

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]**

I.T.A. No. 999/Kol/2019
Assessment Year: 2014-15

M/s. Shell N Tube Pvt. Ltd.....Appellant
3, Gulmohar Orchids, 29/37
Sahney Sujan Park, Lullanagar, Pune
Maharashtra - 411 040.
[PAN: AADCS 5807 M]

Vs

ACIT, Circle-12(2), Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri P.K. Sanghai, FCA appearing on behalf of the Assessee.

Shri Sandeep Lakra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 17, 2020

Date of pronouncing the order : June 05, 2020

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 4, Kolkata dated 07.03.2019 and the grounds raised by the assessee therein read as under:

"i. That the ld. Commissioner of Income Tax (Appeals) grossly erred both in law and on facts in framing the order by confirming the addition made by the ld. AO without granting sufficient and proper opportunity to the appellant and therefore the same are contrary to principle of natural justice and hence vitiated, untenable and unsustainable.

ii. That without prejudice to the above the ld. Commissioner of Income Tax (Appeals) erred in law in sustaining the disallowance made by the ld. AO being interest on late payment of TDS amounting to Rs. 3,01,894/- overlooking the financial strategy of the business as whole and thus was wrong in confirming the action of the ld. AO.

iii. That without prejudice to the above the learned Commissioner of Income Tax (Appeals) erred in confirming the action of the ld. AO who disallowed a sum of Rs. 23099/- being the club expenses incurred for carrying out business of the appellant without looking in to facts and circumstances of the case.

iv. That under the facts and circumstances of the case and without prejudice to the ground no 1 above the learned Commissioner of Income Tax (Appeals) erred both in law and on facts in sustaining the addition of Rs. 12,78,886/- made by the ld. AO on

presumption and on estimate basis out of the total travelling expenses and thus the ld. CIT(A) was wrong in summarily dismiss this ground of appeal.”

2. As regards ground no. 2, the ld. representatives of both these sides have agreed that the issue involved therein relating to the deduction claimed by the assessee on account of interest on late payment of TDS amounting to Rs. 3,01,894/- is squarely covered in favour of the assessee by the decision of this Tribunal rendered in the case of DCIT vs M/s. Narayani Ispat Pvt. Ltd. vide its order dated 30.08.2017 passed in ITA No. 2127/Kol/2014 wherein it was held that the interest charged on account of delayed payment of TDS is an allowable deduction as claimed by the assessee as the TDS does not represent the tax liability of the assessee, but it is the tax of the party which has been paid by the assessee. Respectfully following the said decision of this Coordinate Bench of this Tribunal, we delete the disallowance made by the AO and confirmed by the Ld. CIT(A) on account of assessee's claim for deduction towards interest on late payment of TDS and allow ground no. 2 of the assessee's appeal.

3. As regards the issue involved in ground no. 3 relating to the disallowance of Rs. 23099/- made by the AO and confirmed by the Ld. CIT(A) on account of club expenses, it is observed that the deduction claimed on account of club expenses was justified by the assessee during the course of assessment proceedings before the AO by submitting that the club membership was taken to meet and entertain the customers and other related persons in connection with the business. In the absence of any documentary evidence to support and substantiate its explanation, the AO did not accept the same and

treating the entire club expenses as personal in nature, he disallowed the same. On appeal, the Ld. CIT(A) confirmed the said disallowance made by the AO.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has invited my attention to the details of club expenses given on page no. 2 of the Paper Book in order to show that the nature of the said expenses was sales promotion and staff welfare mainly. He has also submitted that the said expenses amounting to Rs. 23,099/- were quite fair and reasonable keeping in view the turnover of more than Rs. 15 crores achieved by the assessee during the year under consideration. Keeping in view the nature of the expenditure incurred by the assessee under the head club expenses as well as the turnover of more than 15 crores made by the assessee during the year under consideration, I am of the view that the club expenses incurred by the assessee cannot be treated as personal in nature. Having regard to all the facts of the case, I am of the view that it would be fair and reasonable to treat the said expenses to the extent of 50% as personal and the balance as allowable business expenditure. I accordingly sustain the disallowance made by the AO and confirmed by the Ld. CIT(A) on account of club expenses to the extent of Rs. 11,550/- and allow partly ground no. 3 of the assessee's appeal.

5. As regards the issue involved in ground no. 4 relating to the disallowance of Rs. 12,78,886/- made by the AO and confirmed by the Ld. CIT(A) out of travelling and conveyance expenses and car hire

charges, it is observed that total expenses of Rs. 63,94,428/- were claimed by the assessee under the head travelling and conveyance expenses and car hire charges. During the course of assessment proceedings, the assessee however failed to produce the relevant documentary evidence in the form of log books, tickets, vouchers etc. to show that the said expenses were incurred wholly and exclusively for the purpose of its business. The AO also noted that the turnover of the assessee for the year under consideration had increased by about 6% only whereas the expenses claimed under the head travelling and convenience and car hire charges had increased by more than 24%. He also noted that the net profit of the assessee for the year under consideration was decreased to 1.27% as compared to 2.41% declared in the preceding year. He accordingly treated the expenses claimed by the assessee under the head travelling and convenience and car hire charges as excessive and unreasonable and disallowed the same to the extent of Rs. 12,78,886/- being 20% of the total expenses claimed by the assessee. On appeal, the Ld. CIT(A) confirmed the said disallowance made by the AO, keeping in view the adverse findings recorded by the Assessing Officer which the assessee failed to rebut/controvert.

6. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. Although the learned counsel for the assessee has invited my attention to the details of the expenses in question given at page no. 4 to 6 of the Paper Book, a perusal of the said details shows that it is nothing but an extract of the ledger account of travelling expenses which does not

give any relevant details in order to prove the business expediency of the same. Moreover, no supporting evidence whatsoever has been filed by the assessee in the form of log books, ticket bills / vouchers etc. to show that the expenses in question aggregating to Rs. 63,94,428/- were wholly and exclusively incurred for the purpose of business. The assessee has also failed to offer any satisfactory explanation as regards the substantial increase in the expenditure claimed by it on travelling and convenience and car hire charges during the year under consideration as compared to the immediately preceding year as pointed out by the AO. During the course of hearing, the learned counsel for the assessee was directed to furnish a comparative chart showing year-wise details of similar expenses claimed and allowed in the earlier years. He however has failed to furnish the same. Keeping in view all these facts and circumstances of the case, I am of the view that disallowance of 20% of the total travelling and conveyance expenses as well as car hire charges as made by the AO and confirmed by the Ld. CIT(A) on account of unverifiable element involved therein is fair and reasonable and sustaining the same, I dismiss ground no. 4 of the assessee's appeal.

7. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, I rely upon the decision of the Coordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW*

Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020.

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

Order Pronounced in the Open Court on 5th June, 2020.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 05/06/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Shell N Tube (P) Ltd., 3, Gulmohar Orchids, 29/37, Sahney Sujan Park, Lullanagar, Pune, Maharashtra – 411 040.
2. ACIT, Cir 12(2), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata