



आयकर अपीलीय अधिकरण "ऐ" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4213/Mum/2017
 (निर्धारण वर्ष / Assessment Year:2010-11)

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आयकर अपील सं./ I.T.A. No.3497/Mum/2017
 (निर्धारण वर्ष / Assessment Year:2011-12)

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आयकर अपील सं./ I.T.A. No.1856/Mum/2018
 (निर्धारण वर्ष / Assessment Year:2013-14)

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आयकर अपील सं./ I.T.A. No.1857/Mum/2018
 (निर्धारण वर्ष / Assessment Year:2014-15)

Liebherr India Private Limited 25 th & 26 th Floor, Kesar Solitaire, Plot No.5, Sector-19, Sanpada, Navi Mumbai-400 705.	बनाम / Vs.	DCIT-15(2)(1) Aaykar Bhavan, New Marine Lines Mumbai-400 020.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AABCL-2049-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri K.K. Ved and Ms. Urvi Mehta- Ld. ARs
Revenue by	:	Shri Michael Jerald-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	28/02/2020
घोषणा की तारीख / Date of Pronouncement	:	22/05/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeals by assessee for Assessment Years [AYs] 2010-11, 2011-12, 2013-14 & 2014-15 contest separate orders of learned first appellate authority. Since common issues were involved, the appeals



were heard together and are now being disposed-off by way of this common order for the sake of convenience and brevity.

1.2 The Ld. Authorized Representative, placed on record a chart in support of issues raised in the appeal. We have carefully heard the arguments advanced by both the representatives and perused relevant material on record. In the above background, the appeal for AY 2010-11 is taken up first.

ITA No. 4213/Mum/2017, AY 2010-11

2.1 This appeal contests the order of Ld. Commissioner of Income Tax (Appeals)-24, Mumbai [CIT(A)], *Appeal No. CIT(A)-22/DCIT-10(3)/IT-266/13-14, dated 27/03/2017* on following grounds: -

1. Disallowance of the Prepaid Expenses:

The learned CIT (A) erred in upholding the disallowance of prepaid expenses of Rs.5,12,792 without appreciating that these prepaid expenses are not debited to the Profit & Loss account. I

2. Disallowance of Training Expenses:

The learned CIT (A) erred in upholding the disallowance of training expenses of Rs.15,53,309 on the basis that only some benefit has accrued to the appellant in the current year and rest of the benefit is enduring in nature.

3. Disallowance of Depreciation:

The learned CIT (A) erred in holding that depreciation of Rs.58,193 on equipment installed at the residence of appellant's employees is personal in nature and hence not allowable.

4. Disallowance of Gifts:

The learned CIT (A) erred in holding that the expense of Rs.1,15,973 towards gifts to client/ business associates, are personal in nature and cannot be considered as incurred wholly and exclusively for the purpose of business.

5. Disallowance of Capital Expenditure:

The learned CIT (A) erred in upholding the disallowance of regular repairs and maintenance expenses of Rs. 6,84,774 on basis that these are not revenue expenses and the benefit arising from these expenses is enduring in nature.

6. Ad-hoc Disallowance of Travelling Expenses:

The CIT(A) erred in upholding the ad-hoc disallowance of 30% of the total travelling expenses of Rs.2,14,56,154 (i.e. Rs. 64,36,846) on the basis that such expenses is not fully verifiable."

As evident, the assessee is aggrieved by disallowance of certain expenditure. Our adjudication to the subject matter of appeal would be as



given in succeeding paragraphs.

2.2 The assessee being resident corporate assessee stated to be engaged in the business of sale, servicing, erection & commissioning of construction equipment was assessed u/s. 143(3) on 20/12/2013 wherein the income of the assessee was determined at Rs.1426.91 Lacs after certain additions / disallowances as against returned income of Rs.1295.51 Lacs e-filed by assessee on 27/09/2010.

2.3 Disallowance of Prepaid Expenses:

Upon perusal of financial statements, it transpired that the assessee reflected an amount of Rs.5.12 Lacs as Prepaid Expenses in the Balance Sheet. The assessee submitted that the same would be transferred to respective expense account once it expires. However, not satisfied with assessee's submissions, the same was disallowed and added back to the income which was confirmed by Ld.CIT(A).

The Ld. AR has submitted that prepaid expenses are a Balance Sheet item and the same has not been routed through Profit & Loss Account and hence, no such expenditure has been claimed. Upon perusal of financial statements and ledger extract, we find substance in the arguments of Ld. AR. The nature of the aforesaid expenditure is prepaid expenditure which is to be claimed in subsequent years. This being the case, the impugned addition could not be sustained and therefore, we delete the same. This ground stands allowed.

2.4 Training Expenditure:



The assessee debited an amount of Rs.19.41 Lacs as training expenses. The assessee explained that as and when new product is sold by parent company then on hand training to operate and execute such product would be essential. However, treating the same as capital expenditure, only 1/5th of said expenditure was allowed by Ld. AO with the observation that balance expenditure would be allowable as equitably in the subsequent years. The stand of Ld. AO was confirmed by Ld.CIT(A).

The Ld. AR has submitted that the assessee commenced its business of mining division in India. The said division was responsible for resolving the technical issues faced by the customers and also to enter into maintenance and repair contract for the mining machines which the Liebherr group may have sold to its customers in India. Accordingly, the technical and product specialists of the Liebherr group provided training to the assessee's employees on resolving the complications in the imported machines.

Keeping in view the nature of expenses, we find that the action of Ld. AO in treating the said expenditure as capital expenditure was bereft of any merits. The expenditure was merely training expenditure to train the assessee's employees *qua* new products. The assessee did not gained any benefit of enduring in nature. The said expenditure was rightly claimed as revenue expenditure. Ground No.2 stands allowed.

2.5 Depreciation:

On verification of fixed assets schedule, an addition of Rs.11.37 Lacs in



office equipment was noted. It transpired that purchases amounting to Rs.5.81 Lacs consisted of items such as coffee maker, T.V., microwave, washing machine which were installed at the residence of employees of the company. The Ld.AO, treating the same to be personal expenditure, disallowed depreciation of 10% claimed against the same. The stand of Ld.AO, upon confirmation by Ld. CIT(A), is under appeal before us.

The undisputed fact that emerges is that the fixed assets were purchased by the assessee and they entered into block of assets. Therefore, simply because they were put at the disposal of employees, depreciation could not be denied to the assessee. Therefore, the disallowance made in this regard stand deleted. The ground stands allowed.

2.6 Gifts:

The amount of Rs.0.71 Lac consisted of cost of mangoes sent to Austria, Germany, Switzerland as gift on the occasion of marriage of one of the employees. Similarly, customs duty and clearing charges of Rs.0.45 Lacs was debited for import of gift items. Both of these items were disallowed since the assessee could not substantiate that the expenditure was incurred wholly and exclusively for the purpose of business. The stand of Ld.AO, upon confirmation by Ld. CIT(A), is under appeal before us.

The Ld. AR has pleaded that there could be no question of any personal expenditure in case of a company and therefore, the said expenditure would be allowable. However, going by the said argument, whatever expenditure was claimed by a corporate assessee, could never be disallowed despite non-fulfilment of conditions laid down by Sec. 37(1). Not convinced with the arguments, this addition stand confirmed. The



ground stands dismissed.

2.7 Capital Expenditure:

Certain items under the head repair and maintenance expenditure claimed as revenue expenditure, were treated as capital expenditure and depreciation was allowed against the same. The details of the same has been tabulated in para-9 of the quantum assessment order. The expenditure was in the nature of networking & cable work in server room, electrical work for server room, networking cabling, furniture works and cost of blinds etc. The adjustment resulted into an addition of Rs.6.84 Lacs. The stand of Ld.AO, upon confirmation by Ld. CIT(A), is under appeal before us.

Going by the nature of expenditure, we find that these were routine repair and maintenance expenditure and therefore the same, by no stretch of imagination, could be treated as capital expenditure. Hence, the adjustment made in this regard, stand reversed. This ground stands allowed.

2.8 Travelling Expenses:

The assessee claimed travelling & conveyance expenditure of Rs.214.56 Lacs. No supporting documents / vouchers were furnished. Total cash expenditure was for Rs.22.28 Lacs. The Ld.AO estimated the disallowance of 40% against the same for want of satisfactory documentary evidences. The Ld. CIT(A) reduced the same to 30%.

We find that similar disallowance was made in AY 2009-10 which travelled up-to this Tribunal vide ITA No.3496/Mum/2017 order dated 24/12/2019. The co-ordinate bench reduced the estimation to 10%. Therefore, without delving much deeper into the issue, we estimate the



disallowance @10%. This ground stands partly allowed.

3. Resultantly, the appeal stands partly allowed in terms of our above order.

ITA No. 3497/Mum/2017, AY 2011-12

4. The assessee has assailed the disallowance of Sales Promotion Expenses and Travelling Expenses. The assessment was framed u/s 143(3) on 16/03/2015 wherein Ld. AO made similar disallowance of 40% against travelling expenses. Another disallowance was an adhoc disallowance of 10% against Sales Promotion Expenses for want of supporting evidences / documents. The learned first appellate authority reduced the travelling expenditure disallowance to 30% but confirmed the disallowance of sales promotion expenses. Aggrieved, the assessee is under further appeal before us.

Going by the adjudication in AY 2010-11, the travelling expense disallowance stand restricted to 10%. The nature of sales promotion expenses would show that these are in the nature of gifts, advertisement expenses, entertainment expenses, exhibition expenses, sales commission expense and sales promotion expenses. The substantial expenses are exhibition expenses, sales commission and sales promotion expenses. Keeping in view the nature of expenditure, we opine that estimation of 5% would meet the end of justice. Therefore, we reduce the disallowance to 5%. The appeal stands partly allowed.

ITA No. 1856/Mum/2018, AY 2013-14

5. In the first ground, the assessee has assailed the adhoc disallowance of 25% of travelling expenses. The assessment was framed u/s 143(3) on 24/12/2016 wherein Ld. AO made similar disallowance of



25% against travelling expenses. The learned first appellate authority confirmed the same. Aggrieved, the assessee is under further appeal before us.

Going by the adjudication in AY 2010-11, the travelling expense disallowance is restricted to 10%. The second ground has not been pressed by Ld. AR. The appeal stands partly allowed.

ITA No. 1857/Mum/2018, AY 2014-15

6. The grounds as well as facts in this appeal are pari-materia the same as in appeal for AY 2013-14. Therefore, our adjudication of AY 2013-14 shall *mutatis-mutandis* apply to this appeal also. The travelling expense disallowance stand restricted to 10%. The second ground has not been pressed by Ld. AR. The appeal stands partly allowed.

Conclusion

7. All the appeal stands partly allowed to the extent indicated in the order. This order is pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details of the same on the notice board.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / Judicial Member

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 22/05/2020

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.

Sr. No.	Details	Date	Initials	Designation
1	Draft dictation sheets are attached	Directly Typed on Computer / Laptop		Sr.PS/PS
2	Draft dictated on	Not Applicable		Sr.PS/PS
3	Draft Placed before author	Not Applicable		Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			