

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 6721/Mum/2019

(A.Y: 2013-14)

Mobile Trading & Investment Pvt Ltd., 141, Mittal Tower, C- Wing, Nariman Point, Mumbai – 400021.	Vs.	ITO, Circle – 3(2)(2) Room No. 673, 6 th Floor, Aayakar Bhavan, MK Road Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM1419N		
Appellant	..	Respondent

Appellant by :	Ms.Dinkle Hariya.AR
Respondent by :	Mr.Pramod Nikalje.DR

Date of Hearing	16.06.2022
Date of Pronouncement	27.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-8, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

1.NATURAL JUSTICE

1.1 The Learned Commissioner of Income - tax (Appeals) - 8, Mumbai, ["Ld. CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.

1.2 *it is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:*

(i) The same is framed in breach of the principles of natural justice; and

(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.

WITHOUT PREJUDICE TO THE ABOVE

2.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in disallowing an amount of Rs. 90,500/- out of Hotel & Boarding expenses incurred by the Appellant.*

2.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

2.3 *Without prejudice to the above, assuming - but not admitting - that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is arbitrary, excessive and not in accordance with the law.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

3.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance of Rs. 1,77,680/-, to the extent of 5% of Rs. 35,53,607/-, out of the total car hire charges incurred by the Appellant.*

3.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

3.3 *Without prejudice to the above, assuming - but not admitting that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is arbitrary, excessive and not in accordance with the law.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

4.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in disallowing an amount of Rs. 3,45,273/- out of Foreign Travelling Expenses incurred by the Appellant.*

4.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for

4.3. Without prejudice to the above, assuming - but not admitting that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is arbitrary, excessive and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

5.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance of Rs. 4,23,631/, by invoking the provisions of section 14A of the Act read with Rule 8D of the Income - tax Rules, 1962.

5.2 While doing so, the Ld. CIT (A) failed to appreciate that:

(1) The provision of section 14A was not applicable to the Appellant's case; and

(ii) Assuming - but not admitting - that section 14A was applicable, in the facts and the circumstances of the case and in law, the invocation of Rule 8D was neither automatic nor required.

5.3 It is submitted that in the facts and the circumstances of the case and in law, no such disallowance was called for.

5.4 Without prejudice to the above, assuming - but not admitting - that any disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is arbitrary, excessive and not in accordance with the law

LIBERTY

6. The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.

2. The brief facts of the case are that the assessee company is engaged in the business of management consultancy relating to mining activities. The assessee

has filed the return of income for the A.Y 2013-14 on 26.09.2013 disclosing a total income of Rs. Nil. The revised return of income was filed on 17.01.2014 disclosing total income of Rs.NIL and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act were issued. In compliance to the notice, the ld. AR of the assessee appeared from time to time and filed the details and the case was discussed.

3. The Assessing Officer (A.O) on perusal of the financial statements found that (i) the assessee has debited travelling expenses of Rs.47,05,692/- to profit and loss account and the assessee was called to submit the copy of ledger account with the travel details of India and abroad. The assessee has submitted the details vide letter dated 11.02.2016 referred at Para 2.2 of the order. The A.O. dealt on the facts relating to the Air travel expenses, Accommodation expenses and Car Hire expenses. whereas the AO found that the assessee has claimed the hotel and boarding charges incurred at Srinagar and Kashmir amounting to Rs. 90,500/- and the

assessee was called to submit the details and reasons for the claim of expenses. The assessee has explained that the mines are located in Jarkhand and the assessee has branch in Khajurao and the expenses are incurred for the purpose of business but the AO was not satisfied the explanations and made the disallowance of Rs. 90,500/-.

4. (ii) In respect of domestic travel expenses, the A.O found that the car hire charges of Rs.35,53,607/- was incurred. Since the assessee could not submit the supporting documents, the A.O. out of the total expenses disclosed, allowed the local travels expenses to the extent of 40% claimed and balance of @60% is disallowed which work out to Rs.21,32,164/-

(iii) Similarly the AO found that the assessee has incurred on foreign travel expenses of Rs.3,45,273/- and additional expenditure pertains to purchase of euros and medical policy etc. Since the assessee could not submit the details and the purpose of travel is not explained. Therefore the A.O. is of the opinion that the claim of expenditure is personal in nature and disallowed Rs. 3,45,273/-.

5. (iv) the A.O. find that the assessee has disclosed the investments of Rs.3,11,43,466/- in the Balance sheet as at 31-03-2013. The assessee has earned/received the dividend income of Rs.14,43,587/- and claimed exempt U/sec10(34) of the Act. Further the assessee claimed interest in the profit & loss account of Rs.10,46,355/-. The A.O. observed that some expenditure must have been incurred in earning the exempt income and called for the explanations on applicability of sec14A r.w.r 8D (2) of the I T rules. The assessee has filed the submissions and computation of disallowance under section 14A of the Act. The A.O. has not accepted the explanations and worked out disallowance u/s 14A of the Act r.w.r 8D(2) (ii) &(iii) of the I T Rules of Rs. 4,23,631/-and assessed the total income of Rs. 29,80,033/- and passed the order u/sec 143(3) of the Act dated 25.02.2013.

6. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has granted relief in respect of car hire charges by restricting the

disallowance to the extent of @5% as against 60% made by the A.O and has confirmed the additions of hotel and boarding expenses, foreign travel expenses and disallowance u/s 14A of the Act and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

7. At the time of hearing the ld. AR submitted that the CIT(A) has erred in confirming the disallowance made by the AO(i) in respect of Hotel & boarding charges, the facts are that the assessee is in the business line of management consultancy relating to mining activities. The assessee company to explore the business possibilities at the various locations has incurred stay expenses at Srinagar and Kashmir and Jarkhand and form part and parcel of the business activities. (ii) On the second disputed issue, with respect to car hiring charges the Ld. AR submitted that the CIT(A) has restricted the disallowance to @5% but fact remains that the considering turnover and the consultancy services, the expenses are reasonable. (iii) The third disputed issue is with respect to the foreign travel expenses,

the Ld.AR submitted that the assessee's director has visited the foreign countries and the expenses are incurred wholly and exclusively for the purpose of business.(iv) the last disputed issue being the CIT(A) erred in confirming the disallowance U/sec 14A r.w.r 8D(2)of the I T Rules overlooking the facts that the assessee s own funds are more than the borrowed funds and no barrowed funds are utilized for investment purpose and also the assessee has not incurred any expenditure for earning exempted dividend income. Whereas in the earlier years A.Y. 2010-11& 2011-12 there was no addition. The Ld.AR substantiated the submissions with the judicial decisions and factual paper book and prayed for allowing the appeal.

8. Contra, the Ld. DR supported the order of the AO &CIT(A) and submitted that the expenses claimed by the assessee are not for the purpose of business and no evidences were produced and the provisions of section 14A of the Act are applicable to the assessee and prayed for dismissal of the assessee appeal .

9. We heard the rival submissions and perused the material on record. The Ld. AR submitted that the CIT(A) has erred in sustaining the addition ignoring the facts and material information. (i) The first disputed issue is with respect to Hotel & boarding charges, the Ld. AR explained the nature of expenses included in the Hotel& boarding expenses and are incurred for the purpose of business and to look for new avenues/ contacts for expansion in new places. The expenses are reasonably incurred for business activity and comparing to the turnover of the assessee business, the expenses are minimal. The Ld. AR emphasizes the facts of Turnover and demonstrated the chart placed at page 123 of the paper book where the turnover/ consultancy services & expenses of the assessee for the earlier & subsequent assessee Years are disclosed. We find the submissions of the Ld.AR are realistic and duly supported by the material evidences. We considering the facts and submission are of the opinion that the A.O. has not doubted the claim of expenses and we find the ratio of the Hotel & Boarding expenses to turnover is 3.8%, which is

reasonable. Accordingly, we set aside the decision of the CIT(A) on this disputed issue and direct the Assessing officer to delete the disallowance and allow the ground of appeal in favour of the assessee.

10 (ii) The second disputed issue in with respect to the car hire charges restricted to @ 5% by the CIT(A), we find that the CIT(A) has considered the overall facts and the transactions made by the assessee and has restricted to 5% but the traveling expenses are basic necessity of the business in the consultancy services of mining activities and play a key role in assessee's business, Since the assessee could not substantiate completely the travel expenses and has not submitted supporting evidences, we deemed it appropriate to restrict the disallowances to @2% as against@5% and modify the order of the CIT(A) on this disputed issue and partly allow the ground of appeal of the assessee.(iii) The third disputed issue is with respect to disallowance of foreign travelling expenses for want of information by the A.O. The Ld. AR submitted that the assessee for various reasons could not submit the explanations and details and prayed for an opportunity to substantiate with the material

evidences before the lower authorities. We considering the principles of natural justice shall provide one more opportunity to the assessee . Accordingly, we remit the disputed issue to the file of the assessing officer for limited purpose for submission of details and the A.O. to verify the claim and decide on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and we allow this ground of appeal for statistical purposes.

11.(iv) The fourth disputed issue is with respect to disallowance u/s 14A, the Ld. AR referred to the balance sheet at page 30 of the paper book and also noncurrent investments at page 35&36 of paper book which consist of long term listed quoted/unquoted shares. The contentions of the Ld. AR that the investments made by the assessee are less than own funds/ surplus funds and such investments are made out of own funds and interest bearing barrowed funds are not utilized for investments. We are of the opinion that there is a presumption that when the surplus funds/own funds are available and the investments are out of surplus funds. Further on perusal of the

assessment order, there is no discussion by the A.O. on the balance sheet or surplus funds and the A.O. has not recorded the satisfaction on the applicability of the provisions. Accordingly, we set aside the decision of the CIT(A) on this disputed issue of sustaining the disallowance U/sec14A r.w.r 8D(2) of the I T rules and restore the disputed issue to the file of the Assessing officer to recompute the disallowances considering the availability of own funds as per the Audited financial statements and the details filed. Accordingly the ground of appeal raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 27.06.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 27.06.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai