

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DLEHI**

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

**ITA No. 7637/Del/2019
Assessment Year: 2016-17**

Unicorn Post Media Solutions Pvt. Ltd., M-2/43, DLF, Phase-II, Gurgaon (Haryana). PAN : AABCU6397A (Appellant)	vs.	Income-tax Officer, Ward 4(4), Gurgaon. (Respondent)
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Appellant by : None
Respondent by: Sh. Om Prakash, Sr. DR

Date of hearing: 04.05.2022
Date of order : 10.05.2022

ORDER

This appeal filed by the assessee is directed against the order dated 28.06.2019 passed by Id. CIT(A)- 1, Gurgaon for the assessment year 2016-17 on the following grounds :

"1. Disallowance of Rs. 20,000 as expense on adhoc basis:-

The Ld AO has erred in disallowing Rs.20,000 on adhoc basis as a lump sum amount considering the same as personal expense.

During the year 2015-16, Assessee has claimed following expenses :

- i) Freight Expenses of Rs,54,352/-*
- ii) Conveyance Expenses of Rs.19,000 /-*
- iii) Electricity Expenses of Rs. 8,096 /-*

In view of this, the appellant was asked to furnish details of these expenses and documentary evidences i.e bills/vouchers for the expenses debited in the profit & loss account and to prove the genuineness and reasonableness of the same.

In reply to the above, the appellant submitted the details of the expenses along with the bills/vouchers. However, the Ld AO didn't consider the details provided by the appellant as complete details. The Ld AO further claimed those expenses as not been incurred wholly and exclusively for business purpose. Accordingly, the Ld AO has made lump sum disallowance of Rs 20,000 on adhoc basis.

The appellant urged that these expenses are integral part of appellant's business model which is involved in the trading business. Hence, disallowance of the expenses which is purely expended for the business is not justified. In this regard, the appellant has placed reliance on Hon'ble Allahabad High Court as held in the case of CIT v. Rampur Timber & Turnery Co. Ltd. (1981) 129 ITR 581 (All) as below:

"For an expenditure to come within the ambit of Section 57(iii) of the Income Tax Act, 1961, it must be incidental to the making or earning of the income and there must be a nexus between the character of the expenditure and the making or earning of income. Expenditure incurred for retaining the status of a company, namely miscellaneous expenses, salary, legal expenses, travelling expenses, etc., would be expenditure incurred wholly and exclusively for the purpose of making or earning income".

The appellant further submit that these expenses are incidental to the business of it and directly spring from

the carrying on of it. Usually, 1) Freight charges 2) Conveyance expenses 3) Electricity expenses are used for the whole enterprise. It was held in case of Hindustan Petroleum Corporation by Mumbai ITAT that "Administrative expenses are routine administrative expenses incurred on day to day functioning of the company and not in the nature of establishing new line of business of the company". These expenses are not in the nature of capital expenses but revenue as incurred wholly and exclusively for the purpose of business of the appellant and the same is allowable u/s 37(1) of the Act.

As per sec 37 of income tax act 1961, "Any expenditure not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, being laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head Profits and gains of business or profession ".

Hence, the appellant submits that the Ld AO has not applied his mind in making disallowance of Rs 20,000. Thus, the order being prejudicial to the appellant, it requests your Honour to reconsider the disallowance under this ground.

(ii) Disallowance of Rs.93,223 upon perusal of Profit & Loss Account

The appellant submits that the penalty charges of Rs 86,503 is nothing but the charges paid for delay in delivering order to LIC. Further, he Id AO has also disallowed VAT interest of Rs 350 and JDS interest of Rs 6,307.

In this regard, the appellant claims that the said expenses are compensatory in nature and hence, has to be allowed as expenses. The appellant has placed reliance on Bangalore ITAT in the case of Khoday India Ltd 338/Bangalore/2008 wherein it was held that "the payment, which is punitive, is not allowable and in case the payment is compensatory, then the payment to the extent of compensatory nature is to be allowed".

Thus, in view of the above, the appellant submits that the Id.AO has passed the order in haste without understanding our case and the same being prejudicial to the appellant, it requests your honour to reconsider the disallowance under this ground."

2. A notice through speed post acknowledgement due was sent to the appellant on 07.02.2022, which has been returned un-served with a remark 'left the address". Notice has been issued to the appellant/assessee on the address M-2/43, DLF Phase-2, Gurgaon, Haryana 122015 and the same address has been mentioned in Form 36 by the assessee in the column of 'complete address for sending notices'. As per judgment of Hon'ble Supreme Court in the case of PCIT vs. M/s. I Ven Interactive Ltd. dated 18.10.2019 in Civil Appeal No. 8132 of 2019, in absence of any specific information to the Assessing Officer with respect to change of address and/or change of the name of assessee, Assessing Officer would be justified in sending the notices at the available address mentioned in the PAN database of the assessee. Respectfully following the same, I hold that when the assessee has filed return mentioning a particular

address as per his PAN database, which has also been noted by the Assessing Officer as well as by the assessee himself in Form No. 36 as complete address for sending the notices and the assessee is not found available on the same address and no information about change of address to the Assessing Officer by the assessee, then I safely presume that all possible efforts have been made regarding service of notice on the assessee on the address given in PAN data and by assessee and assessee is not available, then I have no alternate but to proceed ex parte qua assessee to decide this appeal after hearing the submissions of Id. Sr. Departmental Representative (DR).

3. Ground No. 1 pertains to addition of Rs.20,000/- on account of disallowance of expenses. From the assessment order, it is discernible that the assessee submitted the details of expenses, but complete bills/narration of expenses was not attached with few of the bills and vouchers. The Assessing Officer made disallowance by observing that it is obligatory on the part of the assessee to justify its claim of expenditure debited in the profit and loss account with all supporting vouchers and the assessee could not produce evidence for incurring few expenses wholly and exclusively for the purpose of business and therefore, made lump sum disallowance of Rs.20,000/- on adhoc basis to cover the personal expenses of the assessee. From the first appellate order, I also observe that before the Id. CIT(A), the assessee again failed to submit copies of bills and

vouchers pertaining to expenses claimed. Learned CIT(A) also noted that no bills were found and all the vouchers were self made vouchers and all expenses have been incurred in cash. After noting the above, Id. CIT(A) confirmed the addition by observing that the expenses claimed to have been occurred in cash and in absence of proper vouchers, it is not possible to verify the genuineness of such expenses. In my considered view, the assessee was allowed sufficient opportunity before the authorities below to substantiate its claim of expenses, but the assessee failed to submit relevant bills and vouchers before the Assessing Officer as well as before the Id. CIT(A). The onus lay on the assessee to substantiate the claim that the expenses were incurred wholly and exclusively for the purpose of business, but when the assessee fails in discharging this onus, then the Revenue Authorities are entitled to make disallowance to cover all possible leakages of revenue and keeping in view partial personal benefit of expenses to the assessee. Therefore, I am unable to see any infirmity or any other valid reason to interfere with the findings of the authorities below. Therefore, this ground is dismissed.

4. Ground No. 2 also relates to disallowance of other expenses. Learned DR vehemently relied upon the orders of the authorities below and submitted that the penalty charges of Rs.86,503/- were penal in nature and therefore, the same was rightly disallowed by the Assessing Officer and the Id. CIT(A). Before the Id. CIT(A), it was

submitted on behalf of the assessee that the penalty has been paid to the Life Insurance Corporation of India Limited for delay in delivery of the products and it was compensatory in nature, but no evidence was submitted by the assessee to substantiate this explanation. In this situation, when the assessee has failed to substantiate that the amount of Rs.86,503/- had been paid to Life Insurance Corporation of India Ltd. for delay in delivery of products and were in the nature of compensation, then the Revenue authorities had no option but to treat the same as payment being penal in nature. Therefore, I am unable to see any ambiguity or any other valid reason to interfere with the findings arrived by the authorities below. Hence, the addition of Rs.86,503/- is also confirmed, dismissing the ground No. 2 of the assessee.

5. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on /05/2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 10/05/2022

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