

IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH MUMBAI
BEFORE SHRI C.N.PRASAD, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
ITA No.6922/Mum/2018
(Assessment Year: 2015-16)

Akshat Pushpakant Kedia 252/C, Grand Paradi Apt., Kemps Corner Mumbai-400 036	Vs.	ITO(IT),Ward-3(1)(2) 16 th Floor Air India Building Nariman Point Mumbai-400 021
PAN/GIR No.AAMPK9273H (Appellant)	..	(Respondent)

Revenue by	Shri. Harshad Vengurlekar, Sr.DR
Assessee by	Shri. Hari S.Raheja, AR
Date of Hearing	27/11/2019
Date of Pronouncement	27 /11/2019

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals) –57, Mumbai, dated 03/09/2018 and it pertains to AY 2015-16.

2. The assessee has raised the following grounds of appeal.

- 1. On the fact and in the circumstances of the case and in law the Commissioner of Income tax Appeals was not justified in confirming the order of the Assessing officer, disallowing the claim of Consultancy charges paid by the Appellant to Dr.Puspkant Madanlal Kedia, merely because he is a Doctor by qualification, doubting his professional competence, ignoring his industry experience and business acumen.*
- 2. The appellant craves leave to add to, alter or vary the grounds of appeal at or before the hearing of the appeal.*

3. The assessee is a non-resident engaged in the business of share trading, filed his return of income for AY 2015-16 on 26/09/2015 declaring total income at Rs.2,77,13,460/-. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO had made various additions, including additions towards disallowances of payment of consultancy charges to assessee father and HUF of assessee father, on the ground that there is no nexus between the payment of consultancy charges and business activity of the assessee and also, the assessee has failed to provide any details to prove that the payment of consultancy charges is commensurate with services rendered by the father of the assessee. The assessee carried the matter in appeal before the Ld.CIT(A), but could not succeed, because the Ld.CIT(A) rejected the claim of the assessee, on the ground that the assessee has failed to explain with necessary evidences that there is a live nexus between payment of consultancy charges and services rendered by the consultant. Therefore, he opined that there is no error in the findings of the Ld.AO in disallowances of consultancy charges and accordingly, confirmed additions made by the AO. Aggrieved by the Ld. CIT(A) order, the assessee is in appeal before us.

4. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in confirmed disallowances of consultancy charges made by the AO without appreciating the fact that the assessee has explained with evidences before the Ld. AO that the father of the assessee is rendered services to the assessee in connection with share trading business and which resulted in substantial increase in derivative profits from share trading activity. The Ld. AR, further submitted that the services provider is although a Doctor by profession, but he

never practiced medicine. He, further, submitted that service provider was employed with a company in the capacity of Director, which is involved in manufacturing of pharmaceuticals and with his vast experience has advised the assessee in his business, for which necessary payment has been made. Therefore, there is no reason for the Ld. AO to disallow said expenditure only for the reasons that the service provider does not have requisite management qualifications to render said services.

5. The Ld. DR, on the other hand, strongly supporting order of the Ld. AO, as well as Ld.CIT (A) submitted that it is very clear from the orders of the authorities below that the assessee, neither produced any details to prove rendering of services by the service provider, nor filed any evidences to prove there is a nexus between payment of consultancy charges and business activity of the assessee. Therefore, the Ld. AO, as well as the Ld.CIT(A) was very much right in rejection of claim of the assessee and their order should be upheld.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. It is an admitted fact that in order to claim, the benefit of deduction of any expenditure, the assessee shall prove with necessary evidences that said expenditure has been expended wholly and exclusively for the purpose of his business. Further, it is for the assessee to discharge the onus cast upon him by filing necessary evidences, when said payment has been made to a related party covered within the ambit of a provision of section 40A(2)(b) of the I.T.Act, 1961. In light of above legal proposition, if you examine the claim of the assessee

that there is a nexus between payment of consultancy charges to his father and his business activity, we find that the lower authorities has rejected the claim of the assessee, on the ground that the assessee, neither furnished any evidences to prove that the services provider has provided services to the assessee, nor filed any details to prove that there is a live nexus between expenses incurred and business activity of the assessee. Further, in this case, the assessee is into the business of share trading, whereas the payment has been made to his father for rendering consultancy services without explaining, how the services provided by his father is benefited his business. Further, as per facts brought out by the lower authorities, the service provider does not have requisite management skills to give consultancy services to the assessee. Therefore, we are of the considered view that the assessee has failed to file necessary evidences to prove live nexus between payment of consultancy charges and business activity of the assessee and also rendering services by the service provider. Hence, we are of the considered view that there is no error in the findings of the Ld.CIT(A), while confirming additions made towards disallowances of consultancy charges . Hence, we are inclined to uphold the order of the Ld.CIT and dismissed appeal filed by the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 27 /11/2019

Sd/-
(C.N.PRASAD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 27 /11/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai