

आयकरअपीलीयअधिकरण "ए" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH,
PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER AND
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं./ ITA No.2091/PUN/2017

निर्धारणवर्ष / Assessment Year : 2013-14

Karandikar Enterprises, 111, Shivajinagar, Pune – 411005. PAN: AADFK 2227 Q	Vs	The Assistant Commissioner of Income Tax, Circle-2, Pune.
Appellant/ Revenue		Respondent/ Assessee

आयकरअपीलसं. / ITA No.2458/PUN/2017

निर्धारणवर्ष / Assessment Year : 2013-14

The Assistant Commissioner of Income Tax, Circle-2, Pune.	Vs	Karandikar Enterprises, 111, Shivajinagar, Pune – 411005. PAN: AADFK 2227 Q
Appellant/ Revenue		Respondent/ Assessee

Assessee by	None.
Revenue by	Shri S P Walimbe - DR
Date of hearing	20/04/2022
Date of pronouncement	15/06/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These appeals filed by the Revenue and Assessee are directed against the order of Id.Commissioner of Income Tax(Appeals)-3, Pune, dated 27.07.2017 for the Assessment Year 2013-14. The Revenue raised the following grounds of appeal:

- “1. *On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 2,42,04,706/- made on account of treating entertainment tax subsidy as revenue receipt by relying on the decision of the Hon’ble Bombay High Court in the case of M/s Chaphalkar Brothers (ITA No. 1036 of 2010 & ITAT No. 1147 of 2010 dated 08.06.2011), without appreciating the fact that this decision has not been accepted by the Department and SLP has been preferred against the same before the Hon’ble Supreme Court.*

2. *On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the entertainment tax subsidy received by the assessee is a receipt in lieu of its income. It is a receipt generated because a part of the assessee's income has not been subjected to taxation by the government and therefore, such concession bear the character of income on revenue account.*
3. *On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the entertainment tax under the Bombay Entertainment Duty (Amendment) Act 2001, does not contain any specific direction on how the proceeds are to be utilized and therefore, such incentive cannot be regarded as an aid to the construction of the multiplex or towards any capital outlay.*
4. *The appellant prays to be allowed to add, amend, modify, rectify, delete or raise any grounds of appeal during the course of appellate proceedings."*

The Assessee raised following grounds of appeal:

- "1. In the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs.22,06,000/- by merely stating that the alternative argument of the AO appears valid.*
 - 2. While confirming the addition the learned CIT(A) failed to point out which expenditure was incurred by the assessee to remain eligible for receiving the subsidy when in fact no expenditure was incurred in the year under consideration for receiving the subsidy.*
 - 3. The learned CIT(A) did not meet the assessee's arguments that no expenditure was incurred u/s 37(1) and, therefore, no addition can be made u/s 371(1).*
 - 4. The learned CIT(A) further erred in confirming the disallowance of Rs.2,07,620/- from out of Cabin Expenses, Travelling and conveyance expenses when no single items was pointed out by the AO as of non-business nature or non-genuine.*
 - 5. The reasons adduced by the learned CIT(A) for confirming the additions of Rs.22,06,000/- and of Rs.2,07,620/- are wrong, insufficient and contrary to the provisions of law and facts on record.*
 - 6. The appellant craves leave to add, alter amend, modify and/or delete any of the grounds of appeal."*
2. Brief facts of the case are that the Appellant assessee is in the business of film exhibition at Mangala Multiplex Pune, it runs the multiplex. The assessee has treated the Entertainment tax subsidy as

capital receipt. The Assessing Officer in the assessment order hold it as revenue receipt. The ld.CIT(A) held it as Capital receipt following Hon'ble Bombay High court. The AO made certain disallowance u/s 37 of the Act, in the assessment order.

3. The Ld.Departmental Representative(ld.DR) for the Revenue relied on the order of the Assessing Officer(AO).

4. Decision on the issue of Entertainment Subsidy:

It is observed that the Ld.CIT(A) has followed the decision of Hon'ble Bombay High Court in the case of Chaphalkar Brothers (ITA 1036 of 2010 order dated 8.6.2011). It is also observed that Hon'ble SC vide order dated December 7 2017 upheld the said order of Hon'ble High Court. Therefore, we do uphold the order of the Ld.CIT(A) on the issue of Entertainment subsidy, that it is a capital receipt and not revenue receipt.

4.1 Thus, the Ground No's.1, 2 & 3 of the Revenue are dismissed. Ground No.4 is general in nature and no adjudication is required, thus, Ground No.4 is also dismissed.

4.2 Hence, Revenue appeal in ITA No.2458/PUN/2017 is dismissed.

ITA No.2091/PUN/2017 of Assessee:

5. The appellant assessee has raised ground number 1 regarding disallowance of Rs.22,06,000/-. In the assessment order the AO has

observed that since the entertainment subsidy has been claimed as capital receipt by the assessee, the assessee must have incurred certain administrative & Operational expenditure for the said capital receipt. Therefore, AO made adhoc disallowance u/s 37 of Rs.22,06,000/- (10% of expenditure). However, the said disallowance was not added by AO in the assessment order because the AO has added entire entertainment subsidy as capital receipt. This is an adhoc disallowance. AO has not pointed out any specific expenditure which was in the nature of revenue expenditure. AO cannot presume it. Therefore, the AO is directed to delete the said disallowance. Accordingly, the assessee's Ground No.1, 2 and 3 are allowed.

6. Ground No.4 is related to disallowance of Rs.2,07,620/-. The AO has made adhoc disallowance of 10% of expenditure out of Travelling, Conveyance, repairs and maintenance on the ground that these expenditures were in cash, no evidence filed to prove it. The Ld.DR relied on the order of the AO and ld.CIT(A).

6.1 Heard ld.DR and perused the material available on record. It is important to understand here that the ld.CIT(A) has given a finding that many of these expenditures were not supported by bills. Before us also the Assessee has not claimed that all the expenditures were supported by bills. The onus is on the assessee to prove the genuineness of the expenditure and to prove that the expenditure were incurred wholly and

exclusively for the purpose of business of the assessee, In this case the assessee has not filed any documents to prove that the expenditure were wholly and exclusively for the business and has also not filed bills. Therefore, we uphold the disallowance made by the AO. Accordingly, this Ground No.4 of assessee related to disallowance of Rs.2,07620/- is hereby dismissed.

6.2 Ground No.5 is related to disallowances. We have discussed the issue of disallowances in earlier Para. Accordingly, there is no need to adjudicate this ground separately. Accordingly, dismissed.

6.3 Ground No.6 is general in nature, hence dismissed.

6.4 Thus, appeal of the assessee in ITA No.2091/PUN/2017 is partly allowed.

7. To sum up, the appeal of the Assessee is partly allowed and appeal of the Revenue is dismissed.

Order pronounced in the open Court on 15th June, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th June, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Pune concerned.
4. The Pr. CIT, Pune concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.