

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.374/Bang/2021
Assessment Year : 2016-17

M/s. Seiko Watch India Private Limited, #874 Ground Floor Temple Vista, Shri Krishna Temple Road, Indiranagar 1 st Stage, Bengaluru – 560 038. PAN : AAKCS 6484 K	Vs.	DCIT, Circle - 6(1)(1), Bengaluru.
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Assessee by	:	Shri. Tata Krishna, Advocate
Revenue by	:	Shri. Pradeep Kumar, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	11.10.2021
Date of Pronouncement	:	12.10.2021

ORDER

Per N. V. Vasudevan, Vice President

This is an appeal filed by assessee against the order dated 14.06.2021 of CIT(A) National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Year 2016-17.

2. In this appeal, the assessee has challenged the order of the CIT(A) as bad in law for the reason that the same is cryptic without reasons and without considering various contentions urged by the assessee. The grounds taken in this regard by the assessee are as follows:

1. *The Order of the Learned Commissioner (Appeals), National Faceless Appeal Centre, NFAC, is not justified in law and on facts and circumstances case.*
2. *The order of the Learned Commissioner (Appeals), NFAC, is bad in law cryptic, without reasons and without considering various contentions urged by the Appellant*
3. *The order of the Learned Commissioner (Appeals), NFAC, is bad in law being passed without affording either the person hearing or the VC hearing to the Appellant.*
4. *The order of the Learned Commissioner (Appeals), NFAC, is bad in law being not in conformity with the National Faceless Appeal Scheme.*

3. Besides the aforesaid grounds, the assessee has also challenged the following additions made by the AO which was sustained by the CIT(A) in the impugned order:

- a. Disallowing Guarantee Fee of Rs. 2,56,250/-;
- b. Adding Rs. 1,37,60,347/- (i.e., 20% of Rs. 6,88,01,735/- on sums reimbursed) on an ad hoc basis;
- c. Treating Rs. 73,92,914/- (i.e., 50% of Rs. 1,47,85,829/- incurred towards business promotion expenditure) on an ad hoc basis as capital in nature;
- d. Disallowing Rs. 2,06,06,607/- (i.e., 30% of Rs. 6,86,88,692/- on sales incentives) under section 40(a)(ia) of the IT Act;

4. The assessee is a company. The assessee filed the return of income for Assessment year 2016-17 declaring income of Rs.4,14,34,160/-. An order of assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act') was passed dated 15.12.2018 wherein the AO made the following additions to the total income of the assessee:

- (i) A sum of Rs.2,56,250/- paid as guarantee fee to the holding company which was treated as in the nature of a shareholder expense and not allowable as a business expense.

- (ii) Recovery of expenses of Rs.6,88,01,735/- on the ground that the assessee incurred expenses towards brand promotion of the holding company (AE). 20% of the aforesaid expense was treated as a profit markup on the reimbursement cost paid to the AE. Rs.1,37,60,347/- was added to the total income of the assessee.
- (iii) Similarly, a sum of Rs.73,92,914/- being 50% of the sales promotion incurred by the assessee on the ground on they are capital in nature.
- (iv) Customer incentive of Rs.6,86,88,692/- incurred by the assessee, the AO took the view that provisions of section 40(a)(ia) of the Act was applicable to the aforesaid expenses and since tax at source was not deducted, 30% of the aforesaid sum viz., sum of Rs.2,06,06,607/- was disallowed under section 40(a)(ia) of the Act.

5. Against the aforesaid additions, assessee preferred an appeal before the First Appellate Authority. Before the First Appellate Authority, the assessee filed the following documents:

Particulars	Annexure	Page Nos.
Memorandum of Written Submission for the AY 2016-17	1	1-116
Copy of the submission dated 28.09.2018 filed by the Appellant before the Learned Assessing Officer	2	117-126
Copy of the submission dated 23.11.2018 filed by the Appellant before the Learned Assessing Officer	3	127-132
Copy of Form 15CA evidencing deduction of tax at source in annexure Jto letter dated 28.09.2018 furnished before the Learned Assessing Officer	4	133-135
Copy of the inter-company supplement agreement dated 01.04.2015	5	136-138

Copy of the list of various ledger accounts excluding extracts of ledger accounts forming part of annexure B to letter dated 28.09.2018 furnished before Learned Assessing Officer	6	139
Sample copies of the pre-agreed letters for achieving annual target entered between the Appellant and the retailers	7	140-144
Copy of the details of customer incentive in annexure A to letter dated 28.09.2018 furnished before Learned Assessing Officer.		145-152

6. The First Appellate Authority however passed the impugned order without considering any of the contentions that were put forth in the written submissions supported by various documents and evidence. On the issue of disallowance of the guarantee fees, recovery of expenses, sales promotion expenses and customer incentive, the observations of the First Appellate Authority was as follows:

On the issue of Guarantee Fees:

“During the course of appellate proceeding it was submitted that such expenses is not for the purpose of carrying out day to day expenses of business of the appellant. Since these expenses are not in respect of conduct in course of every day business of the appellant company. Ground of appeal no. 3 fails accordingly. These are already not allowable as business expenditure. Reliance is placed on the following cases-

1. *Bombay2020114taxmann.com 614(Bombay)*
2. *(2013) 34taxmann.com228(Bombay)*

Accordingly. the ground of appeal is rejected.

On the issue of recovery of expenses:

During the course of appellate proceedings the appellant was issued notices dated 12/01/2021 & 25/02/2021. No further replies have made from it. it is noticed that appellant has incurred various expenses on

behalf of its holding and subsidiaries for which it is being reimbursed on the basis of actual expenses incurred. It is relevant to state here that for incurring these expenses of brand promotion the appellant has used its own manpower and resources for which it should have been adequately compensated. This however is not the case in the instant year. As such a minimum mark up ought to have been charged from the holding/subsidiary companies by the appellant. The AO has estimated the same at 20%. This working out of a mark up is at a conservative percentage and is upheld accordingly. The appeal fails and is not allowed on this ground.

On the issue of Sales Promotion Expenses:

During the course of appellate proceedings it was submitted that the disallowance by the AO is not scientific. There is no comparative data over the past years. Sponsorship of IPL no doubt is contributive constitutive towards brand building and brand promotion which leads to long term benefit. However even in case they are to be disallowed a certain extent, these should have been adequately compared vis-a-vis other sponsor's during the year or comparison in case of assessee company over the past few years.

In absence of relevant data as above appellant would get a relief of half of the disallowances made. AO shall re-compute the disallowance accordingly.

On the issue of Customer Incentive:

Customer incentive of Rs. 6,86,88,692/- During the course of assessment proceeding AO noted that the assessee in its submissions dated 03.10.2018 has incurred an amount of Rs. 6,86,88,692/- as sales incentive paid to various parties. On perusal of the information it is observed that the assessee has not deducted TDS as per the provisions of IT Act on the amount of Rs. 6,86,88,692/-. Hence 30% of Rs. 6,86,88,692/- amounting to Rs. 2,06,06,607/- is brought to tax as a disallowance u/s 40(a)(ia).

7. We have perused the submissions made by the assessee before the CIT(A) and we find that in so far as the disallowance of guarantee fees is concerned, a specific stand of the assessee was that the guarantee fees was not paid to a shareholder payee on the presumption on the First Appellate Authority was erroneous. It was also seen that a specific case made out by the assessee was that the guarantee fee paid to Seiko Holding Corporation is towards loan facility obtained from Mizuho Bank. In fact the assessee never made submissions as was quoted by the First Appellate Authority in the impugned order.

8. With regard to notional addition of 20% of reimbursement, on this issue a specific case of the assessee was that the notional disallowance was arbitrary, illegal and unreasonable and in this regard submissions dated 18.01.2021 and 17.03.2021 were made before the First Appellate Authority but the First Appellate Authority has mentioned in the impugned order that no replies have been made by the assessee. With regard to sales promotion expense, the specific case of the assessee was that there was no basis to conclude that the expenses were capital in nature and that the expenses were incurred towards display holding, branding charges and advertising material. With regard to disallowance of sales incentive under section 40(a)(ia) of the Act, a specific case of the assessee was that the sales incentive is not subject to TDS under the Act and it was in the nature of target given to distributor.

9. In the light of the above factual background, we agree with the submissions of the learned Counsel for the assessee that the impugned order of the First Appellate Authority is cryptic without reasons and without considering the various contentions urged by the assessee. We, therefore, set aside the impugned order and remand the issues raised by the assessee in the appeal to the First Appellate

Authority for consideration afresh in the light of the submissions made by the assessee and in the light of documentary evidence filed by the assessee, after affording opportunity of being heard to the assessee. In view of the above conclusion, the other issues on merits do not require consideration.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 12.10.2021.

/NS/*

Copy to:

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.