

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:1676/CHNY/2018

निर्धारण वर्ष / Assessment Year: 2013-14

**The DCIT,**  
Corporate Circle – 2(1),  
Chennai – 600 034.

v. **M/s. Essel Forex Ltd.,**  
(formerly known as M/s. Essel  
Finance VKC Forex Ltd.),  
11-A, 2<sup>nd</sup> Floor, Sriman  
Srinivasan Iyengar, 1<sup>st</sup> Cross St,  
Teynampet,  
Chennai – 600 018.

(अपीलार्थी/Appellant)

**PAN: AACCV 3640E**

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Ms. R. Anita, JCIT  
: Shri Philip George, Advocate

सुनवाई की तारीख/Date of Hearing

: 06.07.2021

घोषणा की तारीख/Date of Pronouncement

: 09.08.2021

**आदेश /O R D E R**

**Per G Manjunatha, AM:**

This appeal filed by the Revenue is directed against order of learned Commissioner of Income Tax (Appeals)-6, Chennai, dated 28.02.2018 and pertains to assessment year 2013-14

2. The Revenue has raised the following grounds of appeal:-

“1.The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.

2.1 The CIT(A) ought to have appreciated the fact that the AO made the disallowance u/s.68 of the Act for the reason that the assessee could not prove the credit worthiness of the said loan with evidences.

2.2 The CIT(A) failed to call for the remand report from the AO while allowing an amount of Rs.85,00,000/- based on the submissions of the assessee which was not submitted before the AO during course of scrutiny proceedings, which is in violation of provisions of Rule 46A.

3.1 The CIT(A) erred in deleting the disallowance u/s.37 of Rs.1,92,00,725/- by holding that there was a direct nexus between the expenditure incurred and the business of the assessee.

3.2 The CIT(A) ought to have appreciated the fact that the AO made the disallowance u/s.37 of the Act for the reason that the assessee could not prove that the said commission expenditure was incurred for business purposes.

3.3 The CIT(A) failed to call for the remand report from the AO while allowing an amount of Rs. 1,92,00,725/- based on the submissions of the assessee which was not submitted before the AO during course of scrutiny proceedings, which is in violation of provisions of Rule 46A.

4.1 The CIT(A) erred in directing the AO to delete the disallowance of miscellaneous expenses of Rs.32,60,000/- by holding that it was a normal routine expenses incurred in the course of business.

4.2 The CIT(A) ought to have appreciated the fact that the assessee had not produced any vital evidence i.e., bills/documents and details in support of its claim, which were expended wholly and exclusively for business purpose.

5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.”

3. The brief facts of the case are that the assessee company is engaged in the business of sale of foreign exchange to individual travelers, corporate houses, etc. The assessee is also engaged in the business of remittance of foreign demand drafts to students referred to by M/s. Credila Financial Services Pvt. Ltd., under AD-II category authorized by RBI. The assessee has filed its return of income for the assessment year 2013-14 on 23.09.2013 declaring income of Rs.1,85,06,830/-. The case has been taken up for scrutiny and assessment has been completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') on 21.03.2016 and determined total income of Rs.4,94,67,555/- by inter-alia making addition towards unexplained cash credit u/s.68 of the Act of Rs.85,00,000/- towards unsecured loan received from Shri R.D. Sukumar Babu, the Director of the company, disallowance of commission expenses u/s.37 of the Act of Rs.1,92,00,725/-, on the ground that the assessee has failed to furnish required information to establish that said commission expenditure was incurred for the purpose of business. The AO has also made adhoc disallowance of 20% of various administrative and other expenses and made addition of Rs.32,60,000/- on the ground that no evidence has been filed to prove nexus between expenditure debited to the profit &

loss account and business of the assessee. The assessee carried the matter in appeal before the first appellate authority and contested various additions made by the AO along with certain additional evidences. The Id.CIT(A) for the reasons recorded in his appellate order dated 28.02.2018 deleted additions made by the AO towards disallowance of commission expenses u/s.37 of the Act, disallowance of various administrative and other overhead expenses and addition towards unexplained cash credit. Aggrieved by the CIT(A) order, the Revenue is in appeal before us.

4. The first issue that came up for our consideration from Ground No.2 of Revenue appeal is deletion of addition made towards unsecured loan taken from Shri R.D. Sukumar Babu. The assessee has received a sum of Rs.2,35,00,000/- loan from Shri R.D. Sukumar Babu and returned a sum of Rs.1,50,00,000/- during the same financial year, balance outstanding of Rs.85,00,000/- shown under the head 'unsecured loans'. The assessee has paid interest on said loan of Rs.17,73,555/- and has also deducted TDS at the rate of 10% and remitted to Government account. The AO has made addition on the ground that the assessee has failed to prove the genuineness of unsecured loan. It was the explanation of the

assessee before the lower authorities that identity of the creditor is satisfied and genuineness of the loan is also not in dispute because the loan has been taken from shareholder of the company whose credentials have been furnished to the AO.

4.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find from the order of the Id.CIT(A) that the loan has been taken from shareholder of the company, that means the identity of the creditor is not disputed by the AO. As regards, genuineness of the transaction, loan has been taken through bank and part of loan has been repaid through cheque. The assessee had also paid interest after deducting applicable TDS. Therefore, there is no reason for doubting the genuineness of transaction. As regards, creditworthiness of the creditor, the assessee has filed necessary evidences to discharge creditworthiness including financial statements filed for the relevant assessment year. The CIT(A) after considering relevant facts has deleted addition made by the AO towards unsecured loan u/s.68 of the Act. Facts remain unchanged. The Revenue has failed to bring on record further evidences to counter the findings of the facts recorded by the Id.CIT(A). Hence,

we are inclined to uphold the findings of Id.CIT(A) and reject the ground taken by the Revenue.

5. The next issue that came up for our consideration from Ground No.3 of Revenue appeal is deleting the disallowance of commission expenses u/s.37 of the Act. The facts with regard to the impugned dispute are that the assessee is engaged in the business of sale of foreign exchange to individual travelers, corporate houses, etc. The main source of income of the assessee is commission received from M/s. Credila Financial Services Pvt. Ltd., for remittance of foreign demand drafts to students referred to by the company. The major receipt for the year was come from M/s. Credila Financial Services Pvt. Ltd., and such payment has been made through proper banking channels after deducting applicable TDS. The AO has disallowed commission expenses on the ground that assessee had not furnished the required information to establish the nexus between commission expenditure and business of the assessee.

5.1 The Id.DR submitted that the Id.CIT(A) has erred in deleting disallowance of commission expenses u/s.37 of the Act by holding that there is a direct nexus between expenditure incurred and the

business of the assessee without appreciating the fact that the assessee could not file any evidences to prove business nexus with that company.

5.2 The Id.AR for the assessee on the other hand strongly supporting order of the Id.CIT(A) submitted that there is no doubt in genuineness of payment because the said payment was made through proper banking channel after deducting applicable TDS and hence, the reason given by the AO to disallow said expenses is incorrect.

5.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that major source of income for the year under consideration is commission received towards remittance of foreign demand drafts to students referred to by M/s. Credila Financial Services Pvt. Ltd., under AD-II category authorized by RBI. It is also not in dispute that the assessee has paid commission to M/s. Credila Financial Services Pvt. Ltd., which is in commensurate with volume of business generated from them. The assessee has also filed necessary evidences to prove genuineness of

payment and nexus between expenditure and business of the assessee by filing various evidences including Form 16 issued to the party for deduction of TDS on said payment. The Id.CIT(A) after considering relevant facts has rightly deleted addition made by the AO towards disallowance of commission expenditure. The Revenue neither bring on record any evidence to prove that expenditure incurred under the head commission expenditure is not genuine nor counter the findings of fact recorded by the Id.CIT(A). Therefore, we are of the considered view that there is no error in the findings recorded by the CIT(A) and hence, we are inclined to uphold the order of the CIT(A) and reject the ground taken by the Revenue.

6. The next issue that came up for our consideration from Ground No.4 of Revenue appeal is adhoc disallowance of miscellaneous expenses amounting to Rs.32,60,000/-. The AO has disallowed 20% of various expenses including printing & stationery, office maintenance and electricity charges, on the ground that the assessee has not filed any evidences to prove that said expenses are normal business expenses which had to be incurred wholly and exclusively for the business of the assessee. It was the claim of the assessee before the lower authorities that all expenses incurred

under the head 'miscellaneous expenses' are incurred wholly and exclusively for the business of the assessee and further AO has made adhoc disallowance without any query with regard to said expenditure. The assessee further claimed that it had furnished all evidences before the AO and also proved that out of total expenses deferred revenue expenditure written off of Rs.7,97,889/- was already disallowed in the statement of computation of income.

6.1 Having heard both the sides and considered material on record, we find no reason to interfere with the findings recorded by the CIT(A) to delete adhoc disallowance of miscellaneous expenses for the simple reason that AO has made ad-hoc disallowance of expenses without pointing out any discrepancy in expenditure debited in the profit & loss account. It is an admitted fact that in order to disallow any expenditure, there should be some finding of fact that either the expenditure was not incurred wholly and exclusively for the purpose of business or the assessee is not able to substantiate the expenditure with necessary evidences. In this case, no such finding is recorded by the AO before making any adhoc disallowance. The CIT(A) after considering relevant facts has rightly deleted addition made by the AO towards adhoc disallowance

of various expenses. Hence, we are inclined to uphold the findings of CIT(A) and reject ground taken by the Revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 9<sup>th</sup> August, 2021 at Chennai.

Sd/-  
(महावीर सिंह)  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /VICE PRESIDENT

Sd/-  
(जी. मंजुनाथ)  
**(G. MANJUNATHA)**  
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,  
दिनांक/Dated, the 9<sup>th</sup> August, 2021

**RSR**

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF.            |