

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A No.:473/CHNY/2020
निर्धारण वर्ष/ Assessment Year 2016 - 2017

M/s. Kalaingar TV Private Limited,
"Anna Arivalayam"
No.367/369, Anna Salai,
Tynampet,
Chennai – 600 019.

PAN : AADCK 0898E
(अपीलार्थी/ Appellant)

The Assistant Commissioner of
Income Tax,
Vs. Non-Corporate Circle – 20(1),
Aayakar Bhawan – Annexe
Building,
No.121, M.G. Road,
Nungambakkam, Chennai – 600 034
(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/Appellant by : Mr. N. Pavithran, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Mr. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 08.09.2022
घोषणा की तारीख/Date of Pronouncement : 08.09.2022

आदेश /ORDER

PER MAHAVIR SINGH, VP:

This appeal by the Assessee is arising out of the order passed by the Commissioner of Income Tax (Appeals)-14, Chennai in No. ITA No.92/CIT(A)-14/2018-19; dated 22.01.2020. The assessment was framed by the Assistant Commissioner of Income Tax, Non-Corporate Circle – 20(1), Chennai for the Assessment Year 2016 – 2017

u/s.143(3) of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 22.11.2018.

2. The only issue in this appeal of the Assessee is as regards to the order of the Commissioner of Income Tax (Appeals) in confirming the disallowance of the legal expenditure amounting to Rs.59,88,460/- and travelling and conveyance expenses for the Director and Shareholder amounting to Rs.19,75,455/-. For this, the Assessee has raised various grounds which are argumentative and exhaustive but only Ground No.1 is effective which reads as under:

"1. The order of the Commissioner of Income Tax (Appeals) confirming the disallowance of:

(a) Legal expenses of the Assessee company of Rs.59,88,460/- and

(b) Travelling and conveyance expenses for the Director and shareholder of the Assessee company of Rs.19,75,455/- is contrary to the provisions of the Income Tax Act, 1961 and contrary to law, illegal and without any basis."

3. The brief facts of the case are that during the course of the assessment proceedings, the Assessing Officer noticed from the notes to accounts, i.e., Item

Nos.25.1 and Item No.25.2, that during the year, the Assessee company has incurred legal expenditure amounting to Rs.59,88,460/- and travelling and conveyance expenses amounting to Rs.19,75,455/- for legal, travelling and other expenses incurred by the Director and shareholder on behalf of the company for attending the court proceedings at Delhi. The Assessing Officer was not convinced and therefore he had disallowed these two expenses by observing in paragraph No.2.3, as under:

"2.3 As seen from the above, it is clear that the legal expenditure of Rs.59,88,460/- and travelling expenses of Rs.19,75,455/- were incurred for defending its Director-cum-shareholder and another share holder in their personal capacities. At the same time, it is further clear that the amount was not incurred for the purpose of the business of the company and that the amount was reimbursed by the company, though the expenditure in no way pertains to the company. In view of the foregoing legal expenses of Rs.59,88,460/- and travelling expenses of Rs.19,75,455/- are disallowed and added back to the total loss returned by the Assessee."

4. Aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The CIT(A) also confirmed the action of the Assessing Officer as observed in paragraph No.5, as under:

"5. I have carefully considered the assessment order and the written submissions filed by the Appellant during the course of the appeal proceedings. The expenses incurred were towards defending the Director-cum-shareholder and another share holder also were charged in their personal capacities. As rightly pointed out by the Assessing Officer, the legal and travelling expenses are not incurred wholly and exclusively for the purpose of business of the Appellant company. The case laws relied upon by the Appellant are also not applicable to the facts of the Appellant's case. I do not find any reason to interfere with the disallowances made by the Assessing Officer. Therefore, the grounds raised by the Appellant are dismissed."

5. Aggrieved, the Assessee has now come in appeal before the Tribunal.

6. We have heard the rival contentions and had gone through the facts and circumstances of the case. Before

us, the learned Counsel for the Assessee filed a copy of the Tribunal's order in the Assessee's own case in I.T.A. Nos.2442, 2443 & 2444/Chny/2018 dated 20.07.2022; wherein the Tribunal has already set aside the issue back to the file of the Assessing Officer to consider afresh with certain directions. The Tribunal observations in paragraph Nos. 7 to 10 are as under:

"7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book filed by the assessee and written submissions filed by both the parties. The assessee has claimed legal expenses and travelling & conveyance expenses before the Assessing Officer. The Assessing Officer mainly disallowed the expenditure claimed by the assessee on the ground that the legal proceedings was undertaken in respect of the charges framed against the Directors and shareholders of the assessee company for their alleged misconduct and not that of the company for the reason that Kalaingar TV Pvt. Ltd. is a mere recipient of the alleged illegal gratification and as a company it did not involve itself in the process to receive the funds. This process was actually undertaken by the Directors and the shareholder only. It is not a case where the involvement of Kalaingar TV Pvt. Ltd. is being put to test. It is not a case where a complaint has been lodged against Kalaingar TV Pvt. Ltd. for any acts of misdemeanor found in the day to day business of running and telecasting work undertaken by the company. On the contrary, the case before the Special CBI Court is due to alleged involvement of the Director and Share holders of the company in their individual capacity which is put to test the alleged illegal gratification of ₹.200 crores was received by the company on account of the misdemeanors alleged to have been undertaken by

the Director & shareholders of the company. Thus treating the reimbursement of legal expenses and travelling costs of the Director and shareholders of the company to pursue their case against the judicial proceedings at the Special CBI Court at New Delhi as business expenditure of the assessee company is incongruous and hence the same cannot be allowed to be debited as expenditure. On appeal, the Id. CIT(A) confirmed the order of the Assessing Officer by observing that the expenditures are relating to 2G Spectrum Scam in which the directors and shareholders of the assessee company were accused and the assessee could be proved as to how the aforesaid expenditures are incurred to enhance the assessee's business activity and its profit making capability. We have gone through the orders of authorities below and arguments of both the sides and find that the Assessing Officer has disallowed the expenses claimed by the assessee on the ground that the expenditures incurred by the assessee was not for the business purposes and it was relating to 2G Spectrum case and the Directors and shareholders are involved and the expenditures incurred are not for the business of the assessee and it was only relating to legal and travelling expenses to persue the Directors and shareholders' case before the Special CBI Court, New Delhi. We find that at the time of assessment proceedings, the CBI judgement was not available before the Assessing Officer as the assessment order under section 143(3) of the Act was posted on 27.03.2015 and therefore, there was no occasion for the Assessing Officer to examine the judgement of the CBI Court and consider the issue of legal and travelling expenses incurred by the assessee company are eligible under section 37(1) of the Act or not. Whereas, the Id. CIT(A) passed the appellate order on 30.05.2018 by the time the judgement dated 21.12.2017 of the Hon'ble Special CBI Court was available. However, the Id. CIT(A), without considering the same, confirmed the order of the Assessing Officer by noting that the expenses are relating to 2G Spectrum Scam. In our opinion, both the authorities below have disallowed the expenditure claimed by the assessee on the ground that it was relating to 2G Spectrum case. Both the authorities below have not

examined the outcome of the Special CBI Court judgement. Further, we are of the opinion that whether the expenses incurred by the assessee relating to business and eligible for claiming deduction or not, one must look into the judgement of the Special CBI Court, where, the Directors and shareholders of the assessee company are accused and both the authorities below have failed to consider the judgement of the Hon'ble Special CBI Court. In view of the above, we set aside the order of the Id. CIT(A) and remit the matter back to the Assessing Officer to decide the issue afresh in accordance with law after examining the judgement of Hon'ble Special CBI Court.

8. Similar issue on identical facts has been raised in the appeals for the assessment years 2013-14 and 2014-15. Accordingly, we remit the matter back to the Assessing Officer to decide the issue afresh in view of our above decision in the assessment year 2012-13.

9. In the assessment year 2014-15, the assessee has also raised limitation issue. However, the Id. Counsel has not pressed the above ground, the said ground is dismissed as not pressed.

10. In the result, the appeals filed by the assessee for the assessment years 2012-13 and 2013-14 are allowed for statistical purposes and the appeal for the assessment year 2014-15 is partly allowed for statistical purposes."

When a query was put up to the learned Senior Departmental Representative as well as the learned Counsel for the Assessee, both agreed that on the similar directions the matter may be sent back to the file of the Assessing Officer.

7. After hearing both the sides and on going through the facts and circumstances of the case, we set aside the orders of the Assessing Officer and that of the Commissioner of Income Tax (Appeals) and remand the matter back to the file of the Assessing Officer for fresh adjudication.

8. In the result, the appeal of the Assessee in I.T.A No.:473/CHNY/2020 is allowed for statistical purposes.

Order pronounced in the court on 8th September, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 8th September, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF