

**IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI 'E-COURT' AT
KOLKATA**

Before Shri S.S, Godara, JM & Dr. A.L. Saini, AM

ITA No.55/Ran/2018
(Assessment Year: 2014-15)

M/s Tirupati Carbons & Chemicals Pvt. Ltd.	Vs.	DCIT, Circle-3, Ranchi
3P, Shree Gopal Complex, Court Road, Ranchi-834001.		
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCT5856A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri Devesh Poddar, AR
Respondent by : Shri A. K. Mohanti, JCIT, Sr. DR

सुनवाई की तारीख / **Date of Hearing** : 16/07/2020
घोषणा की तारीख/**Date of Pronouncement** : 10/09/2020

आदेश / O R D E R

Per Bench:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2014-15, is directed against the order passed by the Id. Commissioner of Income Tax(Appeals), Jharkhand dated 20.12.2017 which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The grounds of appeal raised by the assessee are as follows:

"1.For that the Assessee deals in mining of graphite & other minerals in India as well in other countries such as Madagascar etc. The club expenses are incurred by the director on behalf of the company to accommodate the visitor and our customers. There was no personal use or element found out. The Ld. CIT(A) was therefore not justified in sustaining the addition of expenses. As such, 100% of club expenses being disallowed is illegal & incorrect.

2.For that the appellant has maintained regular books of accounts which were audited and there was no defect pointed out in the books of accounts for the year under consideration. Ld. AO made disallowance of club expenses on ad hoc basis suggesting that in certain vouchers the complete particulars were not filed and that the expenses were not properly supported, thus the use of personal purpose cannot be ruled out. All payments were made by cheque.

3.For that Ld. AO was not justified in charging interest on the assessed income. Following the decision of Hon'ble Jharkhand High Court, the interest should have been charged on the returned income.

For that other grounds in detail will be argued at the time of hearing.”

3. Brief facts qua the issue are that during the scrutiny proceedings on perusal of Para 21(a)(1) of the Tax Audit Report furnished and also from the Profit and Loss it was noticed by the assessing officer that the assessee company had paid Rs.1,93,525/- on account of club expenses of the directors of the company. Therefore, during the course of assessment proceedings, the assessee was specifically asked to furnish an explanation why the said amount of Rs.1,93,525/- may not be disallowed, as this payment did not stand the test of commercial expediency. Given the fact that this payment has exclusively been made on the club expenses of the directors of the company. In response, the assessee has furnished the following written submissions before the assessing officer which is reproduced below:

"The Directors of the company hold a membership of Ranchi Club Ltd and Ranchi Gymkhana Club. The Co. has provided the facility of bearing the costs incurred by the Directors as these are facilitative to the Company's business."

The assessing officer examined the contention of the assessee very carefully and was of the view that assessee could not reasonably establish beyond doubt that the given payment was necessary for the smooth running of the business of the assessee. Therefore, the same amount of Rs. 1,93,525/- was added back to the total income of the assessee company u/s 37 of the Act.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the CIT(A) who has confirmed the addition made by the Assessing Officer observing the following:

"[8.2] I have considered the submissions of the appellant and have perused the assessment order. Though it is the claim of the appellant that the expenses were made for the purpose of business, no evidence in this regard was submitted. The law regarding claim of expenses is clear. The onus is clearly on the appellant to show that the expenses were incurred and that they were revenue in nature while at the same time that they were laid out wholly and exclusively for the purpose of business. Further, mere payment by itself would not entitle the assessee to deduction of the said

expenditure unless the same is proved to be paid for commercial consideration. The onus of proof is always upon the assessee. It cannot be said that even if the taxpayer does not produce any evidence in support of the claim for deduction, the Assessing Officer himself independently is to collect and decide that the deduction claimed is allowable having regard to the legitimate business needs of the assessee. It is for the taxpayer to establish by evidence that a particular allowance is justified. But, whether an assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto, and not on the view which he might take of his rights. The position is well-settled by the judgments of the Apex Court in CIT v. Calcutta Agency Ltd. [1951] 19 ITR 191 and CIT v. Imperial Chemical Industries (I) (P) Ltd. [1969] 74 ITR 17.”

5. Aggrieved by the order of ld. CIT(A), the assessee is in appeal before us.
6. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. Learned Counsel for the assessee relied on the submissions made before the ld. CIT(A) and stated that assessee company paid the club expenses for the purpose of business, as the directors of the assessee company hold the meeting with customers in the club to develop the business. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We note that there is no bar for a company becoming member of a club either in its corporate capacity or through its directors or employees or executives if the intention was to gain business advantage by virtue of becoming a member of a club.

The ld Counsel submitted before us that assessee had claimed of Rs.1,93,525/- as club expenses incurred by the directors for the purpose of business of the company to accompany and for general meetings. We note that considering the assets of the company and the nature of business of the company, the club expenses pertains to development of the business of the assessee. The assessee conducts the meeting with the customers in the club and directors of the company regularly holds the general meetings in the club to develop the business of the assessee company therefore, it is for the purpose of business. However, to meet the ends of justice, we disallow Rs.20,000/-

towards personal expenses out of Rs.1,93,525/- and the balance amount of Rs.1,73,525/- is directed to be deleted.

7. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on this 10/09/2020.

Sd/-

(S. S. Godara)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(A. L. Saini)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

Dated: 10/09/2020

RS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Tirupati Carbons & Chemicals Pvt. Ltd.
2. प्रत्यर्थी/Respondent- DCIT, Circle-3, Ranchi
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाइल / Guard file.

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By order/आदेश से,

Sr. Private Secretary