



ITA No.4822/Mum/2017
Reliance Capital Partners
Assessment Year :2011-12

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4822/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

Reliance Capital Partners Kamala Mills Compound Trade World, B-Wing, 7 th Floor S.B. Marg, Lower Parel Mumbai- 400 013.	बनाम/ Vs.	JCIT-Range-19(2) Room no.309, 3 rd Floor Piramal Chambers Lalbaug, Parel Mumbai- 400 012.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAIFR-9553-P		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	S/Shri Jitendra Sanghvi and Amit Khatija-Ld.ARs
Revenue by	:	Ms. Jyothilakshmi Nayak-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	18/02/2020
घोषणा की तारीख / Date of Pronouncement	:	12/03/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-34, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-34/JCIT-19(2)/IT-165/14-15 dated 01/03/2017 on following grounds: -



1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) - 34, Mumbai [CIT(A)¹] erred in upholding the action of the Joint Commissioner of Income-Tax, Range - 19(2), Mumbai ("Assessing Officer") in disallowing of professional fees of Rs.1,40,01,500/- paid to M/s. Sharan & Co. on the ground that the Appellant has not carried out the business of trading in paintings during the year and the said expenditure of professional fees are not wholly and exclusively incurred for the purpose of business.

The appellant submits that the disallowance of Rs.1,40,01,500/- is wrongly made and the same ought to be deleted.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the Assessing Officer's conclusion that during the year M/s. Sharan & Co. has not rendered any professional services of verification of originality of paintings / artworks, providing estimates and investigating authenticity of paintings / artworks.

The Appellant submits that the learned CIT(A) ought to have held that M/s. Sharan & Co. have actually provided professional services to the Appellant for which a consideration of Rs.1,40,01,500/- is paid by the Appellant to M/s. Sharan & Co. as professional fees.

With prejudice to the above:

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the Assessing Officer in not restricting the disallowance of professional fees paid to M/s. Sharan & Co. at Rs. 99,63,020/- as against the disallowance of Rs.1,40,01,500/-, the difference of Rs.40,38,480 being the sum of professional fees in turn paid by M/s. Sharan & Co. to M/s. First Canvass for their assistance to M/s. Sharan & Co. in rendering services to the Appellant.

The Appellant submits that the disallowance of the professional fees ought to have been restricted to Rs. 99,63,020/- as against the sum of Rs.1,40,01,500/-.

With prejudice to the above:

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not adjudicating on the ground raised by the Appellant with respect to action of the Assessing Officer in alternatively and without prejudice restricting the allowability of professional fees paid to M/s. Sharan & Co. at Rs.40,36,980 and that too by treating the same as capital expenditure.

The Appellant submits that the CIT(A) ought to have allow entire professional fees of Rs.1,40,01,500/- as revenue expenditure and not restricted the allowability at Rs.40,36,980/- as capital expenditure.

As evident, the sole subject matter of appeal is disallowance of Rs.140.01 Lacs.

2. We have carefully heard the arguments advanced by respective representatives and perused relevant material on record including



documents placed in the *paper-book*. We have also deliberated on various judicial pronouncements as cited before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 Briefly stated, the assessee being resident firm, stated to be engaged in trading of commodities, articles, shares etc. was assessed for year under consideration u/s 143(3) on 24/03/2014 wherein the income was determined at Rs.1747.43 Lacs after sole disallowance of Rs.140.01 Lacs, as against returned income of Rs.1607.41 Lacs filed by the assessee on 30/09/2011.

3.2 During assessment proceedings, it transpired that assessee debited sum of Rs.140.01 Lacs, being amount paid to *M/s Sharan & Co.* towards services such as verification of originality of paintings / artworks, providing estimates, investigating authenticity of painting / artworks etc. The assessee submitted that the payment had a direct connection with trading activities *qua* paintings.

3.3 However, it was noted that there was no purchase of paintings during the year. The Ld. AO also doubted the rendering of services. The assessee, referring to invoices issued by that entity, submitted that payment made for similar services was disallowed in AY 2009-10 but the same was deleted by Ld. first appellate authority. The attention was also drawn to the fact that *M/s Sharan & Co.* made further payment of Rs.40.36 Lacs to *M/s First Canvass* towards rendering of services. Therefore, alternatively, the disallowance was to be restricted to differential i.e. Rs.99.63 Lacs.



ITA No.4822/Mum/2017
Reliance Capital Partners
Assessment Year :2011-12

3.4 However, Ld. AO opined that in the absence of purchase of any paintings during the year, no such services could be rendered and therefore, the claim was a fictitious / sham claim.

3.5 Noting the background of the assessee, it was observed that the assessee had acquired 36 pieces of painting of renowned artists for aggregate sum of Rs.3654.72 Lacs. During the period of 5 years, the assessee had sold only one painting during FY 2008-09 for a sum of Rs.22.50 Lacs and therefore, the claim that the assessee carried out business of trading of paintings could not be accepted.

