

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 3624/DEL/2019 (A.Y 2013-14)

Ms. Sylvia Moin, C-134, Ground Floor, Defence Colony, New Delhi – 110 024. PAN No. BAJPM1665B	Vs.	ACIT, Central Circle : 19, New Delhi.
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AND

I.T.A. No. 3625/DEL/2019 (A.Y 2014-15)

Ms. Sylvia Moin, C-134, Ground Floor, Defence Colony, New Delhi – 110 024. PAN No. BAJPM1665B (APPELLANT)	Vs.	ACIT, Central Circle : 19, New Delhi. (RESPONDENT)
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Assessee by :	Shri Hiren Mehta, C. A.; & Shri Nirbhay, Advocate.
Department by:	Shri R. S. Yadav, Sr. D. R.;

Date of Hearing	29.08.2022
Date of Pronouncement	02.09.2022

ORDER

PER YOGESH KUMAR U.S., JM

These two appeals are filed by the assessee for assessment years 2013-14 and 2014-15 against separate orders of the Id. Commissioner of Income Tax (Appeals)-27, New Delhi, both dated 25.02.2019.

2. The assessee has raised the following common substantive grounds of appeal (except for the amounts):-

“1. That on the facts and circumstances of the case and in law, the order passed by CIT (A)-27, New Delhi (hereinafter referred to as CIT (A)), is contrary to the facts and bad in law.

2. That on the facts and circumstances of the case and in law, the CIT (A) was not justified in restricting the adhoc addition of Rs.69,08,349/- made by the AO by disallowing 50% of expenses to Rs.27,63,339/- (being 20% of the expenses disallowed by the assessing officer) without considering the submission made by the appellant during the course of appellate proceedings that the alleged expenses have been exclusively incurred for the purpose of the business of the appellant company and properly supported by evidence.

3. That the CIT (A) was not justified to restrict the adhoc addition to 20% of the disallowance made by the AO on the basis of findings given in the remand report without pointing out any specific defects in the documents filed during the course of appellate proceedings by the appellant to verify the alleged expenses.”

I.T.A. No. 3624/DEL/2019 (A.Y 2013-14)

3. A search & seizure and survey operation u/s 132 A/133A of the Act were conducted on 15/02/2104 and subsequent dates in the case of the assessee along with other cases of the AMQ Group at various residential and business premises. The assessment proceedings have been initiated and an assessment order u/s 153A read with Section 143(3) of the Act came to be passed on 29/12/2016 by making an addition of Rs. 15,00,000/- holding the same as unexplained credit u/s 68 of the Act and further made addition of Rs. 69,08,349/- on account of disallowance of 50% expenses u/s 40A(1) of the Act. Accordingly, the income of the assessee has been computed at 1,17,02,400/- as against declared income of Rs. 32,94,054/.

4. As against the assessment order dated 29/01/2016, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) has partly allowed the Appeal by deleting the addition of Rs. 15,00,000/- made by the assessee on account of unexplained credit u/s 68 of the Act, further, partly allowed the ground in respect of addition of Rs. 69,08,349/- by restricting to 20% of the expenses claimed interest of 50% considered by the A.O. Thus, disallowance has been restricted by the Ld.CIT(A) to Rs. 27,63,339/-.

5. Aggrieved by the order dated 25/02/2009 of the Ld.CIT(A), the assessee has preferred the present appeal. It is to be noted that the Department has not field any Appeal against the said order of the Ld.CIT(A) .

6. We have heard the parties, perused the material on record and gave our thoughtful consideration.

7. The Ld. Counsel for the assessee submitted that the Ld.CIT(A) has not considered the submission made by the assessee during the course of the

Appellate Proceedings that the expense claimed by the assessee exclusively incurred for the purpose of the business of the assessee company and properly supported by the evidence. Further, submitted that the Ld.CIT(A) has not justified to restrict the ad-hoc addition to 20% of the disallowance made by the A.O on the basis of finding given in the remand report without pointing out any specific defects in the documents filed during the course of the appellate proceedings by the assessee to verify the expenses.

8. Per contra, the Ld. DR relied on the order of the Ld.CIT(A) and submitted that the order of the Ld.CIT(A) requires no interference.

9. We have heard the parties, perused the material on record and gave our thoughtful consideration. The Ld.CIT(A) while restricting the disallowance to 20% of the expenses claimed interest of 50% considered by the A.O has observed hereunder:-

“8.2. I have gone through the facts of the case, written submissions of the appellant, findings of the Assessing Officer in the assessment order and thereafter remand report dated 11.12.2018 of AO on this issue. This ground pertains to the ad-hoc disallowance @50% at Rs.69,08,349/- made by AO on account of certain expenses like event expenses, business promotion, courier charges, telephone expenses and travelling expenses incurred by the appellant during the year under consideration by holding in the assessment order that the appellant had not furnished the bills/supporting documents during the course of assessment proceedings despite specifically asked by the AO. On this ground of appeal, during the course of appellate proceedings, the appellant has contended that the appellant is maintaining all the bills/supporting documents but the same could not be filed during the course of assessment proceedings

and in this regard also filed an application for admission of additional evidence which have been duly considered and the remand report has been called for from the Assessing Officer which was filed on 11.12.2018. After considering the remand report filed by the Assessing Officer, it was observed that the Assessing Officer during the course of remand report proceedings has issued notice u/s 133(6) randomly to two parties from whom the appellant had claimed to paid for these expenses. Out of which in the case of one party namely M/s Black Hat the notice sent has been returned back with remarks "left" and in the case of another party namely M/s Rama Tent House the balance has been confirmed. In response to which the appellant has submitted that as the transaction from the party was carried out in the year 2013-14 there is a possibility that the address of the party has been changed and filed the ledger account of the party and made oral submission that all the transactions with the party are done through banking channel only. The primary reason for disallowance is that bills/supporting documents could not be filed by the appellant but considering the nature and volume of business of the appellant coupled with the fact that bills/supporting documents have now been filed by the appellant, but in some cases there are chances that these expenses might not been incurred for the business of the appellant due to non-confirmation/non-verifiability of facts. In totality of circumstances, it is observed that:

- The appellant has produced all the bills/vouchers, which were sent to AO during remand and no specific defect has been pointed by the AO.*
- The AO has chosen a sample of two parties for examination to whom payments have been made. The notice u/s 133(6) has*

come back from one party with remarks "left". It is not a case where notice had been served & no compliance has been made or notice has been returned back with remarks "no party exists". Remarks "Left" indicate that party was existing earlier at this address. Further all the payments have been made by cheque.

- Further the business of the appellant is such that many suppliers change their base as soon as new contracts come in. It is common in film & event management industry. Many suppliers provide "on site services" and mayn't have permanent addresses.*

In such circumstances, the complete verification of expenses may even not be possible. In the absence of such complete verification, the bogus or inflated expenses are difficult to pin point and only an estimation of such expenses can be made. The AO has done estimation @50% of such expenses.

*However considering the above discussion, it cannot be said that all expenditure is verifiable to have been incurred and incurred for business. At the same time, the estimation of disallowance @50% is too high considering that appellant had all the relevant bills/vouchers, payments are through banking channels and peculiar nature of suppliers in this industry. Considering the overall facts and circumstances of the case, **I am of the opinion that disallowance of expenses should be restricted to 20% of the expenses claimed instead of 50% considered by AO. Thus the disallowance is restricted to Rs.27,63,339/-. This ground is partly allowed.***

10. As against the said order and the observations made by the CIT(A), the Department has not filed any Appeal challenge in the deletion made the Ld.CIT(A). It is found that the Ld. CIT(A) after verifying the material on record made specific observation that *“it cannot be said that all expenditure is verifiable to have been incurred and incurred for business. At the same time, the estimation of disallowance @ 50% is too high considering that appellant had all the relevant bills/vouchers, payments are through banking channels and peculiar nature of suppliers in this industry.”*

11. The Ld. Counsel has taken us through the paper book, wherein it is found that the assessee has produced the documents before the CIT(A) and also taken us through the remand report. It is found that the Ld.CIT(A) has not pointed out any specific defects in the documents filed before the CIT(A) and not doubted the genuineness of the same, thus, restricted the expense to 20%. Since, the Ld.CIT(A) has observed that all the relevant bills/vouchers payments are through banking channels and peculiar nature of supplies in industry and more over not pointed out the specific defects in the documents produced by the assessee. In our opinion, if the disallowance of expenses is restricted to 5%, substantial justice would be rendered. Accordingly, we partly allow the Appeal by restricting the disallowance/expenses to 5% disallowed by the A.O. Thus, the disallowance is restricted to Rs. 6,00,835/-.

12. In the result, Appeal in ITA No. 3624/Del/2019 filed by the assessee is partly allowed.

13. We have already decided the Appeal in ITA No. 3624/Del/2019 for Assessment Year 2013-14 by restricting the disallowance/expenses to 5% of the expenses disallowed by the A.O, since the issue involved in this Appeal and Ground raised are identical except the amount involved in the ground. This Appeal is also partly allowed by restricting the disallowance/expenses to 5% of

the expenses disallowed by the A.O. Thus, the disallowance is restricted to Rs. 2,84,275/-.

14. Accordingly, Appeal in ITA No. 3625/Del/2019 is partly allowed for statistical purpose.

Order pronounced in the open court on : **02/09/2022.**

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 02/09/2022

**R.N* Sr. PS*

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI