

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'C': NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No.8148/DEL/2018
[Assessment Year: 2013-14]**

M/s Heritage Holidays Pvt. Ltd. F-138, 1 st Floor, Main Market, Rajouri Garden, New Delhi-110027	Vs	Deputy Commissioner of Income Tax, Circle-11(1), New Delhi
PAN-AAACH2138K		
Assessee		Revenue

Assessee by	Sh. G.S. Kohli, CA
Revenue by	Sh. Hemant Gupta, Sr. DR

Date of Hearing	14.02.2022
Date of Pronouncement	29.04.2022

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 16.11.2018 of the learned CIT(A)-4, New Delhi, relating to Assessment Year 2013-14.

2. Grounds of appeal no. 1 being general in nature is dismissed.
3. Grounds of appeal no.2 and 3 raised by the assessee reads as under:-

1. *The learned C.I.T. (Appeal) was not justified in confirming an addition of Rs.76,62,000/- relating to receipt in advance pertaining to the subsequent year has been treated as income in the year under appeal ignoring the relevant documents placed on the record that the amount received has been shown as income in the subsequent year.*

2. *That the learned CIT (Appeal) had failed to appreciate the submission that it is practice since from the incorporation of the company that the proportionate receipt had always been carried forward related to the subsequent year. The facts are also placed on the record the carried forward amount Rs.46,22,000.21 has been shown as income in the relevant Asstt. year under appeal.”*

4. Facts of the case, in brief, are that the assessee is a company engaged in the business of providing holiday vouchers which entitle the customers to have discount on hotels, airlines and other travel related services to the extent of coupons allotted to them. It filed its return of income on 21.09.2013 declaring total income at Rs.37,50,110/-. The AO asked the assessee to justify for treating the sum of Rs.76.62 lakhs as an advance from Samsung India Electronics Ltd. along with copy of agreement for the same and also a confirmation from Samsung India Electronics. In response to the same, the assessee vide reply dated 29.02.2016 submitted as under:-

"Deal with Samsung was to give them a holiday voucher which entitled its customer who bought laptops and printers a discount on hotels, airlines and other travel related services.

There is a validity to each voucher that is a norm. The customer can use the voucher only within the validity printed on the voucher. After the expiry of the voucher the voucher becomes non usable.

In case of Samsung the voucher was for 12 months validity. At request of the company the voucher validity was increased by 3.5 months that's why Rs. 76.62 became advance from Samsung India Electronics Ltd.

This is a general practice we follow with corporate. They all generally ask extensions in validity and we generally oblige them to maintain cordial and healthy relationship with them for future business. Also extension can happen multiple times or once according to the need."

5. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that the assessee has failed to file the confirmation of the said account from Samsung Electronics India Pvt. Ltd. and no documentary evidence was furnished by the assessee in this regard despite sufficient opportunities granted. He therefore applying the provisions of section 68 of the Act made addition of Rs.76.62 Lakhs to the total income of the assessee.

6. In appeal, the ld. CIT(A) upheld the action of the AO by observing as under:-

“7. Ground No.3 relates to addition amounting to Rs.76,62,000/- under section 68 of the Act.

7.1. I have considering the finding of the AO and the submissions placed by the appellant on record. The prime reasoning for the addition by the AO is with regard to the fact that no confirmation was provided by Samsung Electronics India Private Limited on account of which such advance was received.

7.2. Before me the appellant submitted that the said advance is on account of the services rendered to Samsung Electronics India Private Limited. As per the appellant the appellant company has entered into an engagement with Samsung Electronics India Private Limited, whereby the appellant company would provide free stay to the clients of Samsung Electronics India Private Limited on the basis of vouchers issued to clients. Clients may or may not avail the benefits of coupons. The validity of these vouchers range to other subsequent years also and is not confined to a particular year. Though the invoices are raised during the year and the payment is received during the year, however, certain portion of revenue is recognised in future years when the expense related to the same was incurred.

7.3 I have considered the submission of the appellant and the documents, placed on record.'At the outset, before me also no confirmation from Samsung India was placed on record. Nor even the appellant furnished any bank account details to substantiate that the said amount was received from Samsung India only. There is no record available, which is an independent record, not in control of the appellant company to substantiate that the amount of Rs. 76,62,000/- was received from Samsung India and the same is an advance and was also treated by Samsung India as advance paid to the appellant.,

7.4 Having said so, even if the issue is examined on the basis of the documents submitted, like ledger

accounts and invoices raised by the appellant company to Samsung India, there is no plausible reason as to why the revenue is not to be recognised in the captioned year and why it is deferred for future years. It is not the case as if the vouchers have an expiry and after expiry the appellant has to refund back the amount. Once the amount is received by the appellant company and there is no clause of refund of the amount at a later stage, the amount has to be recognised in the current year.

7.5 Furthermore, the explanation of the appellant that the said income is claimed in consecutive years, is also not forthcoming as no details of future corresponding years is submitted by the appellant on record to justify the same. Further, the basis on which the revenue is recognised in each year is also not presented before me nor before the AO.

7.6 Thus, keeping in consideration the entirety of the facts, the addition made by the AO amounting to Rs.76,62,000/- is sustained and confirmed. Ground of appeal of the appellant is rejected.”

7. Aggrieved with such order of the Ld. CIT(A), the assessee in appeal before the Tribunal.

8. The ld. counsel for the assessee submitted that both the AO as well as the ld. CIT(A) failed to follow the principle of accounting method followed by the assessee. He submitted that ledger account of Samsung Electronics India Pvt. Ltd. was filed during the course of assessment proceedings and it was submitted that the company has no transaction at the moment with the assessee. Further, such confirmation was

not practically possible since it were assessee's own working, which were carried forward in the subsequent year as such normal practice is going on since from the incorporation of the Company. Relying on various decisions, he submitted that the addition made by the AO and upheld by the Ld. CIT(A) should be deleted. He also relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Escorts Ltd. reported in (2011) 338 ITR 435 (Del) and the decision of the Hon'ble Allahabad High Court in the case of Zazsons Exports Ltd. vs CIT, reported in 397 ITR 40 (All.).

9. The Ld. DR, on the other hand, heavily relied on the order of the AO and the ld. CIT(A).

10. We have heard the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has shown advance of Rs.76.62 lakhs from Samsung India Electronics Private Limited for which the AO asked the assessee to furnish the copy of agreement and file the confirmation from Samsung India Electronics Private Limited. We find due to inability of the

assessee to furnish such confirmation, the AO invoking the provisions of section 68 of the Act made addition of the same to the total income of the assessee. We find the ld. CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld. counsel for the assessee that the AO and the ld. CIT(A) without properly appreciating the nature of business done by the assessee and the accounting method consistently followed has made the addition which is not correct. According to the ld. Counsel for the assessee when the payment is made by Samsung India Electronics Private Limited it becomes revenue expenditure in their hands but if the assessee gives the vouchers over a period of ten months or so and when the advance is received in the month of February, then certain amount is shown as advance received in the hands of the assessee, which is shown as advance from customers in the balance-sheet. It is also his submission that assessee is following this method since past so many years. From the order of the lower authorities, we find the assessee has not even filed the bank statement details to substantiate that the said amount of Rs.76,62,000/- has in fact been

received from Samsung India Electronics Private Limited. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore this issue to the file of the AO with a direction to grant one more opportunity to the assessee to substantiate with evidence to his satisfaction that the amount of Rs.76,62,000/- was in fact received from Samsung India Electronics Private Limited only and not from any other person. The assessee is hereby directed to substantiate with evidence before the AO how he has adjusted Rs.76,62,000/- in the subsequent years by giving coupons and vouchers to employees of Samsung India Electronics Private Limited. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Grounds of appeal no. 2 and 3 are accordingly allowed for statistical purposes.

11. Ground of appeal no.4(i), 4(ii) and 4(iii) are as under:-

4(i) That the learned CIT (Appeal) was not justified in giving the contention that the relevant documents were not placed on the record during the course of appellate proceedings while the appellant moved an application

u/s 154 giving the reference of pages of relevant documents which were placed on the record during the course of Appellate hearing.

(ii) That the learned CIT(Appeal) was not justified in confirming the disallowance of Rs.13,30,000/- related to the commission paid in the light of submission and documents placed on the record.

(iii) The recipients of commission was produced before A.O. who confirmed the facts that it was an introductory commission for introducing the Chief Whip of Samsung India Electronics Pvt. Ltd. to the directors of the appellant company.”

12. Facts of the case, in brief, are that the during the course of assessment proceedings, the AO asked the assessee to file the details of commission of Rs.13,30,000/- paid to two persons namely Mr. Mukesh Bathla Rs.8,10,000/- and Ms. Sangeeta Bathla Rs.5,20,000/-. He also asked the assessee to explain as to why these commissions were paid and to file the documentary evidence i.e. bills and invoices in this regard. In response to the same, the assessee filed two invoices raised by Mr. Mukesh Batha and Ms. Sangeeta Bathla. In both the invoices, it was mentioned that the commission has been given on sale of Samsung India Electronics laptop and printer. The AO noted that the assessee has paid commission in lieu of sale

of Samsung Laptop and printer, which is not the business of the assessee. He therefore asked the assessee to justify the commission paid to the above two parties and produce the above two persons for necessary submission and verification. The assessee produced Mr. Mukesh Bathla whose statement was recorded by the AO. On being questioned by the AO to explain the nature and service provided by him, it was stated by Mr. Bathla that commission was given by the assessee company as he introduced Mr. Uday from Samsung India to Mr. Sagar (Director of the assessee company). However, Mr. Bathla didnot elaborate the exact nature of services provided by him in order to justify the commission received. Further, when asked about Mr. Uday, Mr. Bathla did not give any detail/contact no. of Mr. Uday. Subsequently, vide the order sheet entry dated 14.03.2016 the AR of the assessee was given the copy of statement of Mr. Bathla and was requested to give the details of Mr. Uday. However, no such details were filed by the assessee. In view of this the AO held that the assessee company could not justify the payment of commission of Rs.8,10,000 to Mr. Bathla and that this payment of Rs.8,10,000 was not for the purpose of business expediency

and is not genuine. Therefore, he disallowed the amount of Rs.8,10,000 given as commission and added back to the income of the assessee. Since the assessee could not produce Ms. Sangeet Bathla as she refused to attend, the AO treated the commission paid to Ms. Sangeeta Bahtla as bogus and made addition of Rs.5,20,000/-. Thus, the AO made addition of Rs.13,30,000/-.

13. In appeal, the Id. CIT(A) confirmed the addition by observing as under:-

“6.3 I have considered all the documents and explanation of the appellant, but the same is not tenable. Just because Mr. and Mrs. Bathla have accepted the receipt of the commission and have reflected the same as their income does not transpire and approve the genuineness of the transaction. The primary point that has to be considered for checking the genuineness of the commission transaction, is whether the services were actually rendered by the commission agents or not. One has to see the substance of the transaction and not the form of it. No doubt, even in non-genuine transactions, the assesses do take care of doing all the compliances and deduct TDS and make payments by cheque, however, one has to consider the genuineness on the facts whether in actual any service was rendered or not.

6.4. *There are lot of facts and reasonings which substantiate that the said transaction is not genuine:*

- *First of all, why commission is paid to two persons for the same work? There is no reasoning and logic for making the payment to*

two persons for introduction of the same client i.e. M/s Samsung India Electronics Pvt. Ltd.

- *Further, there is no reasoning and logic submitted before me or either before AO as to how such commission income was computed and why there was a commission of Rs.8,10,000 in the hands of Mr. Mukesh Bathla and why there is a commission of Rs.5,20,000 in the hands of Ms. Sangeeta Bathla.*
- *Non-appearance of Ms. Sangeeta Bathla before the AO and lack of cooperation in the tax proceedings, further proves non-genuineness of the transaction.*
- *No proof of rendering of service, i.e. introduction of the client Samsung with the assessee has been furnished. If Samsung India Electronics Pvt. Ltd. and the assessee were introduced, there must be some email, messages, call details, meeting details. However, nothing of such sort was furnished on record to substantiate that how such introduction took place.*
- *Furthermore, it is interesting to note that Mr. Mukesh Bathla, who is claiming to introduce Mr. Uday from Samsun India, does not have his coordinates and details.*

6.5 Before me the appellant submitted that it was difficult at that point in time to furnish the details of Mr. Uday in a short span of time, however, even as on| date, no details were even furnished before me.

6.6 In view of the above, since the appellant has failed to discharge his onus to substantiate rendition of the service on account of which commission was paid, the genuineness of the said expense is not established. Hence the addition amounting to Rs 13,30,000/- (Rs 8,10,000/- + Rs 5,20,000/-) made by the AO is sustained and upheld. Ground Nos. 1 and 2 are dismissed.”

14. Aggrieved with such order, the assessee in appeal before the Tribunal.

15. The ld. counsel for the assessee strongly challenged the order of the Ld. CIT(A) in confirming the addition made by the AO and sustained by the Ld. CIT(A). He submitted that when the expenditure has been laid out or expended wholly and exclusively for the purpose of business and the expenditure is incurred for commercial expediency, no disallowance should be made. For the above proposition, he relied on the decision of the Hon'ble Madras High Court in the case of PCIT vs Managed Information Services Pvt. Ltd. reported in 396 ITR 490. He submitted that in the instant case M/s. Heritage Holidays Private Limited was having no business with Samsung Electronics India Private Limited in the earlier years and that "Sh. Uday" the key person of M/s. Samsung at that time was well known to the couple and they introduced Sh. Sagar the Director of the assessee company with Uday (key person of Samsung) in October, 2012 where the former (Mr. Sagar) agrees to pay commission @ 12.5% on order given by "Samsung". That since such introduction was held through Bathla family/spouses, it was held in family

atmosphere, therefore, they insisted that both of them should be benefitted. However, initially Sh.Mukesh Bathla was rewarded with commission in Jan-Feb 2013 on initial business held with Samsung. Mrs. Sangeeta Bathla corresponded with assessee company for which Samsung has further placed an order. Further, she was facilitated with commission. Thus, she was paid in the month of March, 2013. He accordingly submitted that the addition made by the AO and sustained by the Ld. CIT(A) is not justified.

16. The ld. DR, on the other hand, heavily relied on the order of the AO and the Ld. CIT(A).

17. We have heard the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.13,30,000/- being commission paid to Mr. Mukesh Bathla Rs.8,10,000/- and Ms. Sangeeta Bathla Rs.5,20,000/- since, the assessee failed to substantiate with evidence to his satisfaction regarding the above commission. The ld. CIT(A) sustained the addition made by the AO, the reasons of which have already

been reproduced in the preceding paragraph. We do not find any infirmity in the order of the Id. CIT(A) on this issue. We find when the AO asked the assessee to substantiate the commission, the assessee filed letter dated 09.11.2015 and submitted that the commission has been given on sale of Samsung Laptop and Printers. The relevant observation of the AO at para 3.2 of the order reads as under:-

“3.2. In response to the above query the assessee vide the letter dated 09.11.2015 filed two invoices raise by Mr. Mukesh Bathla & Mrs. Sangeeta Bathla. In both the invoices, it was mentioned that the commission has been given on sale of Samsung India Electronics Laptop and printer. It was surprising to see that the assessee paid the commission in lieu of sale of Samsung laptop and printer, which is not the business of the assessee and therefore these payment of commission raised a suspicion on the genuineness of this transaction.”

18. We find subsequently when the AO confronted the assessee, the assessee filed the bills raised by above two persons against Samsung. Even the confirmation from the assessee to the above two parties says the commission on sale. The assessee is changing the stand for reasons best known to them. Even though they have received commission for introducing Mr. Uday of Samsung to the assessee, these two persons do not have details of Mr. Uday. Further, Ms.

Sangeeta Bathla refused to appear before the AO. The findings given by the AO as well as the ld. CIT(A) could not be controverted by the ld. counsel for the assessee by filing any other evidence before us so as to take a contrary view than the view taken by the lower authorities. Merely stating that the expenditure has been incurred for commercial expediency in our opinion is not sufficient for allowing the commission of Rs.13,30,000/-. It is the settled proposition of law that for claiming of any expenditure as allowable, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO that the same has been incurred wholly and exclusively for the purposes of business. The assessee in the instant case has miserably failed to substantiate the same except by furnishing certain papers which do not substantiate the allowability . Since, the assessee in the instant case could not furnish any other documents before us against the findings of the AO and the Ld. CIT(A), therefore, we uphold the order of the Ld. CIT(A) on this issue.

19. So far as the arguments of the ld. counsel for the assessee that in AY 2012-13, no such addition has been made is concerned, we find no merit in the said argument.

Principles of res-judicata do not apply to the Income Tax proceedings and every year is separate and distinct. In view of the above discussion, we uphold the order of the ld. CIT(A) and the grounds raised by the assessee are dismissed.

20. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 29.04.2022.

Sd/-
[N.K.CHOUDHRY]
JUDICIAL MEMBER

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 29th April, 2022.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi