

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. R. K. PANDA, ACCOUNTANT MEMBER**

ITA No.6836/Del/2015
Assessment Year: 2010-11

Dr. R. N. Kalra J-1/61A, Rajouri Garden New Delhi PAN AATPK4470H (APPELLANT)	Vs.	DCIT Circle – 37 (1) New Delhi (RESPONDENT)
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Appellant by	Sh. Gautam Jain, Advocate Sh. Lalit Mohan, CA
Respondent by	Sh. S. L. Anuragi, Sr. DR

Date of hearing:	05/02/2020
Date of Pronouncement:	17/02/2020

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 02.11.2015 of the CIT(A)-20, New Delhi relating to A.Y.2010-11.

2. The ground of appeal No.1 by the assessee reads as under :-

1. *That the learned Commissioner of Income Tax (Appeals)-5, New Delhi has erred both in law and on facts in upholding the addition of*

Rs.47,640.00 out of total expenses of Rs.3,47,640.00 claimed under "Business Promotion" during the year as the submissions made both during the assessment proceedings as well as appellate proceedings have not been properly appreciated by the Authorities below.

3. Facts of the case, in brief, are that the assessee is a doctor by profession and derives income from profession and salary income. He filed his return of income on 13.10.2010 declaring total income at Rs.5,20,64,840/-. The AO during the course of assessment proceedings noted that the assessee has claimed an amount of Rs.47,640/- under the head business promotion expenses. From the various details filed by the assessee he noted that these expenses are in the nature of bills of various restaurants and clubs. Since personal element in these expenses cannot be ruled out the AO made disallowance of the entire amount. In appeal, the Ld. CIT(A) upheld the addition.

4. Aggrieved with such order of the CIT(A) the assessee is in appeal before the Tribunal.

5. We have heard the rival arguments made by both the sides and perused the record. We find that the assessee has claimed an amount of Rs.47,640/- under the head business promotion expenses. The Ld. CIT(A) had held that some of the expenses incurred might have been for personal use. Therefore, in our opinion the entire amount debited to the P & L account should not have been disallowed. Considering the totality of the facts of the case we are of the considered opinion that the disallowance of an amount of Rs.25,000/- on ad-hoc basis out of business promotion expenses will meet the ends of justice. We hold and

direct accordingly. Ground No.1 by the assessee is accordingly partly allowed.

6. Ground of appeal No.2 by the assessee reads as under :-

2. That the learned Commissioner of Income Tax (Appeals)-5, New Delhi has erred both in law and on facts in upholding the addition of Rs.1,59,368.00 being 1/10th of the total expenses claimed under Car Running and Maintenance and depreciation on car claimed during the year as the submissions made both during the assessment proceedings as well as appellate proceedings have not been properly appreciated by the Authorities below.

7. After hearing both the sides we find the AO disallowed an amount of Rs.1,59,368/- being 10% the expenses claimed by the assessee under the head car running and maintenance of Rs.8,53,422/-and under the head depreciation of car and ambulance of Rs.7,37,946/- on the ground that element of personal use of the vehicles cannot be ruled out and the assessee did not produce the log book of vehicle expenses on the ground that the same is not maintained. We find the ld. CIT(A) sustained the addition on the ground that assessee has not maintained any log book and the onus is on the assessee to prove that the expenses so claimed were incurred wholly and exclusively for the purpose of business. It is the submission of the Ld. Counsel for the assessee that the disallowance so made by the AO and upheld by the CIT(A) are on the higher side. It is also his submission that there cannot be any personal element of expenses in running and maintenance of the ambulance. Considering the totality of the facts of the case we are of the considered opinion that disallowance of an amount of Rs. 1,00,000 on ad-hoc basis out of

the motor car running and maintenance expenses will meet the ends of justice. We hold and direct accordingly. Ground No.2 is accordingly partly allowed.

8. Ground No.3 of appeal reads as under :-

3. That the learned Commissioner of Income Tax (Appeals)-5, New Delhi has erred both in law and on facts in upholding the addition of Rs. 1,09,517.00 being 1/10th of the total telephone expenses claimed during the year as the submissions made both during the assessment proceedings as well as appellate proceedings have not been properly appreciated by the Authorities below.

9. After hearing both the sides we find the AO disallowed an amount of Rs.1,09,5172/- being 10% of the telephone expenses claimed in the P & L account at Rs. 1,095,172/- on the ground that personal use of telephone cannot be ruled out and the assessee failed to produce the details of use of telephone. We find the Ld.CIT(A) upheld the action of the AO. Considering the totality of the facts of the case and considering the fact that certain free calls are allowed by the telephone department, we are of the considered opinion that disallowance of Rs.50,000/- on ad-hoc basis out of such telephone expenses will meet the ends of justice. We hold and direct accordingly. The ground No 3 by the assessee is accordingly partly allowed.

10. Ground No.4 and 5 by the assessee reads as under :-

4. That the learned Commissioner of Income Tax (Appeals)-5, New Delhi has erred both in law and on facts in enhancing the addition from 2,07,000.00 to Rs.5,54,505.00 towards expenses incurred on building repair and maintenance without appreciating the fact that the payment

to the contractor did not exceed the limits laid down under Section 40A and that the provisions of Section 40A(3) were not attracted. That the learned Commissioner of Income Tax (Appeals)-5, New Delhi has further erred in not appreciating the submissions made both during the assessment proceedings as well as appellate proceedings have not been properly appreciated by the Authorities below.

5. That it is therefore, prayed that, it be held that assessment made by the learned Deputy Commissioner of Income Tax and sustained and enhanced by the learned Commissioner of Income Tax (Appeals) be quashed and , further addition so upheld by the learned Commissioner of Income Tax (Appeals) along with interest levied be deleted and appeal of the appellant be allowed.

11. After hearing both the sides we find that the AO disallowed an amount of Rs.2,07,000/- out of the building and repair and maintenance expenses claimed by the assessee at Rs.15,18,225/- on the ground that the bills and vouchers produced by the assessee are not in order. We find the Ld. CIT(A) not only sustained the addition but enhanced the same to Rs.5,54,505/-. It is the submission of the Ld. Counsel for the assessee that the total expenses booked under the head building repairs and maintenance account is shown at Rs.2,074,038/-. Although the AO alleged that proper bills and vouchers were not maintained, however, no specific instance of unverifiable expenses has been given in the assessment order or by the CIT(A). It is the submission of the Ld. Counsel for the assessee that due opportunity to the assessee to substantiate his claim was not given by the AO before making the addition. It is also his submission that given an opportunity the assessee can

substantiate the claim before the lower authority. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the AO with a direction to give one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 17.02.2020.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date 17.02.2020

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	05.02.2020
Date on which the typed draft is placed before the dictating Member	05.02.2020
Date on which the approved draft comes to the Sr.PS/PS	17.02.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	17.02.2020
Date on which the fair order comes back to the Sr. PS/ PS	17.02.2020
Date on which the final order is uploaded on the website of ITAT	17.02.2020
Date on which the file goes to the Bench Clerk	17.02.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	