

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI.**

**BEFORE SHRI B.R. BASAKARAN, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**I.T.A. No.4402/Mum/2017
(Assessment Year : 1994-95)**

Income Tax Officer 3(3)(3),
R.No.672, Aayakar Bhavan,
M.K. Road, New Marine Lines,
Mumbai-400 020

....Appellant.

Vs.

M/s. Surlux Health Centre Limited,
3A, Blue Chip, Ground Floor,
Prakash Chambers, 77, Nagindas Master Road,
Mumbai-400 023
PAN AAFCS2646J

...Respondent.

**I.T.A. No.6101/Mum/2017
(Assessment Year : 1994-95)**

M/s. Surlux Health Centre Limited,
Mumbai-400 023

...Appellant.

Vs.

Asst. Commissioner of Income Tax,
Central Circle 31,
R.No.672, Aayakar Bhavan, M.K. Road,
Mumbai-400 020

...Respondent.

Appellant By :	None.
Respondent By :	Shri A.K. Das, DR
Date of Hearing :	17.11.2022
Date of Pronouncement :	28.12.2022

O R D E R**Per Bench :**

These cross appeals are directed against the order dated 21st march, 2017 passed by Ld CIT(A)-8, Mumbai and they relate to the assessment year 1994-95.

2. None appeared on behalf of the assessee, even though the notice of hearing was sent on several occasions by registered post and further the notice was also served to the assessee through the assessing officer. Hence we proceed to dispose of the appeal, ex-parte, without the presence of the assessee.

3. The facts relating to the case are stated in brief. The assessee is running diagnostic centres. The AO was constrained to complete the assessment to the best of his judgement u/s 144 of the Act, since the assessee did not furnish various details called for by him. The AO completed the assessment on 28-02-1997. It was the contention of the assessee before Ld CIT(A) that it furnished the details before the AO during first week of March, 1997, but by that time, the AO had completed the assessment on 28-02-1997. The assessee made detailed submissions before Ld CIT(A) and hence the first appellate authority called for a remand report from the assessing officer. The remand report was confronted with the assessee by Ld CIT(A). After considering the submissions made by the assessee, remand report of the AO and the comments of the assessee on remand report, the Ld CIT(A) disposed of various grounds urged by the assessee before him. Both the parties are aggrieved.

4. Most of the additions made by the AO have been given partial relief by Ld CIT(A) and hence most of the grounds urged by both the parties are common in nature. Accordingly, it would be convenient to consider each of the additions and dispose of them without making specific reference to the grounds urged by both the parties.

5. The first issue relates to the addition of Rs.1,01,064/- relating to repairs and maintenance. The AO disallowed this expenditure mainly for want of proper vouchers. The Ld CIT(A) noticed that the AO had accepted the vouchers to the extent of Rs.6,549/-. With regard to the remaining amount, the Ld CIT(A) restricted the disallowance to 25% of the balance amount.

5.1 We heard Ld D.R and perused the record. We notice that the Ld CIT(A) has noticed that some of the payments have been made by cheques. Further, several items of expenses relate to repair/maintenance of motor cars admittedly owned by the Directors and used for business purposes. Accordingly, he has granted partial relief to the assessee. In our view, the Ld CIT(A) has taken a rational view on this issue and accordingly, we uphold the same.

6. The next issue relates to the disallowance of interest payment of Rs.11,44,521/-, which consisted of payments of Rs.7,50,771/- paid to Maharashtra State Finance Corporation and Rs.3,93,750/- paid to Karnataka bank. The AO disallowed this claim on the reasoning that the user of the relevant loans for business purpose is not verifiable. Before Ld CIT(A), the assessee furnished copies of loan accounts. Accordingly, he directed the AO to verify the interest payments and allow interest to the extent verified.

6.1 We heard Ld D.R on this issue and perused the record. We notice that the Ld CIT(A) has restored this issue to the file of AO for verification of interest payments. Hence, we do not find any infirmity in the said decision of Ld CIT(A).

7. The next issue relates to disallowance of Professional and Consultancy fee of Rs.3,43,500/- paid by the assessee. The AO disallowed this claim for want of evidences. The Ld CIT(A) noticed that these expenses related to internal audit, registrar services etc. Hence he restricted the disallowance to 50% of the claim.

7.1 We heard Ld D.R on this issue and perused the record. We notice that the assessee could not furnish evidences in support of the above said claim. Considering the nature of expenses, the Ld CIT(A) has restricted disallowance to 50% of the claim. We find it to be reasonable decision and accordingly uphold the same.

8. The next issue relates to disallowance of travelling and conveyance expenses of Rs.1,51,458/-. The AO disallowed this claim for want of evidences. The Ld CIT(A) restricted the disallowance to 50% on the reasoning that the accounts of the assessee have been audited, i.e., apparently the view of Ld CIT(A) was that the incurring of expenses cannot be doubted, but the quantum needs to be established.

8.1 We heard Ld D.R on this issue and perused the record. We notice that the Ld CIT(A) has taken this decision on the basis of facts available on record. There should not be any doubt that the responsibility to prove the expenses is placed upon the assessee. Hence considering the surrounding circumstances, the Ld CIT(A) has allowed 50% of the claim. Hence we do not find any infirmity in the decision of Ld CIT(A) on this issue.

9. The next issue relates to the disallowance of postage, telegram and telex expenses of Rs.1,64,612/-. The AO disallowed this claim on the reasoning that phone numbers are not visible on some of the bills and payments are not verifiable. The Ld CIT(A) deleted this disallowance holding that the communication expenses are inevitable in a business.

9.1 We heard Ld D.R on this issue and perused the record. We notice that the AO has not doubted incurring of expenses, but disallowed the claim due to illegible nature of bills. In our view, the Ld CIT(A) has taken a pragmatic view of this matter. Accordingly, we uphold the view of Ld CIT(A) rendered on this issue.

10. The next issue relates to disallowance of miscellaneous expenses of Rs.81,000/-. The AO disallowed the claim for want of evidence and the ld CIT(A) restricted the disallowance to 50% as the accounts of the assessee have been audited.

10.1 We heard Ld D.R on this issue and perused the record. We notice that the Ld CIT(A) has taken this decision on the basis of facts available on record. There should not be any doubt that the responsibility to prove the expenses is placed upon the assessee. Hence considering the surrounding circumstances, the Ld CIT(A) has allowed 50% of the claim. Hence we do not find any infirmity in the decision of Ld CIT(A) on this issue.

11. The next issue relates to disallowance of business promotion expenses of Rs.14,25,031/-. The AO disallowed the claim for want of evidence and the ld CIT(A) restricted the disallowance to 50% on the reasoning that the incurring of business promotion expenses cannot be ruled out.

11.1 We heard Ld D.R and perused the record. There should not be any doubt that the responsibility to prove the expenses is placed upon the assessee. Incurring of business promotion expenses is not compulsory, i.e., it is optional for a business man to incur these types of expenses. Hence the assessee should have produced evidences in support of these expenses. Accordingly, we are of the view that the disallowance should have been made @ 75%. Accordingly, we modify the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance to 75%.

12. The next issue relates to disallowance of depreciation claim to the extent of Rs.66,49,906/-. The assessee had purchased new medical equipments worth Rs.5.32 crores during the year. The AO estimated that a good medical centre would require equipment worth Rs.1.37 crores and hence he doubted the claim of purchase of new equipments. He also took the view that the said equipments were put to use before 31.3.1994 or not. Accordingly, the AO

disallowed the claim of depreciation. The ld CIT(A) noticed that the statutory auditors have not made any adverse remark on the purchase of fixed assets or depreciation claimed in books. Hence the Ld CIT(A) deleted this disallowance.

12.1 We heard Ld D.R on this issue and perused the record. We notice that the AO has made this disallowance on surmises and inferences. Hence, we are of the view that the Ld CIT(A) was justified in deleting the disallowance of depreciation.

13. The next issue relates to disallowance of “medication & franchise expenses” of Rs.5.38 crores. The AO disallowed the claim on the reasoning that the assessee did not substantiate the amounts, did not submit copy of agreements and further debit notes raised by the other party are undated. The Ld CIT(A) noticed that the turnover and profits of the assessee have improved on account of franchisee arrangements. Accordingly, he reduced the disallowance to 50%.

13.1 We heard Ld D.R and perused the record. We notice that the assessee has made the payment to a sister concern named M/s Surlex Mediquip Ltd. Because of the change in business model by offering franchisee to the sister concern, the assessee could improve its turnover and profitability. When the payments are made to sister concerns, the responsibility to prove the genuineness of payments is more upon the assessee. We notice that the assessee did not furnish sufficient evidences in support of the claim. The payments have been made to the sister concern on the basis of debit notes raised by them. However, considering the surrounding facts, the ld CIT(A) has restricted the disallowance to 50%. In our view, the Ld CIT(A) has taken reasonable view of the matter and accordingly, we uphold his decision rendered on this issue.

14. The next issue relates to disallowance of staff welfare expenses of Rs.1,43,000/-. The AO disallowed the claim for want of evidence and the ld

CIT(A) restricted the disallowance to 50% as the accounts of the assessee have been audited.

14.1 We heard Ld D.R on this issue and perused the record. We notice that the Ld CIT(A) has taken this decision on the basis of facts available on record. There should not be any doubt that the responsibility to prove the expenses is placed upon the assessee. Hence considering the surrounding circumstances, the Ld CIT(A) has allowed 50% of the claim. Hence we do not find any infirmity in the decision of Ld CIT(A) on this issue.

15. The next issue relates to the disallowance rent expenses of Rs.1.00 lakh paid to M/s Surlux Mutual Fund P Ltd. The AO disallowed the claim for want of evidences. During remand proceeding also, the assessee did not furnish any evidence to prove this expenditure and hence the Ld CIT(A) has confirmed the disallowance.

15.1 We heard Ld D.R on this issue and perused the record. Since the assessee has not proved this expenditure, we are of the view that the Ld CIT(A) was justified in confirming the disallowance of rent expense.

16. The next issue relates to the disallowance of claim for deduction u/s 80M of the Act. The AO disallowed the claim for want of evidences. However, in the remand report, the AO has accepted availability of TDS certificates. Hence the Ld CIT(A) deleted this disallowance.

16.1 We heard Ld D.R on this issue and perused the record. Since the AO has accepted the claim in remand report, the Ld CIT(A) was justified in deleting this disallowance.

17. The next issue relates to disallowance of amortization of preliminary expenses of RS.8,75,340/-. The AO disallowed the claim holding that the assessee is not eligible to claim it u/s 35D(2)(c) & (d) of the Act, as the assessee is not industrial undertaking. The Ld CIT(A) confirmed the disallowance.

17.1 We heard Ld D.R on this issue and perused the record. Since the assessee cannot be considered as an industrial undertaking, we are of the view that the Ld CIT(A) was justified in confirming the disallowance of claim made u/s 35D of the Act.

18. The next issue relates to the addition of share capital of Rs.5.06 crores u/s 68 of the Act. The AO has made this addition on the ground that the records produced by the assessee with regard to receipt of share capital were taken back and not produced later. The Ld CIT(A) noticed that, in remand proceedings also, the assessee did not furnish any evidence. Hence he confirmed the addition.

18.1 We heard Ld D.R on this issue and perused the record. The initial onus to prove cash credits is placed upon the assessee. We notice that the assessee, in this case, has not discharged his onus. Accordingly, we are of the view that the Ld CIT(A) was justified in confirming the addition made u/s 68 of the Act.

19. The last issue relates to the addition of loan taken from Maharashtra State Finance Corporation and Karnataka Bank. The Ld CIT(A) has restored this issue to the file of AO. Hence we do not find any reason to interfere with this decision of Ld CIT(A).

20. In the result, the appeal filed by the assessee is dismissed and the appeal of revenue is partly allowed.

Pronounced in the open court on 28th Dec., 2022.

Sd/-

(RAHUL CHAUDHARY)
Judicial Member

Sd/-++

(B.R. BASAKARAN)
Accountant Member

Mumbai, Dt. 28.12.2022.

* Reddy gp

Copy to :

1.	The Assessee
2.	Respondent
3.	Pr.C I T-3, Mumbai
4.	CIT(Appeals)- 8, Mumbai
5.	DR, ITAT, Mumbai.
6.	Guard File.

By Order

Asst. Registrar, ITAT, Mumbai.