3.6 The assessee also submitted that the said paintings were kept at the premises of one of the partners and the assessee did not own any shop or gallery. The assessee did not participate in any exhibition.

3.7 In the above factual matrix, Ld. AO conclude that the assessee had not carried out on any activity which could be termed as trading of paintings. Therefore, the claim was disallowed since the same was held not to be a revenue expenditure. Alternatively, the claim was to be restricted to Rs.40.36 Lacs, being fees paid to *M/s First Canvass*.

4. Before Ld. CIT(A), the assessee, *inter-alia*, relied on the favorable decision of Tribunal for AY 2009-10 dismissing revenue's appeal. However, the submissions could not find favor with Ld. CIT(A), who upheld the stand of Ld.AO by observing as under: -

4.4 I have considered the A.O's assessment order and the appellant's submissions I find that the Hon'ble ITAT in its order dated 01,03.2016 in the case of the appellant for A.Y. 2009-10 in ITA No.1024/Mum/2014 as cited by the appellant in its submission above had decided the issue in favour of the appellant. However, the facts as obtaining in A.Y. 2009-10 and the facts of the year under consideration are different. In A.Y. 2009-10, it was not disputed that services were rendered. The AO had only held that the professional fees paid to M/s Sharan & Co. (Prop; Mr. Aditya Mitra Anand) was excessive and had restricted the expenses to the amount paid by



ITA No.4822/Mum/2017
Reliance Capital Partners
Assessment Year :2011-12

Mr. Aditya Mitra Anand to M/s First Canvass who had actually provided the services. In the present year under consideration, the appellant had submitted that professional charges were paid to M/s Sharan & Co. towards services such as verification of originality of paintings/artworks, providing estimates, and investigating authenticity of painting/artworks. The AO has categorically mentioned in the assessment order that there was no purchase or sales of any painting/art work during the year under consideration. This fact has not been controverted by the appellant. When there was no purchase or sales of any painting/art work, there was no scope of M/s Sharan & Co. rendering services such as verification of originality of paintings/artworks, providing estimates, and investigating authenticity of painting/artworks. The AO had also observed that there is no trading activity in respect of paintings/art works. The professional fee paid to M/s. Sharan & Co. cannot, therefore, be said to be incurred wholly and exclusively for the purpose of business. In view of these facts, the Assessing Officer was justified in disallowing the professional fees of Rs.1,40,01,500/- paid to M/s. Sharan & CO. and the same is sustained.

Aggrieved, the assessee is under further appeal before us.

5. From the perusal of details of sale and purchase of painting year-wise, as placed on record, it is observed that the assessee has purchased painting aggregating to Rs.3654.72 Lacs during financial years 2006-07 to 2008-09. It has sold painting of Rs.22.50 Lacs during financial year 2008-09. Thereafter, no sale or purchase of paintings have taken place. However, the undisputed position that emerges is that fact that the said paintings have been held as inventories and the same forms part of assessee's stock-in-trade which is evident from the perusal of financial statements, as placed on record. The fact that these constitute inventories for the assessee has not been disturbed even by lower authorities. Therefore, any expenditure incurred in connection with trading operations would broadly constitute revenue expenditure for the assessee. For example, rent paid by the assessee for proper storage of inventory or insurance premium paid towards inventory held by the assessee would certainly constitute allowable revenue expenditure for



ITA No.4822/Mum/2017
Reliance Capital Partners
Assessment Year :2011-12

the assessee. Simply because no sale / purchase of paintings has taken place during the year, that fact alone could not unsettle the stated proposition.

6. Applying the same analogy to the factual matrix of the present case, we find that the assessee has incurred expenditure towards maintenance of inventories. The payment is duly supported by the debit note issued by *M/s Sharan & Co.* It is also evident that said entity has made further payment to another entity i.e. *M/s First Canvass* towards rendering of services, which fact Ld. AO has also accepted in the alternative and proposed that the payment to that extent could be allowed to the assessee.

7. From perusal of Tribunal order for AY 2009-10, as placed on record, it is also noted that similar payment of Rs.192.65 Lacs was paid by the assessee to avail similar services in that year. The Ld. AO termed the payment to be excessive and allowed partial claim to the extent of Rs.37.97 Lacs. Upon further appeal, Ld. CIT(A) deleted the disallowance as proposed by Ld.AO which was agitated by the revenue before this Tribunal. The Tribunal, *inter-alia*, noting that the payment was in accordance with the agreed terms, it was not correct on the part of Ld.AO to question the correctness of the decision taken by the assessee out of commercial expediency. Therefore, the revenue's appeal was dismissed.

8. Considering the entirety of facts and circumstances, we find that an expenditure has been incurred by the assessee towards maintenance / upkeep of inventories and the same being part of trading operations,



ITA No.4822/Mum/2017
Reliance Capital Partners
Assessment Year :2011-12

would constitute allowable revenue expenditure. Therefore, by deleting the impugned disallowance, we allow Ground No.1 & 2 of the appeal. Consequently, the alternative grounds become *infructuous*.

9. The appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 12th March, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12/03/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.