आयकर अपीलीय अधिकरण, कोलकाता पीठ ''बी'', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 541 & 542/Kol/2022
Assessment Years: 2013-14 & 2014-15

Rishi Chemical Works Pvt. Ltd. (PAN: AABCR 4746 C)	Vs.	ACIT, Central Circle-2(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri Siddharth Agarwal, Advocate
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-20, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 26.08.2022 for the AYs2013-14 & 2014-15.

2. Issue raised in ground no. 1 is against the confirmation of addition of Rs. 22,22,358/- as made by the AO on account of sponsorship expenses incurred by the assessee company on the ground that the expenses were not wholly and exclusively incurred for the purpose of business.

3. Facts in brief are that in the assessment proceedings, the AO observed that the assessee has debited a sum of Rs. 22,22,358/- under the head professional training expenses. The AO observed that said expenses were incurred towards sponsorship expenses for doing studies abroad by Shri Harshvardhan Barech who happened to be the son of director Rajkumar Barech. The assessee company during the year sponsored for his education for graduation abroad at University of Sussex, UK. The AO noted that Harshvardhan Barech was not the employee of the assessee company at the relevant point of time and therefore the expenses were not incurred for wholly and exclusively for the purpose of business. Shri Harshvardhan Barech after completion Higher Secondary Examination in 2011 was sponsored by the assesse company by the board of director in its meeting held on 26.07.2011 deciding to bear the expenses on foreign studies on the condition that Mr. Harshvardhan Barech would join the company after completion of graduation in future and to corroborate the facts the Ld. A.R filed agreement dated 21.08.2022 and copy of extracts of board meeting dated 26.07.2011 before the AO. However the AO rejected the contention of the assessee and added the same to the income of the assessee by holding that this has not been wholly and exclusively incurred for the purpose of business of the assessee.

4. In the appellant proceedings, the Ld. CIT(A) simply dismissed the appeal of the assessee by observing and holding as under:

> *"3.3.a) I have carefully considered the facts of the case and the submission of the appellant. I have also gone through the case laws cited above by the appellant. On this issue there are a number of judgments. In some of the cases the expenditure on training of its personnel has been allowed by the court while in others, courts have held that training does not have any relation with the furtherance of the business of the company and hence it has been held that these are not allowable. Thus the actual facts of the individual case has to be considered separately while deciding this issue. In each of the cases cited by appellant, the Courts have held that the training of the personnel was beneficial to the interest of the company. But in a recent judgment the Hon'ble Delhi High Court in JBM Industries Ltd. vs. CIT, New Delhi (2019) 418 ITR 502 has decided a similar issue against the assessee. In this case appellant company was engaged in the business of manufacturing of Sheet metal components and LPG Cylinders. It had claimed expenses on education of newly inducted director who was 18 year old daughter of one of the directors, for pursuing MBA programme in USA. The daughter was without any specialized education, qualification or experience when she was inducted as a whole time director of the company. She signed an agreement with the company and undertook to remain in the employment of assessee company for a period of not less than one year from the date of completion of higher education/training. In this case A.O. had held that*

there was no nexus between the expenditure on higher education and the propogation of the business of the assessee company. The action of the A.O. was upheld by the Hon'ble High Court. In confirming the action of the A.O. the Hon'ble court also distinguished the judgement of the Hon'ble Delhi High Court in Kostub Investment Ltd. Vs. CIT (2014) 365 ITR 436.

(b) In the case of Indian Galvanics Cyrium Foils Ltd. Vs. DCIT, Circle-4(4), Mumbai, (2018) 95 taxmann.com 259, Hon'ble Mumbai High Court has also decided a similar issue against the assessee. In this case the assessee company was engaged in manufacturing of copper foil. The assessee had claimed certain expenses under the head management training and development expenditure. It was incurred for higher education and training of one of its director's son who was sent to USA for completing course in business administration. In this case the director's son had committed to serve the assessee company for at least ten years. A.O. was not convinced with the explanation of the assessee and he disallowed the expenses in this regard. The Hon'ble Court in this case held that the course in business administration was general in nature and had no direct nexus with the business activities of the appellant assessee. Court observed that the appellant failed to place particulars on record like basic education, subject knowledge, and how such subject had nexus to business activities of the appellant and so on. Though the director's son had enteredirito a contract to render his services after completing his education but it was not sufficient to hold that appellant assessee had proved nexus between expenditure and its'business activities. The Hon'ble court upheld the action of the A.O. and in the process also distinguished the case of Sakai Papers Pvt. Ltd. Vs. CIT (1978) 114 ITR 256 (Bombay H.C.). This is one of the judgements on which the assessee has relied in support of its claim.

(c) In the case of Westin Hospitability Services Pvt. Ltd. Vs. DCIT, Central Circle-39 (2011) 9 taxmann.com 79 (Mumbai), the Hon'ble ITAT upheld the decision of the AO regarding disallowances of foreign education expenses of director's son. Assessee company was in the business of supplying ready-to-serve food and beverages to hotels and clubs. It appointed son of one of the directors as management trainee and then this person was sent abroad for training and education. As per the agreement entered between the assessee company and son of the director, he was required to serve assessee for a minimum period of three years after completing foreign training. Assessee had claimed expenditure on foreign education and training as revenue expenditure. AO didn't allow the claim of the assessee and assessee's decision was upheld by the Ld.CJT (A). On appeal to the Hon'ble ITAT, it was noted that the decision for sending son of one of the directors was taken even prior to his appointment as a management trainee. Moreover, this appointment was even prior to the age of 18 years. Under the circumstances, the Hon'ble ITAT held that giving appointment as a management trainee was only with the view, to claim expenses oneducation. Hence, disallowance of assessee's claim was upheld. In the instant case, Shri Harsh Vardhan Bharech is not even an employee of the assessee company. Still, assessee company is claiming to sponsor the foreign education of Shri Harsh Vardhan Bharech in the hope of reaping benefits in future when he completes his studies.

(d) Perusal of details reveal that Shri Harsh Vardhan Bharech was simply 12th passed when he had applied for further studies at University of Sussex, UK. Shri Harsh Vardhan Bharech did not possess any special qualification which may justify selection and sponsoring of his studies abroad by the company. If the company was bothered about improving its functioning it would have hired a qualified professional from some business College. If the company had hired trained professional then it would have at least known the feed back from the respective institute regarding the skill and acumen of that particular person. Normally private sector hires management trainees when they have completed their graduation and thus they are specialised in a particular field. Deciding to hire somebody in future just after

the person has cleared 12th exam would not ensure that the person has requisite skillssuited to the needs of the company. Now coming to the assessee's submissions regarding the decision given by Ld. CIT(A)-17, Kolkata for A.Y. 2012-13 and AY: 2015-16, with due respect I differ from the views of the Ld. CIT(A). Facts of assessee's case are similar to those discussed in JBM Industries Ltd, vs. CIT (Supra) and Indian Galvanics Cyrium Foils Ltd. (Supra). The judgements cited by the appellant, in support of its contentions, are distinguishable on facts. In all the cases, relied upon by the assessee, the persons cont^rned had^been working with company and they all were at least graduates. A person's specialization in any field decides his utility for a particular job. Specialization comes by experience or through education/training. If only educational background is considered, then the person should be at least graduate in a particular stream to assess his suitability for a particular job. But in the present case, the person has just finished his basic schooling only. Hence, the facts of assessee's case are distinguishable from the cases relied upon by the assessee. On the other hand it is similar to the cases of JBM Industries Ltd. (Supra) and Indian Galvanics Cyrium Foils Ltd. (Supra) and Westin Hospitability Services Pvt. Ltd. Vs. DCIT (Supra). Hence, assessee's contentions are not acceptable.

(e) In view of the discussion above the addition of Rs.22,22,358/- is confirmed.

5. After hearing the rival submissions and perusing the material on record, we find that Mr. Harshvardhan Barech went abroad for study which was sponsored by the assesse as authorized by the board of directors in its meeting held on 26.07.2011 and also an agreement signed with that person for getting his commitment to serve the assessee company after he comes back from his study. We note that the person Shri Harshvardhan Barech has honoured the commitment by serving the company after coming back from US. We also note that in AY 2012-13 and 2015-16 the appeal of the assessee were allowed by the Ld. CIT(A) on the similar issue and revenue has not preferred any appeal challenging the said appellate and thus issue has attained finality as the department has not challenged the order before the higher authority. In our opinion, once the order has attained finality in the earlier and succeeding assessment years then the revenue has no locus standi to agitate on the same issue and on same facts. This is in line with the ratio laid down by the Hon'ble Supreme Court in the case of *Radhasoami Satsang vs CIT [1992] 193 ITR 321 (SC)* wherein it has been held that where there is no change in facts and circumstances and revenue has accepted decision in one year , then the revenue cannot be allowed to agitate the same in the other years. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition. Consequently ground no. 1 is allowed.

6. Issue raised in ground no. 2 is against the confirmation of addition of Rs. 22,115/- by the Ld. CIT(A) as made by the AO under Rule 8D(2)(iii).

7. After hearing the rival contention and perusing the material on record including the finding of the Ld. CIT(A) as given in Para 4.3 , we observe that the Ld. CIT(A) has principally agreed that only those investments are required to be considered for making disallowance under Rule 8D(2)(iii) which yielded exempt income during the year. However due to non-availability of the details of those investments the disallowance was upheld by ld CIT(A). In our opinion the Ld. CIT(A) has given correct findings that only those investments are required to be taken into accounts for calculating disallowance under Rule 8D(2)(iii). Accordingly we restore this issue to the file of AO to calculate the disallowance only by taking those investments which yielded exempt income during the year. The case of the assessee finds support from the decision of *REI Agro Ltd. in ITA No. 1331/Kol/2011 dated 19.06.2013* and the decision of Hon'ble Calcutta High Court in the case of *CIT vs. Ashika Global Securities Ltd. in ITAT 100 of 2014 dated 11.6.2018.* Accordingly the ground no. 2 raised by the assessee is allowed for statistical purposes.

8. Now we shall adjudicate in ITA No. 542/Kol/2022 for AY 2014-15. Issue raised in ground no. 1 and 5 are similar to ground no. 1 and 2 in ITA No. 541/Kol/2022 for AY 2013-14 therefore our finding would ,mutatis mutandis, apply to these grounds as well. Consequently issue raised in ground no. 1 is allowed and issue raised in ground no. 5 is allowed for statistical purposes.

9. Issue raised in ground no. 2 is against the confirmation of addition of Rs. 5,29,472/- by the Ld. CIT(A) as made by the AO on account of prior period expenses on repairs to building.

10. After hearing both the parties and perusing the material on record, we note that the assessee has incurred expenses in the preceding financial year under the head capital work-in-progress which was completed during the year. During the year the same were charged to repairs of building and claimed accordingly. The AO rejected

the claim of the assesse by adding the same to the income of the assessee. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by holding the amount pertains to prior period and cannot be allowed. Therefore, the Ld. CIT(A) has affirmed the disallowance. However we find force the alternative plea raised before us that depreciation has to be allowed on the applicable rate of depreciation. Accordingly we have allowed the alternative plea of the assessee by directing the AO to allow the depreciation on this account by capitalizing the said amount under the head building. Accordingly ground no. 2 is allowed.

11. Issued raised in ground no. 3 is not pressed at the time of hearing and therefore and dismissed as not pressed.

12. Issue raised in ground no. 4 is against the confirmation of addition of Rs. 13,64,921/- as made by the AO on account of repairs to building on which the assessee failed to deduct tax at source u/s 194C of the Act.

13. Facts in brief are that the assessee during the year incurred these expenses for purchases of material from Mehmood Hassan and the nature of material were bricks, stones, grite and sands etc. According to AO, the assessee has contracted with Mehmood Hassan for purchase of these materials and therefore TDS u/s 194C should have been deducted. Accordingly the AO disallowed the expenses u/s 40a(ia) of the Act and added the same to the income of the assessee.

14. The Ld. CIT(A) simply affirmed the order of AO by holding that TDS was required to be deducted which was not deducted and thus justified the addition.

15. After hearing the rival contention and perusing the material on record including the order of authorities below, we find that the assessee has purchased building materials, the details whereof has been placed before us and is available in the PB. We find that the assessee has purchased materials only comprised bricks, stones,sand and grite etc. from Mehmood Hassan on which the provisions of TDS are not applicable as provided u/s 194C of the Act as this is just a purchase of material and not a contract

for supply of materials. The case of the assessee finds support from the case of *CIT vs. Deputy Chief Accounts officer, Markfed in 304 ITR 17 (P & H)* wherein it has been held that if a manufacturer purchases material on its own and manufactures a product as per the requirement of a specific customers, it is a case of sale and not a contract for carrying out any work. In this case before us also the assessee has carried out repairs itself by purchasing material from outside. Similarly the case of the assessee finds support from the decision of Co-ordinate Bench of Mumbai in the case of *M/s Nipra Exports Pvt. Ltd. vs. ITO in ITA No. 5889/Mum/2011 dated 20.11.2013* wherein it has been held that expenditure incurred by the assessee for the purchase of printing product catalogue and telephone index, is in the nature of contract for sale/purchase and not in the nature of works contract. In the present case also the case is only for the purchase for materials and not a work contract. Therefore we are not in agreement with the conclusion drawn by the Ld. CIT(A). Accordingly we reverse the order of Ld. CIT(A) and direct the AO to delete the addition. Accordingly ground no. 4 is allowed.

16. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 17th January, 2023

Sd/-	Sd/-
(Sonjoy Sarma /संजय शर्मा)	(Rajesh Kumar/राजेश कुमार)
Judicial Member/न्यायिक सदस्य	Accountant Member/लेखा सदस्य

Dated: 17th January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rishi Chemical Works Pvt. Ltd., C/o, Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite-213, 2nd Floor, Kolkata-700069
2. Respondent – ACIT, Central Circle-2(1), Kolkata
3. Ld. CIT(A)-20, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata