail much losses. Therefore, for breach of contract, the assessee had to pay the difference in the rates. Thus, the assessee has incurred business loss which is supported by copies of debit notes filed which are appearing at page 55 to 57. The learned, Counsel further referred the confirmation letter from the parties which are appearing at page 120 to 122. The Id.Counsel has also filed an affidavit dated 19.01.2017 of the assessee which is placed at paper book 132-13 wherein she has deposed that during the financial year relevant to A.Y. 2011-12, she has started a unit under the name and style of Om Exim at Bombay, a unit of Ram Kishore Chemical Company for which separate bank account number ending with 26689 with HDFC Bank

was opened. However, the necessary information for the same was given to sales tax department, Mumbai and the name of OM Exim was also entered in the registration certificate issued by the Sales Tax Officer [C-110] registration branch, Mumbai. It was further stated in the affidavit that an oral agreement for purchase of various chemicals from Usha Chem, Sandeep Organics Pvt. Ltd., and Sanjay Chemicals, was entered into, however, due to sharp fall in the prices of the product to be procured by the above suppliers and in order to avoid further loss it was decided to cancel the order and the assessee agreed to pay the difference amount prices of Rs.19,92,587/-. Since, the audit report in form 3CD and 3CB was to furnish for individual appellant, therefore there was no requirement to mention the name of each and every business of the appellant. There was current account in the name of Om Exim as a unit of Ram Kishore Chemical company whose proprietor is the assessee was filed amendment in sales tax department for addition / alteration of the name of the appellants concern which has been duly incorporated, therefore it is being a business loss has to be allowed to the assessee.

19. *Per contra*, the ld.Departmental Representative(DR) submitted that the assessee had entered into an oral agreement, however, no details of any written agreement has been filed, whereas the assessee could have obtained these details from the sister concern. Therefore,

debit notes issued by the suppliers are not sufficient for allowing the loss. Further, the name of Om Exim is not appearing in the audit report, therefore, the Id.CIT(A) has correctly upheld the action of the AO.

20. We have heard the rival submissions and perused the material available on record. We find that the assessee has furnished copy of confirmation issued by the three suppliers which are appearing at PB 120-122. It is further noticed that the name of Om Exim has been added with Ram Kishore Chemical Company by the sales tax department on 04.03.2011 which is a evidencing from the details filed and appearing at PB-118 & 119. We further note that the assessee has opened a bank account with HDFC bank in the name of M/s.Om Exim at Bombay, being a unit of Ram Kishore Chemical Company. Thus, the apprehension of the AO that the assessee has not done any business with these parties is without any sound basis. Further, the debit notes are appearing at page 55 to 57 which is also supported by the bank statement of HDFC Bank appearing at page 53 & 54. Further, the transaction could be effected by orgal agreement, which not prohibited by law. Since, the Om Exim, is a unit of M/s.Ram Kishore Chemical Co., therefore, non-appearing the name of Om Exim is of no consequence. The evidences filed by the assessee in the form of debit notes, confirmation, bank accounts and payments has not

been refuted by the AO. In view of these facts, we are of the considered opinion that the assessee has incurred a business loss, hence same is allowable as business expenditure, accordingly the disallowance / additions made by the AO are therefore deleted. Accordingly, Ground No.6 of appeal is allowed in favour of the assessee.

21. In the result, appeal of the assessee is partly allowed.

22. Order pronounced in the open court on 08-11-2019.

Sd/-

(AMIT SHUKLA)

(न्यायिक सदस्यतथा/JUDICIAL MEMBER)

Sd/-

(O.P.MEENA)

(लेखा सदस्यकेसमक्ष /ACCOUNTANT MEMBER)

नई दिल्ली /New Delhi, दिनांक Dated: 8th November, 2019 /S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, New Delhi