

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No.1527/Mum/2018
(Assessment year : 2011-12)

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| ITO 8(1)(4), Mumbai Room No.662, M.K. Road, Aayakar Bhavan, Mumbai-400 020 | vs | M/s Quest 2 travel.com India Pvt Ltd 28 th Floor, The Ruby, Senapati Bapat Marg, Dadar (West), Mumbai-400 028 PAN : AAACO0519P |
| APPELLANT | | RESPONDENT |

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| Assessee represented by | Shri Satish Jain |
| Department represented by | Shri C.T. Mathews, SR AR |

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| Date of hearing | 03/06/2022 |
| Date of pronouncement | 01/09/2022 |

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the Revenue against the order of the Ld. Commissioner of Income-tax (Appeals) dated 22/12/2017 passed under section 250 of the Income-tax Act, 1961 pertaining to assessment year 2011-12.

2. The grounds of appeal are as under:-

"1. The learned CIT(A) erred in deleting the disallowance of overdraft interest of Rs 45,09,669/- The CIT(A) failed to seed that debiting of interest and increase in debit balance in account is not actual payment as defined in explanation 3d to section 43 B.

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2. The learned CIT(A) has erred in deleting the disallowance made towards discount of Rs 1,47,02,391/-. The learned CIT(A) should have realized that the

assessee had produced only computer generated bills which are neither signed by the assessee nor by the client. The learned CIT (A) did not appreciate the facts and circumstances of the case indicated in the assessment order and remand report.”

2. The brief facts of the case are that the assessee company is engaged in the business of travel management, ticketing and allied business. The assessee company filed its return of income on 23/09/2011 for the impugned assessment year declaring total income of Rs.23,56,450/-. The assessee's case was selected for scrutiny and assessment order under section 143(3) was passed on 24/03/2014 determining total income at Rs.2,91,78,670/- wherein the assessing officer has disallowed interest expenses of Rs.45,09,669/- as per Explanation 3(d) to section 43B and disallowance made towards discount of Rs.1,47,02,391/- on the ground that the assessee has produced only computer generated bills which are neither signed by the assessee nor by the client. The assessee was in appeal against the said order before the Ld.CIT(A), who deleted the said disallowance on the ground that the assessee has paid Rs.33,01,931/- as interest to the banks as opposed to Rs.45,09,669/- as determined by the assessing officer. The Ld.CIT(A) has stated that the bank charges amounting to Rs.12,07,738/- does not come under the purview of interest and also that there was no overdraft in Axis Bank account after January, 2011 and in Yes Bank from November, 2010. The Ld.CIT(A) has also stated that Axis Bank and Saraswat Bank has furnished certificates stating that the assessee has paid interest before 30/04/2011 and Yes Bank has also certified showing date-wise payment of interest and that no interest payment was outstanding as on 31/03/2011. The Ld.CIT(A) has also observed that there were deposits in all these accounts after the date of debit of interest by the

banks which are much more than the interest debited by the banks. On the said observation, the Ld.CIT(A) has deleted the disallowance made under section 43B of the I.T. Act for Rs.45,09,669 on account of interest payments to the banks. Aggrieved by the said order, the Revenue is in appeal before us.

3. With regard to ground 1, the Ld.DR has contended that the assessee has failed to comply with the provisions of section 43B(e) and Explanation 3D thereto and that the said interest was paid after the due date of filing of return of income under section 139(1) and also that the assessee is not entitled to the claim on the ground that the said interest expense towards OD account pertains to scheduled bank which is not admissible as per section 43B.

4. The Ld.AR, on the other hand, relied on the decision of Ld.CIT(A), who, in turn has relied on the decision of Hon'ble Calcutta High Court in the case of CIT vs Srikant Phumbhra 387 ITR 523 (Cal) which has held that on a similar issue where interest was debited by bank in OD account and was disallowed by the Assessing Officer, the issue was decided in favour of the assessee. The Ld.AR placed his reliance on the said decision and also relied on the order of the Ld.CIT(A).

5. Having heard both the learned representatives on ground 1 and perused the materials on record, it is evident that the total amount of interest paid by the assessee to the bank is Rs.33,01,931/- and the Assessing Officer has erroneously included the bank charges amounting to Rs.12,07,738/- totalling the disallowance to the tune of Rs.45,09,669/-. It is pertinent to point out that the banks mentioned above have categorically certified that interest has been paid before 30/04/2011 in case of Axis Bank and Saraswat Bank and before 31/03/2011 in case of Yes Bank which shows that there is no outstanding interest payment as on these dates, respectively. The fact that the deposits in

these accounts were made subsequent to the date of debit of interest by the banks which are much more than the interest debited by the banks. From the submission of the assessee, it is seen that the assessee had filed additional evidence before the Ld.CIT(A), which includes copies of bank statements reflecting interest debited in assessee's account for each month, which are calculated as under:-

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|---------------|-------|------------------------|
| Axis Bank | | Rs. 4,68,657/- |
| Yes Bank | | Rs. 4,91,430/- |
| Saraswat Bank | | <u>Rs. 23,41,844/-</u> |
| Total | | <u>Rs.33,01,931/-</u> |

It is also stated by the assessee that interest for the OD account is debited by the bank month to month and that in case of Axis Bank and Yes Bank, the OD accounts were converted into deposit account from January, 2011 and November,2010, respectively which shows that the interest upto the said date was paid much before the deposits. Similarly, in the case of Saraswat Bank interest paid was to the tune of Rs.23,41,844/- on OD account whereas the interest received on fixed deposits for Rs.8,71,00,000/- was Rs.25,95,463/- which is evident that the receipt of interest is much higher than the interest paid. The assessee has also contended that the overdraft balance never exceeded the sanctioned limit at any point of time and that the assessee further contends that the assessee could have very well withdrawn the amount from the bank but whereas the assessee's deposits was subsequent to the debit of interest from the OD account.

6. From the above observation and by respectfully following the decisions cited above, we are of the considered view that the disallowance made by the Assessing Officer under section 43B(e) of section on interest payment to the

banks does not warrant merit and we find no infirmity in the decision of the Ld.CIT(A) on this issue. Ground 1 of the Revenue is dismissed.

7. Ground 2 pertains to disallowance made towards discount of Rs.1,47,02,391/- pertaining to the discount allowed / passed on to the customers on sale of air tickets which is allowable as expenses. The Assessing Officer has disallowed the discount on the ground that the signature of the recipients is not there on the sales bills. It is observed that the assessee is a accredited IATA member and was acting as a ticketing agent for various airlines. The assessee stated that being a .com company, the assessee was carrying out its business transaction with the help of computer software which generates details pertaining to each travel ticket issued by the assessee to its customers alongwith details of administrative charges including the customer discount as per the software. It is stated that while booking the ticket, the billing details are automatically sent to accounts' software as pre-determined wherein bills are created for the customers. The assessee states that there is a client – master relationship in the software and bills are automatically generated and transmitted through emails to the clients. The assessee is not into the practice of preparing physical bills and that the computer generated bills are neither signed by the assessee nor by the client. Such bills do not contain the addresses of the clients and also all the payments to such booking were through cheques. The assessee further stated that when the bill is issued and net amount is received from the customers, the discount is automatically calculated. The assessee further submitted that it has been into the practice of such discounts even in subsequent years and that only the percentage of such discount varies between 44% to 74% of the amount received over the years. In the impugned year, the said percentage of discount was calculated to be 68%

and the sole purpose of giving such discount was to maintain the customers owing to heavy competition in this field. The bills contain details as per the name of customers, date, reference number, PNR number of tickets, discount allowed for each ticket issued, the sample copies of which were given to the Assessing Officer, who failed to accept the same on the ground that the sample copies were self made computer printouts showing deduction of handling charges which does not have the signature of recipients and also which lack complete address of the customers receiving such discounts. The Assessing Officer has also made disallowance on the ground that the assessee has failed to submit any confirmation with regard to the actual discount paid as handling charges. Aggrieved by the said disallowance, the assessee preferred appeal before the Ld.CIT(A), who deleted the said disallowance on the ground that the said discount was part of the bill raised on the customer and that there is no requirement of physical bills in such cases. The Ld.CIT(A) accepted the assessee's claim that only net amount of the bill is debited to the customer's account and the payment received by the assessee is only on the net amount which does not doubt the passing of discount to the customers. The Ld.CIT(A) has also held that the Assessing Officer has failed to rebut the submission of the assessee by not bringing anything on record to show that the assessee has received any amount over and above the net amount billed to the customers. The Ld.CIT(A) has also laid emphasis that the transaction was only through cheque and that it is a common practice on the part of the agents to pass out part of commission received from the airlines to the customers.

8. From the above observation, it is evident that the Assessing Officer had not denied the authenticity of the vouchers or invoices filed by the assessee during the assessment proceedings, but has stated that the said invoices does

not bear the signature of the recipient who is benefitted from the said discount. The assessee has substantiated his claim that the computer generated bills will not contain the signature of neither the assessee nor the customers. The Assessing Officer has also failed to establish the fact that the assessee has received any sum over and above the net amount billed to the clients. Apart from the fact that these vouchers are unsigned, the Assessing Officer has failed to justify the disallowance of Rs.1,47,02,391/- claimed as handling charges / discounts given by the assessee to its customers. We find no infirmity in the order of the Ld.CIT(A).

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 01st September, 2022.

Sd/-

sd/-

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| (OM PRAKASH KANT) | (KAVITHA RAJAGOPAL) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

Mumbai, Dated: 01/09/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai