

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

डॉ. मनीष बोराड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 2058/Kol/2019
Assessment Year: 2015-16**

***Argo Tech India Pvt. Ltd.....Appellant
[PAN: AAICA 7107 M]***

Vs.

ITO, Ward-8(1), Kolkata.....Respondent

Appearances by:

Sh. Manish Tiwari, FCA, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, (D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : August 1st, 2022

Date of pronouncing the order : October 31st, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2015-16 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-23, Kolkata [in

short ld. "CIT(A)"] dated 22.07.2019 which is arising out of the assessment order framed u/s 143(3) of the Act dated 28.12.2017.

2. The assessee is in appeal before this Tribunal raising the following grounds:

"1. (a) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in not adjudicating rent payment of Rs. 3,30,000/- to parties by banking mode out of total disallowance of Rs. 6,97,500/-

(b) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in not mentioning Rs. 3,67,500/- (being balance of disallowed rent of Rs. 6,97,500/-) though agreed and actually allowed by him in his order.

2. That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the disallowance of 48,92,421/- on account of technical service charges.

3. (a) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the disallowance of Rs. 3,51,116/- towards car repair charges under the head Repairs & Services Charges as being capital and personal in nature.

(b) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in Rs. 2,27,128/- towards renovation charges under the head Repairs & Services Charges as being capital and personal nature.

(c) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in not adjudicating the disallowance of expenses made by AO amounting to Rs. 1,23,596/- & Rs. 86,236/-.

4. That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the disallowance of statutory Audit fees of Rs. 3,42,000/- under the head professional fees.

5. That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the disallowance of business promotion expenses amounting to Rs. 7,48,970/-.

6. That on the facts and in the circumstances of the case, Ld. CIT(A) has erred in confirming the disallowance of commission charges paid for Rs. 1,87,692/-.

7. That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing.”

3. Brief facts of the case as culled out from the records are that the assessee is a private limited company. Loss of Rs. 19,62,674/- declared in the e-return filed on 30.11.2015. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. Submissions filed by the assessee were considered and after making various disallowances of the expenses, ld. AO assessed the income at Rs. 78,23,138/-.

4. The assessee preferred appeal before ld. CIT(A) and got part relief.

5. Aggrieved, now the assessee is in appeal before this Tribunal. At the outset, ld. Counsel for the assessee requested for not pressing ground nos. 3(a), 3(b) & 3(c). Therefore, the same are dismissed as not pressed.

6. As regards the remaining disallowances, ld. Counsel for the assessee stated that the disallowances confirmed by ld. CIT(A) are mostly ad-hoc in nature and both the ld. authorities failed to consider that books of accounts are duly audited.

7. Per contra ld. D/R vehemently argued supporting the orders of both the lower authorities.

8. We have heard rival contentions and perused the records placed before us.

Ground No. 1:

9. This ground relates to disallowance of rent expenditure at Rs. 6,97,500/- which includes Rs. 3,30,000/- for the alleged bogus claim of rent and remaining Rs. 3,67,500/- being disallowance u/s 40(a)(ia) of the Act for non-deduction of tax on rent paid at Rs. 12,25,000/-. We find that when the matter travelled before Id. CIT(A), he erred in considering the correct figures of rent disallowance. He ought to have dealt with the issue of disallowances of rent at Rs. 3,30,000/- & Rs. 3,67,500/- separately but in the finding, he has deleted the disallowance u/s 40(a)(ia) of the Act but wrongly mentioned Rs. 3,30,000/- which ought to have been correctly mentioned at Rs. 3,67,500/-. Therefore, so far as the disallowance u/s 40(a)(ia) of the Act is concerned, the same already stands deleted by Id. CIT(A).

9.1. As regards the disallowance of Rs. 3,30,000/- is concerned the assessee has claimed that the same was paid through banking channel and included payment of Rs. 1,54,000/- paid to Mrs. Sangeeta Bhartia, Rs. 22,500/- to Mrs. M. Mallickavalli, Rs. 1,42,200/- to Smt. G. Nookaratnam. Necessary evidences have also been filed in the paper book in support of this claim. Though Id. CIT(A) has not dealt with this issue, however looking to the fact that the assessee being a private limited company of which books of accounts are regularly audited and has paid the rent through account payee cheque and permanent account numbers of all the three parties are duly submitted, we find no reason to doubt the genuineness of the said claim. Therefore, the disallowance at Rs.

3,30,000/- is deleted. Hence ground no. 1 [1(a) & 1(b)] raised by the assessee is allowed.

Ground No. 2:

10. This ground relates to disallowance of technical service charges at Rs. 48,92,421/-. The said amount was paid to Bhavishya International towards the consultancy charges from April, 2014 to March, 2015 but the contents of the bill were not clear as to whether they pertain to the year under consideration. When the matter travelled before Id. CIT(A), he noticed that the assessee failed to produce the bank statement and the bank book of the said transaction and the notice issued to M/s. Bhavishya International u/s 133(6) of the Act returned unserved. Further, there was failure on the part of the assessee to file relevant details to satisfy Id. AO about the genuineness of the expenditure. Before us, the assessee has filed the consultancy agreement dated 12.03.2014 signed by the managing partner of M/s. Bhavishya International.

10.1. Looking to the facts and circumstances of the case, we are of the considered view that the issue needs to be restored to the file of Id. AO for necessary verification and the assessee is directed to file all the relevant details including bank statement and the nature of consultancy services taken from M/s. Bhavishya International and whether the same can be allowed as a business expenditure. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed to remain vigilant and file necessary documents, if considered necessary, in support of its grounds of appeal and

should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance by the assessee, then ld. AO can adjudicate the issue in accordance with law.

10.2. In the result, ground no. 2 is allowed for statistical purposes.

Ground No. 4:

11. Ground no. 4 relates to disallowance of statutory audit fees at Rs. 3,42,000/-. In the profit & loss account assessee has claimed legal and professional fees of Rs. 5,49,405/- which included sum of Rs. 3,42,000/- on account of statutory audit fees for the FY 2014-15. Ld. AO treated the said sum as provision and disallowed the same. Even ld. CIT(A) could not appreciate the fact that as per the mercantile system of accounting, the assessee has rightly claimed the statutory Audit fees as expenditure for the year to which it pertains. The alleged statutory audit fees was for the FY 2014-15 i.e. AY 2015-16 for which the audit work is to be carried out from the close of the year till the finalization of the balance sheet and profit & loss account. In our considered view such claim was rightly made by the assessee. Therefore, finding of ld. CIT(A) is set aside and disallowance of statutory audit fees of Rs. 3,42,000/- made by ld. AO is deleted. In the result, ground no. 4 raised by assessee is allowed.

Ground No. 5:

12. Ground no. 5 relates to disallowance of business promotion expenses at Rs. 7,48,970/- which was made by ld. AO against the total business promotion expenditure claimed at Rs. 14,47,949/-.

Before both the lower authorities, assessee failed to furnish the documents. Before us, ld. Counsel for the assessee stated that the alleged disallowance is 50% of the business promotion expense of Rs. 13,97,949/- reimbursed to the Director.

12.1. We, however, looking to the facts and circumstances of the case and the assessee being unable to furnish relevant details before both the lower authorities but considering the larger interest of justice since the Directors have to incur various expenses on day-to-day basis in the regular course of business of a company, are of the considered view that disallowance of 25% of the said sum of Rs. 13,97,949/- will meet the end of justice. We accordingly confirm the disallowance of Rs. 3,49,487/- and delete the remaining amount.

12.2. In the result, ground no. 5 raised by the assessee is partly allowed.

Ground No. 6:

13. Ground no. 6 relates to disallowance of commission charges at Rs. 1,87,692/-. This disallowance was made by ld. AO on account of mismatch of figures. Assessee claimed to have paid Rs. 10,09,312/- to Mr. G. Venkata Ratnam. But, Form No. 16A submitted by the payee revealed that only 8,21,620/- was paid and therefore, the difference of Rs. 1,87,692/- was disallowed. The assessee failed to succeed before ld. CIT(A) also. However, before us the assessee has made reference to the reconciliation statement providing the details that total debits for the FY 2014-15 was Rs. 9,13,458/- out of which a sum of Rs. 1,74,000/- was reduced

towards reimbursement of expenses incurred by agent during direct shipment on which tax not deductible and on the remaining net commission TDS of Rs. 82,162/- was worked out and therefore, the gross commission was Rs. 8,21,620/- as per the Form No. 16A. We, thus find merit in the submissions made by the assessee and hold that disallowance for commission charges at Rs. 1,87,692/- was uncalled for. Therefore, finding of ld. CIT(A) is set aside.

13.2. In the result, ground no. 6 raised by the assessee is allowed.

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

Kolkata, the 31st October, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 31.10.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Argo Tech India Pvt. Ltd., Suite No. 2A/1, Poonam Building,
5/2, Russel Street, Kolkata-700 071.**
- 2. ITO, Ward-8(1), Kolkata.**
3. CIT(A)- 23, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata