

**IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI TARVINDER SINGH KAPOOR, ACCOUNTANT MEMBER
 AND
 SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No. 452/M/2011
[Assessment Year: 2007-08]

Netgear Technologies (India) Pvt. Ltd., Suite# 403, Paharpur Business Centre, 21 Nehru Place, New Delhi-110019 PAN-AACCN0798H	<u>Vs</u>	DCIT, Circle 2(2) (OSD) Mumbai.
APPELLANT		RESPONDENT
Appellant by		Sh. Vishal Kalra, Adv. & Ms. Vibha Bhatija, Adv.
Respondent by		Sh. Abhishek Kumar, Sr. DR
Date of hearing		29.06.2022
Date of pronouncement		03.08.22

ORDER

PER CHANDRA MOHAN GARG, JM:

This appeal has been filed by the assessee against the order of CIT(A), for A.Y. 2007-08 dated 1.11.2010 by raising following grounds of appeal:

“1. (a) *The Ld. CIT(A) has erred in law and on the facts and the circumstances of the case whilst disallowing advertisement and marketing expenses of Rs 52,70,793/- out of total expenditure of Rs 2,63,53,965.*

(b) The Ld. CIT(A) has erred in law whilst making adhoc disallowance of 20% of the total advertisement and marketing expenses of Rs 2,63,53,965 i.e. Rs. 52,70,793/-.

(c) The Ld. CIT(A) has made the disallowance by wrongly observing that the appellant has not been able to fully justify the business needs of the expenditure incurred towards meeting, gifts, expenditure on show, dinners at hotel etc.

(d) The Ld. CIT(A) has erred in law in ignoring the fact that evidences were provided in support of the advertisement and marketing expenses of Rs 2,63,53,965.”

2. The learned counsel submitted that the AO made disallowance of 1/3rd of total claim of assessee towards advertising and marketing expenses without any basis by wrongly observing that the assessee has not substantiated its claim, by way of supporting documents. The learned AR also pointed out that during first appellate proceeding the assessee also filed supporting evidence and the learned CIT(A) called report from the AO. The AO in his remand report only stated the reasons for passing ex parte order u/s 144 of the Act and requested the learned CIT(A) to decide the appeal on merits without any comment on the documents submitted by the assessee and without disbelieving or dismissing this vital supporting evidence in support of claim of assessee towards advertising and marketing expenses. The learned AR also submitted that the AO has also taken a ground of higher claim on this head in comparison to earlier year but the earlier year was the first year of operation wherein only 9 months working on half capacity was done but in this present assessment year by the assessee was in full function for whole

year - expenditure was higher in comparison to earlier year. Therefore, the CIT(A) was not correct in restricting the disallowance to 20% of total claim by wrongly observing that a substantial amount of expenditure have been incurred on meeting gifts, expenditure on shows, dinners at hotel etc. He drew our attention to page 118 & 119 of assessee's PB and submitted that the entire details of total/all expenditure on advertising and marketing clearly show that no expenditure has been incurred by assessee on the meetings, gifts, expenses on shows and dinner at hotel etc. Therefore, 20% disallowance is also not sustainable as all the payments have been made through bank after deducting TDS and no cash payment has been made.

3. The Sr. DR relied on the order of learned CIT(A) and submitted that the expenses on meetings, gifts, dinner and show cannot be allowed as advertising & marketing expenses . Thus appeal may kindly be dismissed

4. On careful consideration of above the AO made disallowance of 1/3rd which was restricted to 20% by the learned CIT(A). It is not a case of CIT(A) that the expenditure was not for the purpose of business of assessee and he simply sustained disallowance to 20% of total claim by observing that the expenses on meetings, gifts, shows and dinners cannot be allowed. We are satisfied with the contention of learned AR that the expenses was higher in comparison to earlier year due to full year operation of business on higher level and the expenditure has been calculated in the claim towards meetings, gifts, shows and dinner at hotels. From the details available at pages 118 & 119 it is also clear that all payments have been made through banking channel and after deducting TDS, no cash

payment has been made on this head of advertising & marketing. Therefore, we are unable to agree with the basis and cause taken by the learned CIT(A) for restricting the claim to 20% of total claim. Therefore, grounds of appeal are allowed and AO is directed to delete the disallowance in totality.

5. In the result assessee's appeal is allowed.

Order pronounced in open court on 3/08/22.

Sd/-
(TARVINDER SINGH KAPOOR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI