

आयकर अपीलीय अधीकरण, न्यायपीठ – “A(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए.टी. वर्की, न्यायिक सदस्य
 [Before Shri A. T. Varkey, JM]

ITA No.1671/Kol/2019
Assessment Year: 2014-15

M/s. Capital Tours (India) Pvt. Ltd. (PAN: AABCC2821K)	Vs.	Income-tax Officer, Wd-12(1), Kolkata
Appellant		Respondent
Date of Hearing		29.06.2020
Date of Pronouncement		30 .06.2020
For the Appellant		Shri Miraj D. Shah, AR
For the Respondent		Shri Jayanta Khanra, JCIT

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-4, Kolkata dated 22-03-2019 for the assessment year 2014-15.

2. Though the assessee has raised as many as six grounds of appeal, ground nos. 1 and 6 are general in nature and, therefore, dismissed.
3. The Ld. AR at the outset pointed out that ground nos. 4 and 5 were not pressed by the assessee before the Ld. CIT(A), therefore, he has dismissed those grounds by referring this fact at para 6 of the impugned order and, therefore, before me the Ld. AR fairly did not press ground nos. 4 and 5 and, therefore, the same are dismissed.
4. Coming to ground no. 2 which is against the action of the Ld. CIT(A) in confirming the disallowance of miscellaneous expenses of Rs.2,80,900/-. The brief facts as noted from the assessment order is that the AO noted that the assessee had filed return of income on 28.09.2014 disclosing total income of Rs.29,99,270/-. Later, the case was taken up for scrutiny and after issuing statutory notice u/s. 143(2) of the Income Tax Act, 1961 (hereafter referred to as the “Act”) the AO notes that the assessee through the AR appeared and filed various details, information and documents as requisitioned as well as produced books of account, bank statement etc. which AO acknowledges that the same were examined on test

check basis. The AO notes that assessee is a company which is engaged in the business of providing service as a stage carrier in the State of Assam, Meghalaya and Mizoram. Thereafter, he noticed that he had perused the financial accounts and found that the assessee has claimed an amount of Rs.2,80,900/- towards miscellaneous expenses. According to AO, the assessee had submitted the details of the ledger in respect of these expenses and from the same he discerned that the expenses were incurred in cash and since no documentary evidence could be produced, he disallowed the entire amount of Rs.2,80,900/- and added to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to give partial relief to the tune of Rs.3,482/- and confirmed Rs.2,77,418/-. Aggrieved, the assessee is before the Tribunal.

5. The Ld. AR Shri Miraj D. Shah appearing for the assessee brought to my notice that the assessee is into transport business and is plying trucks in the North East States especially in Assam, Meghalaya and Mizoram. According to him, the assessee had declared a turnover of Rs.10.63 cr. and had shown gross profit from the business to the tune of Rs.2.75 cr. which comes to 25.80% (G.P.). The ld. AR pointed out to me the practical difficulties that are faced in the North East areas where the terrain (hilly) and roads are difficult to ply trucks. According to him, the drivers and cleaners of the trucks incurred small expenses while plying the truck in these remote areas and pointed out that this is due to the bad condition of the hilly terrain they come across certain practical difficulties which are not generally faced in urban areas while plying the trucks. Therefore, according to him, there is a practical difficulty in keeping vouchers of each and every expenses incurred by the drivers and cleaners. According to him, when the fact is that assessee is returning gross profit of 25.80% even under the difficult conditions should be appreciated; and in the light of adverse conditions also assessee being able to return more than GP of 25% should be considered as good performance and the AO ought not to have made any disallowance which will in turn increase the gross profit. Therefore, he prayed that the entire disallowance should be deleted. Per contra, the Ld. DR vehemently opposing the submission of the Ld. AR contended that when the expenses are claimed as deduction, the assessee is bound to produce the evidence to substantiate the claim and since the assessee failed to produce the same, the AO as well as the Ld. CIT(A) has correctly made the disallowance which does not require any interference from my side.

6. Having heard both the parties, I note that assessee is into transport business and had declared turnover of approx. Rs.10.63 cr. and has declared Gross Profit of Rs.2.75 cr. (G.P. 25.80%. The assessee had claimed miscellaneous expenses of Rs.2,80,900/- which has been disallowed by the AO and on appeal, the Ld. CIT(A) has given a partial relief to the tune of Rs.3,482/- and confirmed disallowance of Rs.2,77,418/-. Before me the Ld. AR has contended that the assessee is plying trucks in the scheduled areas of Assam, Meghalaya and Mizoram. It has been brought to my notice that due to the bad conditions of the road and since it is hilly terrain due to the incessant rain and bad weather the conditions of the road are bad and, therefore, the truck drivers incurred expenses for repairs of the trucks, (frequent tyre burst etc.) for which the local repair shops insist on cash and were reluctant to give any bills/vouchers. The truck drivers claimed the refund from the assessee the expenses through self made vouchers and since the assessee's central office is at Kolkata it was not possible to collect all the vouchers. And these expenses in cash duly shown in the ledgers and books regularly maintained in the course of business and later are put cumulatively under the head 'Miscellaneous Expenses' for which only self made vouchers could be produced. According to the Ld. AR, the assessee's accounts are audited and the auditor has not found any mistakes or short-comings. The AO as well as the Ld. CIT(A) has made the disallowance without rejecting the books of accounts. Moreover, it is noted that the expenses claimed by the assessee of Rs.2,80,900/- as miscellaneous expenses while plying the trucks in remote areas of Assam, Meghalaya and Mizoram cannot be said to be an unreasonable expense when the assessee has a turnover of Rs.10.63 cr. and it returns gross profit of Rs.2.75 cr. which comes to G.P of 25.80%. Therefore, taking into consideration the peculiar facts and circumstances of the case and the reasonable expenses incurred by the assessee, I am of the considered opinion that the disallowance was not warranted and, therefore, I direct the AO to delete the disallowance of Rs.2,77,418/- which was confirmed by the Ld. CIT(A).

7. Coming to ground no.3 which is disallowance of Rs.1,65,308/-. The facts are that the AO after perusal of the financial accounts noted that the assessee had claimed expenditure of Rs. 1,65,308/- towards puja expenses. According to him, the expenses are incurred in cash and since no supporting documents could be produced, he disallowed the entire amount. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who confirmed the

action of the AO by noting that the assessee did not produce any vouchers and the expenses incurred are in cash. According to him, the two ledgers which were produced shows monthly expenses of puja and, therefore, Ld. CIT(A) observed that since it is not clear whether there is a temple inside the business premises on which expenses have been incurred it cannot be held that these expenses were only for the purpose of the business of the assessee and, therefore, he disallowed the same. Aggrieved, the assessee is before me.

8. Having heard both the parties, it is noted that the assessee claimed puja expenses of Rs.1,65,308/- which has been disallowed by both the authorities below on the ground that there was no voucher to substantiate the claim and since the expenses were in cash they disallowed it. Before me, it has been contended by the Ld. AR that puja expenses are inextricably connected with the business of the assessee. According to him, the drivers and cleaners performed puja every day before they start the journey to the destination and this is on the belief that if puja is performed to God, the vehicle will not meet with any accident and they would be able to safely ply to the destination without any hindrance. So for performing daily puja the expenses are incurred for buying small garlands, lighting lamps/candles etc. According to Ld. AR, the Hon'ble Calcutta High Court in Bata India's case in GA No.3482 of 2013 (order dated 18.08.2014) has observed that puja expenses are required for smooth running of the business and, therefore, the Ld. AR wanted me to direct deletion of the addition. Per contra, the Ld. DR contended that at least 50% of the claim should be disallowed. I note that the assessee had claimed puja expenses of Rs.1,65,308/-. However, both the authorities below disallowed the same for the absence of vouchers and since it was cash payment. It is noted that the assessee is into the business of truck plying in North-East States and it is common knowledge that the drivers and cleaners before they start their journey on their trucks conduct puja of the God they believe and they incur expenses for buying garlands, bhog etc. for safe and smooth running of the vehicle while they go to the pre-destined location which are located in the remote areas of Assam, Meghalaya and Mizoram to deliver/collect goods. The expenses thus it is noted are incurred by the assessee for puja is for the smooth functioning of the business of transport as discussed cannot be disallowed. Since it has been found that the expenses incurred are for the smooth functioning of the business of plying trucks, the expenses need to be allowed. However, taking into consideration the peculiar facts and circumstances of the case, 10% of the

expenses may be disallowed for plugging the revenue loss if any and the balance amount is directed to be deleted.

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

Order is pronounced in the open court on 30 June, 2020.

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 30 June, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Capital Tours (India) Pvt. Ltd., 3/C, 29, Palit Street, Kolkata-700 071.
2. Respondent – ITO, Ward-12(1), Kolkata.
3. CIT(A)-4, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar