

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No. 2855/Mum/2019
Assessment year: 2015-16

M/s Shopworks India Pvt. Ltd,**Appellant**
*601, Silver Spring, Rizvi Complex 2, Sherly Rajan Road,
Bandra (W) Mumbai 400 0050 [PAN No. AAKCS4129F]*

Vs

Income Tax Officer 13(2)(3)
Mumbai**Respondent**

Appearances by

Hari Raheja *for the appellant*

T. Sankar *for the respondent*

Date of concluding the hearing : December 29, 2021
Date of pronouncement of order : December 29, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 21st February 2019, passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act 1961, for the assessment year 2015-16.

2. In the ground no. 1 & 2 of appeal, which I will take up together, grievances raised by the assessee-appellant are as follows:

1. On the Facts and Circumstances of the case, The Hon'ble Commissioner of Income Tax (Appeal) has erred in Law in Confirming the Addition Made by Assessing Officer by disallowing the Operating expenses of Rs. 7,54,775/- which totally unjustified and Arbitrary.

2. On the Facts and Circumstances of the case, The Hon'ble Commissioner of Income Tax (Appeal) has erred in Law in Confirming the Addition Made by Assessing Officer by disallowing Auditors Remuneration of 1,37,300/- which unjustified and Arbitrary.

3. To adjudicate on these grievances it is sufficient to take over the fact that the Assessing Officer has made these disallowances simply on the basis that, in this perception, amounts that the assessee has expenditure incurred is excessive because increase in the expenses in question is not proportionate to increase in turnover. The Assessing Officer has discussed, in some detail, the percentage of operating expenses vis-à-vis and justification for increase in expenses like audit fees when the company itself is in liquidation. As a matter of fact, he has gone to the extent of company audit remuneration in terms of percentage of income with the present year and immediately, preceding year. It was in this backdrop that disallowances of operating expenses of Rs. 754,775/- and audit remuneration of Rs. 137,300/- were made by the Assessing Officer. Aggrieved by the stand so taken by the Assessing Officer, assessee carried the matter in appeal before the learned CIT(A) but without any success. Learned CIT(A) was of the considered view that “no infirmity emerges from the disallowance of excess operating expenses as compared to the total turnover reported by the appellant during the year” and that “the appellant did not produce anything on record to substantiate the huge increase of auditors remuneration due to turnover has exclude drastically”. The action of the Assessing Officer was thus upheld on both these terms. The assessee is not satisfied and is in further appeal before me.

4. I have heard the rival contentions perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. I find that the authorities below have clearly fallen in error by making disallowance on the basis of comparison of the expenses incurred in the immediately preceding year vis-à-vis the turnover in the said year and that expenses incurred in the present year vis-à-vis the turnover in the present year. It proceeds on the erroneous assumption that any increase or decrease expenditure will always move in the same direction and the same ratio in which the turnover increases or decreases. The underline assumption of these disallowances is thus clearly erroneous and wholly unsustainable in law. There is no dispute that the expenses are actually incurred there are no questions about the bonafides of expenses but everything hinges on Assessing Officers belief, which has met the approval on the learned CIT(A) as well, that the expenses and turnover will increase or decrease in the same ratio in which the turnover increases or decreases. I am unable to approve this approach. In view of these discussions and bearing in mind entirety of the case, I am of the considered view that the impugned disallowance of Rs.754,775/- and Rs. 137,300/- deserves to be deleted. I therefore, delete both of these disallowances.

6. Ground no. 1 & 2 are thus allowed.

7. Ground no. 3, the assessee has placed the following grievance:-

3. On the Facts and Circumstances of the Case, The Hon'ble Commissioner of Income Tax (Appeal) has erred in Law in confirming the Addition Made by Assessing Officer by disallowing Long Term Borrowing of 8,69,937/- which is Arbitrary and unjustified.

8. So far as this addition is concerned the relevant material facts are like this. During the course of the assessment proceedings the Assessing Officer noticed that the assessee has received a sum of Rs. 8,69,937/- from Shopworks London. When the matter was probed further, the Assessing Officer further noticed that this amount is received from the UK based company and has come through the banking channels. The Assessing Officer however was not satisfied with the genuineness of the transaction in question and he therefore added the same as income of the assessee u/s. 68 of the Act. Aggrieved by the action so taken by the Assessing Officer, assessee carried the matter in appeal before the learned CIT(A) but without any success. Learned CIT(A) observed that “any receipt through banking channel is not sacrosanct nor could it made a non- genuine transaction genuineness”. The disallowance was thus confirmed. The assessee is not satisfied and is in further appeal before me.

9. I have heard the rival contentions perused the material on record and duly considered facts of the case in the light of the applicable legal position.

10. I find that the assessee has now submitted a confirmation from Shopworks London which states as follows:-

To Whom it May Concern,

SHOPWORKS INDIA PVT LIMITED

This is to confirm that I, Richard Craig Phillipson (date of birth 21/09/1967) UK Citizen and holder of British Passport No. 517948753) was the 80% shareholder in the Company known as “Shopworks India Pvt Ltd”. Mr Sanjeev Mehta, India Citizen, was shareholder of the remaining 20%.

Since the business had not been achieving its objectives or Sales targets, we, the Shareholders, decided in the year 2014 to wind-up the said Company.

As part of this winding-up, there were Liabilities and Creditors to be paid off.

My share of these Liability payments was remitted to Shopworks India Pvt Ltd (Account No. 016256000032 with HDFC Bank Ltd, Mumbai) vide a Wire transfer of Indian Rupees 869,937.34 (INR Eight Hundred sixty-nine thousand, Nine Hundred thirty-seven and paise thirty-four only) on September 25, 2014 via the Cambridge Mercantile Group wire transfer Ref. CMV-2839112.

Please be further informed that the said payment was made towards my share of clearance of the Liabilities and was not to be used for any other purpose.

There being no further Liabilities or commitments the Company was wound up in subsequent years.

This letter has been issued at the request of Mr Sanjeev Mehta, former Managing Director of Shopworks India Pvt Ltd.

Yours sincerely,

Sd/-
R C Phillipson
Managing Director

11. When this was put to the learned Departmental Representative he very fairly left the matter to the bench. Learned Departmental Representative has also did not object to admission of additional evidence at this stage particularly looking to the smallness of the amount involve.

12. I find that clearly the amount in question is received from an company which is closely associated with the assessee company the amount is received through the banking channel and looking to the smallness of the amount and inter-se relationship between the two companies and the fact that Mr. Richard Craig Phillipson, who is 80 percent share holder in the assessee company is Managing Director of the Shopworks London, in my humble understanding, the genuineness of transaction cannot be called in to question. While it is indeed true that this additional evidence is produced at the stage of proceedings before the Tribunal and normally the matter should have been remitted to the file of the Assessing Officer for necessary verification, in view of the smallness of the amount involved and undisputable relationship between the person giving this loan and the assessee company, I think it is a fit case in which matter can be disposed of at this stage itself and the addition in question is delete. I, therefore, direct that the impugned addition of amount Rs. 8,69,937/- to be deleted. Ordered, accordingly.

13. Ground no. 3 is thus allowed.

14. Ground 4, 5 & 6 do not called for any specific adjudication by us.

15. In the result, the appeal is allowed in the terms indicated above. Dictated and pronounced in the open court today on the 29th day of December, 2021.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 29th day of December, 2021

Copies to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai