

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 293/JP/2022  
निर्धारण वर्ष/Assessment Years : 2018-19

Marvel Support Consultancy Services Private Limited 303, 3 <sup>rd</sup> Floor Okay Plus Building, Malviya Nagar Industrial Area Malviya Nagar, Jaipur	बनाम Vs.	ACIT/ DCIT, Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGCM 8636 H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 295/JP/2022  
निर्धारण वर्ष/Assessment Years : 2018-19

Deputy Commissioner of Income-tax, Circle-01, Jaipur	बनाम Vs.	Marvel Support Consultancy Services Private Limited 303, 3 <sup>rd</sup> Floor Okay Plus Building, Malviya Nagar Industrial Area Malviya Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGCM 8636 H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 01/11/2022  
उदघोषणा की तारीख / Date of Pronouncement: 14/12/2022

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are the cross appeals filed by the assessee and revenue which is directed against the order of the National Faceless

Appeal Centre, Delhi [hereinafter referred to as (NFAC)/CIT(A)] dated 06.06.2022 for the Assessment Year 2018-19 which in turn arise from the order of the NeAC dated 20.05.2021 passed under section 143(3) r.w.s. 144B of the Income Tax Act [ here in after referred to as 'Act'].

2. In ITA No. 293/JP/2022, the assessee has taken following grounds in this appeal;

“1. Under the facts and circumstances of the case, the learned CIT(A) erred in confirming the action of Assessing Officer allowing TDS credit of Rs. 4790086 instead of Rs. 5642822 even Assessee claimed respective income in the respective year in which TDS was claimed.

2. Under the facts and circumstances of the case, the learned CIT(A) misconstrued/Mis-Interpret the facts and law and the denial of tax credit for TDS under rule 37BA which is contrary to facts, unjustified, arbitrary, erroneous and bad, both in the eye of law and on facts and legally not tenable.

3. Under the facts and circumstances of the case, the decision of learned CIT(A) is quite illegal, arbitrary, without any basis and based on guess, conjectures and bad in law.

4. The appellant prays to leave to, add, alter or amend aforesaid grounds of appeal's at or before the time of hearing of appeal.”

3. In ITA No. 295/JP/2022, the Revenue has taken following grounds in this appeal;

“1. Whether under the facts and the circumstances, the Ld.CIT(A) was justified in deleting the additions made u/s 37(1) of the Act of Rs. 2,63,00,865/-.”

4. The fact as culled out from the records is that return of income was filed on 28/10/2018 declaring total income of Rs. 83,47,660/-. The case of the assessee was selected for limited scrutiny assessment under the E-assessment scheme, 2019 on the two issue (i) Unsecured Loans (ii) Business Expenses. Notice u/s 143(2) of the Income Tax Act, 1961 was served on 28/09/2010. Notice u/s 142(1) of the Act was issued on 11/12/2019 calling details in respect issues for which case has been selected for the scrutiny. The assessee submitted details on 10/11/2020, 5/09/2020 and 27/02/2021. The assessee is a service company, engaged in back-end support activities for banking & insurance companies which majorly consist of infrastructure support, marketing campaigns through road shows, distribution of pumps-lets, installation of canopies, mailers and SMS to insurance company's customers, distribution and delivery of insurance policies to customers. The business promotion & marketing expenses incurred by the assessee are for the promotion of business of clients. During the year, the assessee claimed sales promotion of Rs. 5,51,07,678/- which is 48% of total turnover of Rs. 11,52,27,253/-. Sale promotions expenses claimed is 49% of total expenses of Rs. 11,20,79,703/-.

5. In ITA No. 293/JP/2022 & 295/JP/2022, the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted here in below;

“Facts & Submission:-

1. In the return filed by the assessee it claimed credit of TDS of Rs.56,42,822/- (APB 67-68). It includes TDS credit of Rs.8,52,736/- (APB 68-69) which was deducted by the deductor in AY 2017-18 (APB 35-40) but the same was not claimed in that year in as much as income in relation to said TDS was offered for tax in the year under consideration.

2. The AO in the computation sheet (APB 11) allowed the credit of TDS at Rs.47,90,086/- instead of Rs.56,42,822/- claimed by the assessee.

3. The Ld. CIT(A) at Pg 14 of its order observed that income is taxable in the year under consideration but the deductor deducted the tax in earlier year and included the same in the TDS return of that year. Therefore, the deductor should revised the TDS return for earlier year as well as of this year. After the deductor revises the TDS return, AO can give credit of balance amount of TDS. Therefore, AO cannot be directed to give credit of TDS which is not reflected in the deductor's TDS return.

4. It is submitted that the Ld. CIT(A) has grossly misconstrued the provision of section 199 read with Rule 37BA and the income tax return form. Sub-rule 3 of Rule 37BA specifically provides that credit of tax deducted at source and paid to the Central Government shall be given for the AY for which such income is assessable. The income of Rs.90,23,072/- on which tax of Rs.8,52,736/- was deducted has been assessed in the year under consideration and therefore as per the provisions of the Act, credit of the same has to be allowed in the year under consideration. In the return filed for AY 2017-18 in which such tax was deducted at source, assessee has not claimed the credit as is evident from S. No.15B1 (APB 35-40) where such amount has been reflected as carried forward. Therefore, the Ld. CIT(A) has erred in taking a view that the deductor should revised the TDS return for earlier year as well as of this year ignoring that there is no provision for such revision under the Act.

5. Reliance is placed on the decision of Hon'ble ITAT, Indore Bench in case of Shivganga Drillers (P) Ltd. Vs. CPC (2022) 195 ITD 555 where it is held that if assessee company had offered to tax relevant income out of which TDS was deducted in AY 2017-18, credit of TDS was to be allowed during AY 2017-18 in accordance with mandate of section 199

read with Rule 37BA even though payers had deducted TDS in financial year relevant to AY 2018-19.

In view of above, AO be directed to allow the credit of TDS of Rs.8,52,736/- not allowed by him.

Departmental Appeal

Only Ground

*Whether under the facts & circumstances, the Ld. CIT(A) was justified in deleting the addition made u/s 37(1) of the Act of Rs.2,63,00,865/-.*

*Facts:-*

1. The assessee is engaged in providing customized back end support services. It mainly consists of infrastructure support, marketing campaigns through road shows, distribution of pamphlets, installation of canopies, mailers and SMS to customers, arranging conferences, etc. as per the requirement of customers.

2. During the year assessee incurred expenditure on business promotion and marketing of Rs.5,51,07,678/- for the promotion of business of its customers. The AO observed that against the receipt of Rs.9,06,26,927/- the expenditure incurred is Rs.5,51,07,678/- which is 61% of the receipt. In some of the cases as tabulated at Pg 3 & 4 of the assessment order, the expenditure is to the extent of 109%, 91%, 71% and 51% of the receipt. In the previous year the expenditure was 25% of the receipt. The assessee has not brought on record any estimation shared with its clients or correspondence to that effect which could suggest that assessee would incur the particular amount of expense towards the back end support activity of the client. AU Small Finance Bank Ltd. where the expenditure incurred is 91% of the revenue has confirmed the amount paid to the assessee but the same is not for expenses incurred by the assessee against such receipt. Accordingly, AO restricted the sales promotion expenses to 25% of the turnover of Rs.11,52,27,253/- and thus, allowed the expenses to the extent of Rs.2,88,06,813/- and disallowed the balance amount of Rs.2,63,00,865/- u/s 37(1) of the Act.

3. The Ld. CIT(A) at Pg 13 & 14 of the assessment order after considering the submission of assessee, confirmation of AU Small Finance Bank Ltd., details of sales promotion expenses incurred and considering the fact that after exclusion of receipt of AU Small Finance Bank Ltd. and the corresponding sales promotion expenses, the expenditure of Rs.1.67 crores on the remaining receipt of Rs.7.29 crores works out at 23%. The doubt of AO per se cannot be a reason for resorting to addition. No specific instance of booking of bogus expenses or defect in audited accounts has been pointed out. Accordingly, the disallowance made by the AO was deleted.

*Submission:-*

1. At the outset it may be noted that assessee vide its reply dt. 16.04.2021 (DPB 14-22) has furnished the complete details along with the bills/ invoice of the entire sales promotion expenses with nature of services provided, purpose for incurring the expense and name of the customer for whom the expense was incurred. These details are placed at DPB 24-48. From the same it can be noted that assessee has furnished the complete name and address of the vendor and the nature of services obtained from them. All the payments are through banking channel. Section 37(1) of the Act provides that any expenditure not being in the nature of capital expenditure or personal expense of the assessee, laid out or expended wholly and exclusively for the purpose of business shall be allowed in computing the income chargeable under the head business. The AO has not pointed out any expenses claimed by the assessee which is of capital nature or personal expense or for non business purpose or bogus or inflated. Hence, the disallowance made by AO u/s 37(1) of the Act has been rightly deleted by the CIT(A).

2. So far as increase in the quantum of expenditure is concerned, it can be noted that during the year under consideration the assessee carried out the work of investors meet, arranging conferences, making sign boards, etc. in connection with the public issue of shares of AU Small Finance Bank Ltd. As per the understanding with AU Bank they would pay cost + 10% margin to the assessee for this work (DPB 23). Assessee incurred expenditure of Rs.3,84,38,750/- on carrying out this work on which after adding margin of around 10%, the assessee received Rs.4,23,00,000/- from them. For this reason the expenditure incurred is more as compared to last year. After excluding both the receipt and expenditure incurred with reference to the work of AU Small Finance Bank Ltd., the remaining expenditure is Rs.1,66,68,928/- (5,51,07,678-3,84,38,750) on the receipt of Rs.7,29,27,253/- (11,52,27,253-4,23,00,000) which is 22.86% of the receipt. Thus, the reasons for increase in expenditure as compared to the last year is otherwise explained. This apart from the details of sales promotion expenses, the nature of expenditure incurred against the receipt from the specific customer is verifiable. Hence, the adhoc disallowance made by AO has been rightly deleted by Ld. CIT(A).

3. Reliance is also placed on the following case laws:-

Jaipur Electro Pvt. Ltd. Vs. CIT (1997) 223 ITR 535 (Raj.) (HC)  
The relevant Para 11 of the order reads as under:-

*11. The general principle underlying s. 37(1) of the Act is that an expenditure which is found to have been wholly and exclusively made or laid out by a businessman for purposes of his business is to be allowed. There can hardly be any dispute to the proposition that the businessman*

*is the best judge to determine the business expediency and, therefore, when he claims to have incurred a certain expenditure for business expediency his version should ordinarily be accepted. This principle, however, does not debar the assessing authorities to enquire and investigate as to whether such expenditure was actually incurred by the businessman and if incurred whether the same was incurred wholly and exclusively for business consideration. The doctrine that the businessman is the best judge of business expediency does not affect the right, nay duty, of the assessing authorities to know whether it was incurred for business purposes and not for other extraneous considerations.*

Kamal Raheja Vs. ITO (2017) 162 ITD 55 (Luck.) (Trib.)

Where AO disallowed on adhoc basis expenses claimed by assessee under head conveyance and entertainment by assuming that there was disproportionate increase, since section 37(1) nowhere empowers AO to disallow expenditure in above said manner and expenses had been incurred wholly and exclusively for purpose of business, disallowance of said sum should be deleted.

DCIT Vs. ABC Bearing Ltd. (2017) 157 DTR 242 (Mum.) (Trib.)

Assessee having produced complete details of expenditure, adhoc disallowance by AO at 25 per cent as reduced by CIT(A) to 10 per cent on mere surmises without indicating any instance of non-business expenditure could not be sustained.

Pricewaterhouse Coopers Pvt. Ltd. Vs. ACIT (2020) 183 ITD 354 (Kol.) (Trib.)

Where DRP/AO without rejecting books of account of assessee had made adhoc disallowance on suspicion while there was no material showing expenditure not for purpose of business, adhoc additions were to be deleted.

Katira Construction Ltd. Vs. ACIT (2020) 185 ITD 173 (Rajkot) (Trib.)

Where books of account of assessee have not been rejected, onus is on AO to point out specific expenses which were not incurred in connection with business and thereafter he can make disallowance under provision of section 37 and as such there is no provision provided under Act empowering AO to make disallowance on adhoc basis despite fact that assessee consents for such disallowance during assessment proceedings.

In view of above, addition made by the AO is rightly deleted by Ld. CIT(A) and therefore, ground of the department be dismissed.”

**First, we will take up ITA No. 293/JP/2022 filed by the assessee.**

6. The only grievance raised by the Id. AR of the assessee in the appeal filed by the assessee is that the Id. AO and Id. CIT(A) has not allowed the credit for TDS for an amount of Rs. 56,42,822/- as claimed by the assessee but has allowed only to the extent of Rs. 47,90,086/-. Thus, effectively short credit of Rs. 8,52,736/- not given by lower authorities.

7. Consequent to the passing of an order u/s. 143(3) of the Act as against the claim for credit of TDS for an amount Rs. 56,42,822/- only credit to the extent of Rs. 47,90,086/- was allowed. Thus, credit of prepaid taxes to the extent of Rs. 8,52,736/- was denied. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) and the relevant findings of the Id. CIT(A) is recorded at para 6 which is reiterated here in below :-

“6. Ground No. 3

In this ground, the assessee is challenging the TDS credit given of Rs. 47,90,086 as against claim of Rs.56,42,822/-

6.1 Following argument was given in appeal:

QUOTE: Assessee in the return of income filed for the year under assessment had claimed TDS credit of Rs.56,42,822/-. However, AO had given TDS credit of Rs. 47,90,086/- only in order u/s 143(3) and not given TDS credit of Rs.8,52,736/

TDS of Rs.8,52,736/- had been deducted by deductor in AY 2017-18 on advance payment the work of which has been done in AY 18-19. Income for the same had been booked by assessee in AY 2018-19 as per applicable accounting standards and claimed TDS of the same in AY 2018-19. Assessee in the return of income of AY 2017-18 had carried forward TDS credit of Rs.8,52,737/- Copy of ITR is enclosed at Annexure 21 specific page 22 to 27 wherein TDS of Rs.8,52,737/has been carried forward.

As per sub rule 3 of rule 37BA "Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable."

Therefore as per the provisions of the law, TDS credit carried forward by assessee in AY 2017-18 of Rs.8,52,737/- should be given in AY 2018-19 as the assessee has amount on which TDS is deducted in AY 17-18 is assessed in AY 18-19.

In view of above, it is kindly requested to direct AO to give TDS credit of Rs.8,52,737/- to the assessee. UNQUOTE

6.2 I have considered the matter. The procedure for giving credit to TDS is laid down in Rule 37BA. The same is extracted as under:

[Credit for tax deducted at source for the purposes of section 199.

37BA. (1) Credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (hereinafter referred to as deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

(2) 279(i) Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee :

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1).]

(ii) The declaration filed by the deductee under clause (1) shall contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and shall keep the declaration in his safe custody.

(3) (1) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

27a [(3A) Notwithstanding anything contained in sub-rule (1), sub-rule (2) or sub-rule (3), for the purposes of section 194N, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.]

(4) Credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of-

(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority; and

(ii) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.]

From a reading of the Rule, it is seen that credit to TDS has to be given:

1. On basis information furnished by the deductor in the TDS return. 2. In the assessment year in which the income is assessable and  
3. On basis of information contained in the return of income.

In case of present assessee, the income is taxable in this year. But the deductor deducted tax in the earlier year and apparently, included the same in the TDS return of that year. Under this circumstances, the order of the AO cannot be faulted. The only option available, in my considered view, is that the deductor should revise the TDs returns for earlier year as well as that of this year. The TDS on payment for this year should be included in the TDS return for this year. Once the deductor revises the TDS return, the AO can give credit to the balance amount of TDS. In view of the above, the AO cannot be directed to give credit to TDS which is not reflected in the deductor's TDS return."

8. Feeling aggrieved and dissatisfied from the findings of the Id.

CIT(A) the assessee has taken up this issue vide ground no. 1 & 2

by filling an appeal against the order of the Id. CIT(A). On this issue

the Id. AR of the assessee submitted before the bench that in the

ITR-6 for A.Y. 2017-18 there is specific column from where

assessee can carry forward and disclose the amount of TDS

deducted for taking carryforward to subsequent year [Assessee's

paper book Page No. 35 ] in column 15B(1). Based on these

arguments the Id. AR of the assessee submitted that the lower

authorities erred in law as well as in fact in interpreting provisions of

section 199 read with rule 37BA. The Id. AR thus, explained that though the TDS has been deducted in A. Y. 2017-18 but the same was shown as to be carried forward in the year under consideration i.e. A. Y. 2018-19. In the light of this fact Id. AR seek necessary direction to the Id. Jurisdictional A.O. to allow the claim which is in accordance with the provision of law and rules framed there under.

9. Per contra, the Id. DR on this issue fairly accepted the contention and factual arguments supported by the evidence. But at the same time, he has contended that let this issue of offering the income be verified in accordance with the ITR filed by the assessee to the extent of the amount shown as carry forward in A.Y 2017-18 may be considered subject to verification that the relevant income has already been offered in the A.Y 2018-19. The Id. AR of the assessee fairly accepted the proposition of Id. DR.

10. We have heard the rival contentions, the submission placed before us and orders of the lower authorities. Looking to the factual aspect of TDS credit to be given in the year under consideration based on the evidence in the form of ITR filed by the Id. AR of the assessee claiming that the same is already disclosed in the ITR-6

filed. The Id. DR fairly accepting the contention of the assessee not objected to the factual aspects of the case. Based on these arguments supported by the evidences which was fairly accepted by the revenue we are of the considered view that since the law is clear on the issue as to allow the carry forward of the credit TDS in subsequent year and the credit for TDS is required to be matched with the income declared by the assessee. Since the Id. AR demonstrated us that the assessee has followed the applicable method permitted under the law and therefore, he has not objected to the propositions of Id. DR to get this factual aspect be verified by the jurisdictional AO. Based on these set of facts and arguments advanced before us we are of the considered view that the credit for prepared taxes carry forward for A.Y 2017-18 as claimed by the assessee in A.Y 2018-19 is required to be allowed subject to verification of the amount carry forward with that of the income offered in the year under consideration.

11. In the light of these facts, ground no. 1 & 2 raised by the assessee is allowed. Ground no. 3 & 4 being general in nature the same did not require any adjudication.

12. In terms of these observation the appeal filed by the assessee in ITA No. 293/JPR/2022 is allowed.

**ITA No. 295/JP/2022 for the Revenue**

13. In the appeal filed by the revenue, effectively one ground is taken challenging the action of the Id. CIT(A) deleting the addition made by the Id. AO out of the sales promotion expenses for an amount of Rs. 2,63,00,865/-. The fact as succinctly culled from the assessment order is that there is considerable increase in the claim of sales promotion expenses for A.Y. 2018-19 as compared to A. Y. 2017-18 & 2016-17, the sales promotion expenses to turnover ratio 25 % and 16% respectively. Whereas the assessee claimed sales promotion of Rs. 5,51,07,678/- which is 48% of total turnover of Rs. 11,52,27,253/-. To verify this claim of sales promotion expenses, the details were called from the assessee. The assessee submitted client wise sales promotion expenses chart showing sales promotion, bills and bank statement in respect of sales promotion. As regards the other details assessee submitted that no ratio of sales promotion expenses with that of gross profit of the assessee can be calculated. As already stated, the company is in service

sector, the competition is un-matchingly increasing day by day. There are many other companies who are ready to provide the services to assessee's client at much lower rates as compared to assessee. Assessee has no option other than to reduce its margin/rates. The severe competition has effected the assessee so badly that its business has almost vanished. In 2018, the revenue has gone down to Rs. 1152 lacs as against Rs. 3408 lacs in 2017 and in 2019 to Rs. 87 lacs only.

13.1 On 23.02.2021 notice was issued to seek the purpose for the expenses, nature of services provided to client / parties, who attended the event, how such expenses were utilized wholly and exclusively for the purpose of business. Further the assessee was requested to furnish the client wise list of income earned, a copy of agreement. The assessee furnished a chart with the date of payment. However for each entry of sales promotion expense, the assessee has not furnished the purpose for such expenses, nature of service provided by those parties, details of event, and how such expenses were utilized wholly and exclusively for the purpose of the business of the assessee. On perusal of the client wise list of sale promotion expenses and income earned from such clients, it is

noted that there is no consistency/pattern in claim of expenses. Huge variation is seen in % claim of sale promotion expenses over revenue from client. Following is the data of revenue and sale promotion expenses in respect of the clients of the assessee.

Party Name	Revenue from clients	Sales promotion expenses	Ratio %
Ashar Mehta Associates	8,78,267	59,397	7
AU Small Finance Bank	423,00,000	38,438,750	91
Future General India Insurance Co. Ltd	29,16,968	252,450	9
HDFC Bank	1,86,22,724	9,684,431	52
Hdfc Standard Life Insurance Co. Ltd.	36,53,866	68,454	2
Liberty Videocon GIC Ltd.	11,39,990	309,155	27
LOGIMATIX CONSULTANTS PVT LTD	81,66,642	1,721,814	21
Mindpool Management Solution Pvt. Ltd.	3811315	200,000	5
OTS Solutions Pvt. Ltd.	15,00,000	103,288	7
Raghav Enterprises	25,00,000	27,42,959	109
Reliance General Insurance Co.	50,14,200	1,440,065	29
UNIVERSAL SOMPO GIC LTD	1,22,955	86,914	71
Grand total	9,06,26,927	5,51,07,677	61

13.2 It is surprised to see that in once case, more expenses have been incurred than the revenue generated from that client. No prudent business enterprise will spend 109%, 91%, 71%, 51% of its earning on the sales promotion of the client.

13.3 The increase of 23% in the claim of sales promotion expenses as compared to earlier year is not realistic as not supported by the details and supportive documents. However for each entry of sales promotion expense, the assessee has not furnished the purpose for such expenses, nature of service provided by those parties, details of event, and how

such expenses were utilized wholly and exclusively for the purpose of the business of the assessee. The few hotel bills submitted by the assessee were for stay of some persons, but how it is related to sales promotion activity for clients is not explained. For the limited details submitted by the assessee, it cannot be concluded that sales promotion expenses have been incurred wholly and exclusively for the business of the assessee. The onus is on the assessee to prove that sales promotion of Rs. 551,07,678/- has been expended wholly and exclusively for the business of the assessee.

13.4 The ratio of sales promotion expenses to turnover for F.Y 2016-17 was 25%. In view of the above discussion and facts of the case, it is considered rational to limit the sales promotion expenses to 25% of the turnover of Rs. 11,52,27,253/- which amounts to Rs. 2,88,06,813/-. Balance amount of expenses amounting Rs. 2,63,00,865/- is disallowed u/s 37(1) of the Act and added to the income of assessee.

14. Feeling dissatisfied from the findings of the Id. AO the assessee preferred an appeal before the Id. CIT(A) who has considered the appeal of the assessee and has allowed the claim of the assessee and deleted the addition. The relevant finding of the Id. CIT(A) is reiterated here in below :

“4.3 I have considered the matter. It is seen that the reason leading to disallowance were mainly that of substantial increase in ratio of sales promotion expenses as compared to turnover; no consistency in revenue

from particular clients as compared to expenses; non furnishing of purpose and nature of each entry of expenses and that of sales promotion expenses being too high as compared to total expenses. While deciding the matter, the AO had neglected an important aspect of expenses. It is the contention of assessee that the said business promotion and marketing expenses were incurred by assessee for promotion of business of clients. None of the expenses were for promotion of assessee's business. Keeping this fact in mind, it is seen in during the previous year, assessee had total receipt of Rs.4.23 Cr from AU Small Finance Bank. Sales promotion expenses recorded was Rs.3.84 Cr. In this regard, the assessee stated that expenses was incurred by the party and assessee received 10% mark up for the work performed by it. Therefore, it is seen that assessee was receiving only markup portion as profit and major portion of so called business promotion expenses was incurred for client only and not for promotion of assessee's business. After exclusion of AU Small Finance Bank, sales promotion expenses came down to Rs.1.67 Cr on residual turnover of Rs.7.29 Cr. That gave expenses at 23% of receipt.

4.3.1 Be that as it may, the AO had a doubt regarding excessive expense being incurred. This doubt per se cannot be reason for resorting to addition. It can provide the foundation for further investigation. In this regard, the AO had not pointed out any specific instance of booking of bogus expenses. No particular defect has been pointed out in the audited account. In view of this, lump sum disallowance is uncalled for.”

Ground no. 1 is allowed.

15. Revenue did not accept the finding of the Id. CIT(A) in deleting the addition of Rs. 2,63,00,865/- this appeal is filed by the revenue solely challenging the action of deleting the addition. To support the contention raised in this appeal the revenue has relied upon the written submission and the same is reiterated here in below:

“Written brief by the DR in support of departmental appeal

May I please to your Honors

The above cited appeal has been filed by the department against the order of Id CIT(A), NFAC, Delhi in Appeal No NFAC/2017-18/10020255

dated 6.6.2022. Appeal was filed by the assessee against the order of the FAO u/s 143(3) of the Act dated 4.5.2021.

Brief facts:

The assessee is in the field of providing services to corporates for infrastructure/market support. It has claimed sales promotion expenses of Rs 5,51,07,678 against receipts of Rs. 11,52,27,253 which are around 48% of receipts. Selection of the case was for limited scrutiny for examination of correctness, reasonableness and genuineness of sales promotion expenses vis a vis total business receipts of the assessee. The FAO observed that in earlier years sale promotion expenses were 25% and 16% of receipts, respectively, in AY 2017-18 and 2016-17. During assessment proceedings, the FAO has asked for the details and supporting evidences in respect of sales promotion expenses. After examination of details and part evidences filed, the FAO arrived at the conclusion that claim was excessive and thus he has restricted the claim at 25% of receipts and balance amount of Rs 2,63,00,865 was disallowed u/s 37 of the Act assigning following reasons:

(1) Assessee has not furnished the purpose of expenses, nature of services provided, details of event and how the particular expenses was related to any particular receipts. (Para 7 of the A.O)

(2) No consistency in party wise receipts and related expenses and there was huge variation in percentage of claim of expenses vis a vis receipts from a particular party. He observed that in certain cases expenses are up to 91% of receipts and even in one case the expenses are more than the receipts (109% ) (Para 7 of the A.O)]

(3) Assessee has not brought on record any estimation shared with the client or correspondence to the effect that how much expenses will be incurred by the assessee and on what accounts.(Para 12 of the A.O)

Before CIT(A), the assessee submitted its arguments, which have been quoted by the CIT(A) in para 4.2( page 6 to 13 of the order). Ld CIT(A) has deleted the entire addition with following findings in para 4.3 and 4.3.1 of his order

1. AO had neglected the important aspect of the case that all the expenses were incurred for business of the clients and not for assessee's own business. (Para 4.3)

2. For the expenses of Rs 3.84 crores related to business receipts from AU small finance Bank Rs 4.23 crore, the claim of the assessee was that expenses were incurred by the party and the assessee only received markup portion of 10%. (Para 4.3)

3. If AO had doubt regarding expenses being excessive, it could provide only the foundation for further

4. AO had not pointed out any specific defect of booking of bogus expenses. ( Para 4.3.1).

#### Arguments in support of departmental appeal

1. First finding is not relevant and has no impact on the profitability of the case. The expenses have been incurred by the assessee for its own business of providing services to its clients and for such services, it has incurred the expenses. So how it affects the reasonableness or genuineness of such expenses, if these are incurred for the services of clients.

2. Second finding of the Id CIT(A) is unjustified and contrary to the facts of the case. There is nothing on record to show that the assessee had received markup amount of 10% only and all the expenses were incurred by the concerned party/client. It is factually incorrect. The AU Small finance Bank has not incurred any expenses directly but has actually paid Rs 4.23 crore to the assessee for providing marketing services and it is the assessee, who has incurred and claiming expenses of Rs. 3.84 crore for promotion of business of AU Small finance bank. The Bank has made due TDS on entire payment of Rs 4.23 crore. Had the sales promotion expenses were incurred directly by the Bank, then there was no need to pay the amount to the assessee and deduct tax on that.

3. The theory of markup amount has simply been conceived from the letter of the Bank dated 15.4.21 filed by the assessee (Copy enclosed as page No 1 to this submission), which says that payment of Rs 4.23 crore was made as per arrangement. But what was this arrangement was not submitted by the assessee and this was also the basic and specific query of the AO. The assessee has received an amount of Rs 4.23 crore and not the 10% markup amount, only, as has been held by the Id CIT(A).

4. The third finding that if the AO had any doubt about expenses being excessive, it was only a foundation of further investigation is no ground for deletion of addition. The Id CIT(A) legally possesses all inherent powers of an AO u/s 253 of the Act and if he was of the view that further investigation is needed, it should have been done, either by the Id CIT(A) himself or by way of an appropriate remand from the A.O, instead of out rightly deleting the addition.

5. As regards to finding of non-pointing out of any bogus expenses by the FAO, it is clear from the assessment order that the assessee has not furnished the basic documents through which it got business from the clients and the basic purchase orders of goods and services from the recipient of expenses. Had these been produced, the FAO could have

clearly pointed out bogus, un-reasonable or non-genuine expenses. The assessee has submitted only copies of bills of goods and services of expenses but without any supporting documents as to which particular client, any particular bills pertained and for which specific events. The assessee has conveniently avoided production of service agreements with the clients and purchase orders issued by it to the various persons for purchasing goods and services for its clients. Impliedly, the AO has given the finding that he was not satisfied with the documents submitted by the assessee and that is why he has restricted the claim of expenses to 25% of total receipts based on past history of the case and balance has been disallowed being excessive, unreasonable and unproved expenses.

6. A bare perusal of some of the sample bills (enclosed copies of 10 such bills), submitted by the assessee on 16.4.2021, downloaded from the assessment module of ITBA, makes it clear that there is no evidence as to for what purposes and for which specific clients, particular expenses were incurred. Some bills are handmade and prima facie not genuine (Bill of Shiv Ratan caterers page No 2 and 3). On page No 3, the bills No are 589 to 592 dated 21.4.17 to 25.4.2017 but on page No 1, there are bill No 675 to 694 issued before 21.4.17. How is it possible to issue bills of 675 to 694 prior to 21.4.17 when Bill No 589 was issued on 21.4.2017? These bills are prima facie manipulated bills. Some bills are for purchase of costly dinner sets (Bill of Kanwal Collection, page No 4), and Bill of purchase of locket and necklace (Bill of Kalyan Jewellers, page No 5). These bills are not supported with any document as to whom these items were given and how the same was related to promotion of the business and of which specific client. Some of the bills are with narration of number of purchase order but other bills of the same concern are without any reference of purchase order (Bills of Classic Signage P Ltd page No 6 and 7). Some bills of same work item, placed by same purchase order but huge difference in rates of work item (Bills of M/s Expand page 8 and 9). Certain Hotel Bills are without any service tax/vat, whereas these taxes are mandatory for hotel business (Bill of Sunshine resort, compare with bill of Hotel Heeralal page 10 and 11). In hotel bills, nothing is there as to for whom or for which event these were raised.

In view of above, it is submitted that the addition made by the FAO was justified and its deletion by the Id CIT(A) is not correct and legally justified. The Hon'ble Bench is therefore requested to kindly allow the departmental appeal and restore the order of the FAO on the issue of sale promotion expenses disallowed by FAO.

Enclosures: 10 bills and letter of AU small Finance Bank, as referred to above.”

16. In addition to the written submission filed by the assessee Id. DR vehemently argued that the reasoning given by the Id. CIT(A) is merely on ground that the doubt per se cannot be reason for resorting to addition but can provide the foundation for further investigation. The Id. CIT(A) neither done the required investigation nor called for any remand report in the matter. Not only that the he drawn our attention to the provision of section 37(1) which also restrict the expenses if the same is not related to business or offending in the nature. In addition, Id. DR submitted that as compared to the previous year the expenditure under the head sales promotion claimed by the assessee is much higher. Therefore, to verify the claim of sales promotion expenses, the details were called for from the assessee so as to submit the details in the format.

"4. To verify the claim of sale promotion expenses, the details were called as under:-

1. Name, PAN and address of the parties to whom payments have been made.
2. Specify the details of any transaction with related parties if any in context of sales promotion expense.
3. Mode of payment along with supporting documentary evidence. Details of TDS deducted on payments made for sales promotion expenses and date of deposit in Government account.
4. Percentage increase in the quantum in comparison with last year sales promotion expenses and justification for the increase.
5. Provide the ratio of sales promotion expense with that of Gross profit of the business and provide a justification thereto.

5. The assessee submitted Client wise Sales Promotion Exp, chart showing sales promotion, bills and bank statement in respect of sales promotion. The assessee has stated that "no ratio of sales promotion expense with that of gross profit of the business can be calculated. As already stated, the company is in service sector, the competition is un matchingly increasing day by day. There are

many other companies who are ready to provide the services to assessee's client at much lower rates as compared to assessee. Assessee has no option other than to reduce its margin/rates. The severe competition has affected the assessee so badly that its business has almost vanished. In 2018, the revenue has gone down to Rs.1152 lacs as against Rs.3408 lacs in 2017 and in 2019 to Rs.87 lacs only.”

17. The Id. DR also drawn our attention to the details filed by the assessee and submitted that in connection with the claim of the expenses specific questions raised by the Assessing Officer relating two questions that who attended the conferences who are persons stayed in the hotel. Secondly, the gift articles purchased and claimed by the assessee as sales promotion expenditure are purely in the nature of personal expenditure and how it is related to the business of the assessee is not explained. The Id. DR drawn our attention to chart wherein the claim of sales promotion expenses and the relevant revenue from the client receipt is declared by the Assessing Officer and the relied upon part is extracted herein below:-

“7. The assessee has furnished a chart with the date of payment. However for each entry of sales promotion expense, the assessee has not furnished the purpose for such expenses, nature of service provided by those parties, details of event, and how such expenses were utilized wholly and exclusively for the purpose of the business of the assessee. On perusal of the client wise list of sale promotion expenses and income earned from such clients, it is noted that there is no consistency/pattern in claim of expenses. Huge variation is seen in % claim of sale promotion expenses over revenue from client. Following is the data of revenue and sale promotion expenses in respect of the clients of the assessee.

Party Name	Revenue from clients	Sales promotion expenses	Ratio
Ashar Mehta Associates	8,78,267	59,397	7
AU Small Finance Bank	4,23,00,000	3,84,38,750	91
Future General India Insurance Co Ltd.	29,16,968	2,52,450	9
HDFC Bank	1,86,22,724	96,84,431	52
HDFC standard Life Insurance Co. Lt Ltd.	36,53,866	68,454	2
Liberty Videocon GIC Ltd.	11,39,990	3,09,155	27
Logimatix Consultants Pvt. Ltd.	81,66,642	17,21,814	21
Mindpool Management Solutions Pvt. Ltd.	38,11,315	2,00,000	5
OTS E Solutions Pvt. Ltd.	15,00,000	1,03,288	7
Raghav Enterprises	25,00,000	27,42,959	109
Reliance General Insurance Co.	50,14,200	14,40,065	29
Universal Sompo GIC Ltd.	1,22,955	86,914	71
Grand Total	9,06,26,927	5,51,07,677	61

18. From this chart, the Id. DR submitted that the sales promotion expenses are ranging from 2% to 109% of the Revenue and therefore, there is no consistency in the claim of sales promotion expenditure claimed by the assessee. The Id. DR further drawn our attention to the bills submitted by the assessee wherein the personal expenditure like necklace and rocket purchased from Kalyan Jewellers were claimed as sales promotion expenditure. The Id. DR further submitted that invoice issued by Kanwal Collections wherein purchase of dinner sets is claimed as sales promotion expenditure how it is related to the business of the assessee and whether the

same are given under the breach of law is not considered by the Id. CIT(A) while considering the appeal of the assessee. Therefore, Id. DR further drawn our attention to the provisions of section 37(1) of the I.T. Act wherein the law itself restrict allowance and prescribe the condition that the expenditure should not be in the nature of capital expenditure and personal expenditure of the assessee. He also drawn our attention to explanation (1) of section 37(1) which contains as under:-

“37 (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 [\*\*\*] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession.”

[Explanation 1]- For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]”

19. Since the assessee has not submitted all these details and without submission of these details or allowing the Id. AO to have his version the Id. CIT(A) has vide non speaking order deleted the addition. Thus, the claim was incorrectly allowed by the Id. CIT(A) and he has summarily without giving any detailed finding on the issues raised by the AO allowed the claim of the assessee. The Id. CIT(A) has allowed the claim of the assessee considering that AO has raised only doubt and not verifying the various aspects of the

case. But at the same time, the assessee has not submitted the relevant details as specifically called for in consonance with the reasons for selection of case for scrutiny and considering the provision of section 37(1) of the Act the claim is excess and not allowable. The Id. DR further submitted that the assessee failed to substantiate the difference of the expenditure with respect to the Revenue that they have accounted and Id. CIT(A) has allowed as claim of the assessee without taking remand report on the various aspects as raised before the first appellate authority and in the interest of justice he submitted that the assessee is required to be verified basis on the facts as per provision of the law. Therefore, the issue may be set aside to the file of the Id. AO who examine all these aspects and can consider the claim of the assessee.

20. Per contra, the Id. AR of the assessee submitted that the assessee is doing customized back office support services and providing various arrangements of handling conferences booking of hotels, arranging sign board and the expenditure may vary and the fact that the ratio expenditure ranges between 2% to 109% which itself suggest the correctness of the claim and it gives the correct picture of business of the assessee and the expenditure claimed are wholly and exclusively in nature of business expenditure and is

allowable u/s 37(1) of the Act. Before the Id. AO all these details were furnished. Thus, the AO has made choose and pick and prepared a chart which is not correct. As regards, the expenditure claimed on higher side which is on account of management of public issue of AU Small Finance Bank wherein the much of the expenditure is claimed by the assessee and if the AO is not satisfied, he might have issued a notice as per provision of section 133(6) of the I.T. Act and have got verified the details. The Id. AR of the assessee submitted that the National Faceless Appellate Proceeding cannot be challenged by the Department on the grounds that they have not received fair chance to represent the case. He vehemently argued that the expenditure claimed by the assessee under the head of sales promotion is not commensurate with the receipt the expenditure incurred are not verifiable so as to confirm whether the expenditure incurred and claimed by the assessee are in the nature of prohibited under the common law and are not of the personal nature of the assessee. The assessee is merely receiving it as reimbursement of the expenditure incurred on behalf of the respective payee. The Id. AR of the assessee drawn our attention to Para 3.1 to 13 of the assessment year wherein the Id. AO has made comparison of sales promotion expenses for A.Ys 2017-18 & 2016-

17, the expenditure ranging between 25% and 16% respectively which itself proves that the expenditure claimed under this head purely in the nature of reimbursement of expenditure paid on behalf of the client and the same is allowable as the income is offered gross and not net of the reimbursement received.

21. In fact, the department has not made any submission before NFAC. The Department should not raise these appeals. As regards, the expenditure incurred for 109% in case of receipt from Raghav Enterprises raised where the services was related to supply of men power. Therefore, it has resulted expenditure more as compared to the income received by the assessee considering the nature of services given. This variation itself shows that the assessee is giving fair details and information to the AO. The Department has only chosen 10 bills which will not render a question to the various other expenditure claimed by the assessee and the argument of Id. DR is merely on account of the difference of expenditure incurred as compared to receipt. The Id. AR of the assessee further submitted that the finding of the NFAC/ Id. CIT(A) is very apt and considered the various facets and the case he has in detail made a comparison of the expenditure claimed by the assessee excluding the receipt of

AU Small Finance Bank which is exceptional item and has allowed the claim of the assessee and there is no factual error of these findings of NFAC/ Id.CIT(A) objected by the department. Therefore, the appeal of the department is not maintainable. The Id. AR of the assessee further drawn our attention to fact that confirmation letter was filed from the AU Small Finance Bank to support the claim was on 10% mark up and 90% expenditure which is accounted of sales promotion expenditure. As regards, the bill of hotels and Kalyan Jewellers, these are be item purchase as per instructions AU Small Finance Bank for the management of their public issue and arranging various meeting of the investors at various locations and therefore, it has nothing to do with the issue related to the personal expenditure or capital expenditure so far as to the business of the assessee is concerned.

22. In the rejoinder of the submission, the Id. DR submitted that there is an excess claim of expenditure is not supported in the assessment proceedings and confirmation of AU Bank is nothing but self-serving document submitted by the assessee themselves, the assessee dealing with corporate clients. There is no agreement or any written instructions and the contravention of any provision of the

law is not apparent from the various personal nature expenditure claimed by the assessee. It is also not evident from the details submitted for the expenses incurred for hotel booked, whether the person stayed are not under the contravention of any law or not. Whether the parties are related parties or the expenditure are in the nature of personal expenditure is not established in the absence of the relevant information. The Id. DR also raised whether the provisions of TDS as applicable is applicable or not is not verified as the assessee has not given complete details. Based on these set of arguments Id. DR submitted that let the assessee prove before the AO, the claim made by the assessee as per provision of section 37(1) of the Act as the explanation 1 of section 37(1) restrict the expenditure even otherwise it is allowable. The Id. DR further submitted that there is no mention whether these payments were made in cash or cheque and whether the relevant applicable rate of TDS is made or not. Since, the assessee has not filed complete details he submitted that for this aspect revenue also needs an opportunity to consider the claim of the assessee.

23. We have heard the rival contentions and also gone through the orders of lower authorities. It is not disputed by both the parties

that the assessee is engaged in the business of Business Support Services. Therefore, the expenditure is required to be incurred by the assessee as per instructions of the client. We have also gone through the orders of the lower authorities and details submitted by the assessee. The contentions as raised by the Revenue are factual and based on the inadequate details filed by the assessee and revenue argued that why the missing details is required which the assessee has not submitted to the satisfaction of the assessing officer and therefore, we are of the considered view that the Assessing Officer was not in a position to verify various aspect on account of the on account of non-submission of the various details by the assessee called for by the Id. AO. All these details will facilitate the Id. AO to decided so as to allowability of the claim of the assessee as per provision of section 37(1) of the Act. In the light of these observations, we set aside this issue and the Id. AO is directed to verify all these aspects as raised by the Revenue and at the same time, the assessee is directed to submit all the details that has been called for by the Revenue so as to decide on the expenses claimed in accordance with the law. With these observations, the solitary ground raised by the Revenue is allowed.

In the result, appeal of the assessee is allowed per ground raised and appeal of the Revenue is also allowed in terms of our observation made here in above.

Order pronounced in the open court on 14/12/2022

Sd/-

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/12/2022

\*Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Marvel Support Consultancy Services, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT/DCIT, Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 293 & 295/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar