

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA
[Virtual Court Hearing]**

(Before Sri J. Sudhakar Reddy, Hon. Accountant Member & Sri Aby T. Varkey, Hon. Judicial Member)

**ITA No. 1518/Kol/2019
Assessment Year: 2010-11**

Industrial Perforation (India) Pvt. Ltd.....Appellant
327, R.N. Guha Road
Kolkata - 700 028
[PAN : AAACI 5550 JJ]

Vs.

Deputy Commissioner of Income Tax, Circle-5(1), Kolkata.....Respondent

Appearances by:

Shri Miraj D. Shah, A/R, appearing on behalf of the Assessee
Shri Jayanta Kanra, JCIT, D/R, appeared on behalf of the Revenue

Date of concluding the hearing : July 7th, 2020
Date of pronouncing the order : July 10th, 2020

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 2, Kolkata, (hereinafter the "Id.CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 21/08/2017, for the Assessment Year 2010-11.

2. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

3. Ground Nos. 1, 4 & 5 are dismissed as not pressed.

4. Ground No. 2 is against the adhoc disallowance of 40% of the expenditure claimed by the assessee as incurred on account of donation and subscription. The Assessing Officer at para 3 page 2 observed as follows:-

"3. Donation & Subscription

The assessee was asked to produce the details of donation and subscription amounting to Rs.1,05,241/-. The assessee produced the details from which it has been observed that most of the payments are made to the local clubs/association for puja or other social purposes. The assessee failed to substantiate the said expenditure incurred wholly and exclusively for the purpose of business. In absence of requirement laid down u/s 37(1) 40% of Rs.105421/- i.e. Rs.42,096/- is being disallowed and added to the total income."

4.1. Expenditure which is of the above described nature, has to be allowed as that which is incurred for the purpose of business as held by the Hon'ble Calcutta High Court in the case of *CIT vs. Bata India Ltd.* reported in [1993] 201 ITR 884 Cal. Hence, we delete the disallowance and allow this ground of the assessee.

5. Ground No. 3 is against the addition made u/s 68 of the Act. The Assessing Officer made the addition by observing as follows:-

"4. Cash Credit u/s 68:-

The assessee has taken an unsecured loan of Rs.5,00,000/- from Sepia Venture Pvt. Ltd. and paid interest of Rs.47062/- A notice u/s 133(6) was issued to enquire the identity, genuineness of transactions and credit worthiness of the lender. The lender has sent a reply the said loan transaction has not been confirmed. Subsequently, a reply has also been received in which it has been mentioned that the amount was wrongly transferred into share investment account and the said amount of Rs.5,00,000/- is still lying as outstanding amount.

It has been observed from the reply received on 17/01/2013 that signature is not similar t the signature put on earlier reply. Therefore, the said reply appears to be fake, in genuine and hence not reliable. Therefore, the amount of Rs.547062/- (including interest paid on unsecured loan) is treated as cash credit u/s 68 and added to the total income. Initiate Penalty u/s 271(1)(c) of the IT Act"

6. The Id. CIT(A), in his order, recorded the facts that the loan was received by way of a cheque on 25/03/2009. Thus, the credit in question does not pertain to the Assessment Year 2010-11. It pertains to the previous Assessment Year i.e., 2009-10. No addition can be made in this year for this credit u/s. 68 of the Act. Hence, we delete the addition in question as bad in law and allow this ground of the assessee.

7. In the result, appeal of the assessee is allowed in part.

Kolkata, the 10th day of July, 2020.

Sd/-
[Aby T. Varkey]
 Judicial Member

Dated : 10.07.2020
 {SC SPS}

Sd/-
[J. Sudhakar Reddy]
 Accountant Member

Copy of the order forwarded to:

1. Industrial Perforation (India) Pvt. Ltd
327, R.N. Guha Road
Kolkata - 700 028

2. Deputy Commissioner of Income Tax, Circle-5(1), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

} Sent through e-mail.

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By order

Assistant Registrar
ITAT, Kolkata Benches