

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES, F, NEW DELHI'**

**BEFORE SHRI N.K. CHOUDHRY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 5747/Del/2015
Assessment Year: 2011-12**

Fox Mandal & Co.,
A-9, Sector-9, FM House,
Noida

PAN: AAFF0687J

(Appellant)

Versus ACIT, Circle 37(1),
New Delhi

(Respondent)

Appellant by : Sh. M P Rastogi. Ld. Adv
Respondent by : Sh. S L Verma, Ld Sr. DR

Date of hearing: 18-01-2023
Date of order : 31.01.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 15.09.2015 impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- 20, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2011-12.

2. In the instant case, the Assessee declared an income of Rs.1,43,28,720/- by filing its regular/original return of income on dated 30.09.2011, which was subsequently revised on dated 31.03.2012, whereby the income was revised to Rs.1,85,81,220/- which was processed u/s. 143(1) of the Act.

Lateron, the case of the Assessee was selected for scrutiny and statutory notices have been issued to the Assessee, in response to which the Assessee from time to time attended the assessment proceedings and filed the necessary details, information/documents etc. as required by the Assessing Officer and also produced its books of account and vouchers, which were examined on test-check basis by the Assessing Officer.

The Assessing Officer observed that the Assessee is a law firm and derive its income from business or profession and in the balance sheets, has shown statutory liability of Rs.12,64,294/- on account of TDS payable, which was part of the expenses and has been claimed as expense in Profit & Loss account. The Assessing Officer further observed that the Assessee is following cash system of accounting, whereby only the payments which have been made during the year, can be claimed as expense and thus, these

expenses which have not been paid cannot be allowed as an expense and consequently, show caused the Assessee.

The Assessee did not submit any reply. Therefore, the Assessing Officer by observing "*that the Assessee has paid certain amounts on which TDS was deductible payable to the government before the due date. The whole of these amounts was claimed as an expense in the Profit & Loss Account, but the TDS part of this amount was not paid before the end of the Financial Year as reflected in the balance sheet as statutory liability*", disallowed the expense of Rs.12,64,294/- in the form of TDS payable and added back to the income of the Assessee.

2.1 The Assessing Officer by observing that during the year under consideration, the Assessee has claimed interest and bank charges of Rs.73,51,253/-, vide order sheet entry dated 28.02.2014, asked the Assessee to submit the details of interest payable along with its expediency for the purpose of business/profession. The Assessee in response vide reply dated 05.03.2014 submitted the details of interest and bank charges in the form of following table :

Particular	Amount
Bank Charges	113399.37
Interest on (C/Card)	931587.70
Interest on Loan (Business)	1382417.82

Interest on Loan (Car)	1111736.40
Interest on Loan (Property)	2583087.00
Interest on O/D (HSBC)	637641.05
Interest on Service Tax	1625.00
Processing Charges for Loan	589759.00
Grand Total	7351253.34

2.2 It appears from the assessment order that the assessed did not submit any note on the expediency of the aforesaid interest payments for the purpose of business/profession. Therefore, the Assessing Officer by considering the fact that from perusal of the details of interest and bank charges submitted by the Assessee, some are for the purpose of property which prima facie seems not much related to the business/profession of the Assessee. Further, as the Assessee has not submitted any details regarding utilization of these interest payments, it is impossible to decipher the relevancy for the purpose of business/profession. Ultimately, the Assessing Officer in the absence of details of the expediency of aforesaid expenses held that the Assessee could neither substantiate the expediency nor has provided the details of interest expenses. Consequently, the Assessing Officer disallowed the interest expenses of Rs.73,51,253/- and added back in the income of the Assessee.

2.3 The Assessing Officer also observed from the balance sheet that the Assessee has a liability of Rs.14,22,554/- on account of credit card, which is a part of expense, which the Assessee has claimed as an expenditure in his profit & loss account. As the Assessee is following cash system of accounting, whereby only the payments which have been made during the year, can be claimed as expense and thus these expenses have not been paid, cannot be allowed as an expense. Further, the Assessing Officer also observed that this is justified also as the Assessee only shows the professional receipts which has accrued to him as per 26AS but the Assessee has not received them. Ultimately, the Assessing Officer also disallowed the expenses of Rs.14,22,554/- which was claimed as expense in the form of credit card payment, on account of expenses in the profit & loss account.

3. The Assessee being aggrieved, challenged all the three additions/disallowances before the Id. Commissioner in first appeal. Though the Id. Commissioner deleted the disallowances to the tune of Rs.12,64,294/- and Rs.14,22,554/- on account of liability of TDS and expenses paid through credit card respectively, however, sustained the addition of Rs.73,51,253/- on account of interest and

bank charges, which have been claimed as expense in the profit & loss account by holding as under :

{7.3} I have considered the submission of the appellant and the assessment order. On the factual matrix following facts have emerged:

1. That the appellant has submitted that it had incurred expenses on account of interest payment on credit cards payment, loan raised for business, car, property, overdraft facility, interest on service tax, processing charges for loan.
2. That the appellant was asked during the course of assessment proceedings to file details along with the expediency for the purpose of the business/profession.
3. That the assessee has not given provided details/evidences with regard to purpose and expediency as is required by the A.O during the assessment proceedings.
4. That the A.O was forced to decide the matter on the basis of facts and evidences on record.

{7.4} It is pertinent to note here that the appellant is a leading law firm and being a law firm itself, if it has not provided the details as called by the A.O during the course of assessment proceedings, the non- compliance is even more glaring. The primary onus of proving an expense to be laid out or expended wholly and exclusively for the purpose of business/profession is on the assessee. In this case it is quite evident that the appellant had not discharged its legal obligation. It has left the matter to be tackled at the appellate level.

Even during the appellate proceedings before me, on this issue the A.R kept on postponing the submissions. Later on he has sought to rely upon the Hon'ble ITAT/Delhi High Court Judgment in his own case for the A.Y 2009-10. But again, the appellant had tried to equate the present ground of appeal with the A.Y 2009-10 in which it has got a favourable judgment. But the facts of the preceding

year is quite different from the present year case. In the A.Y 2009-10 the issue before the Hon'ble ITAT and Hon'ble Delhi High Court was related to interest payments made to its sister concern where addition was made on proportionate interest having been paid after the matter got settled with an order of the Supreme Court. In the present case, the assessee had not provided details as to the purpose and expediency for such interest payment for the purpose of business/profession. It is pertinent to mention here that the A.O had brought it on record on that the assessee has not submitted any details regarding money advanced and it has neither substantiated the expediency nor has provided the justification for the interest expense. In that circumstances, A.O was left with little option but decide the issue on the basis of material on records.

In view of the facts and circumstances of the case, I am of considered opinion that the appellant had failed to discharge its legal obligations of providing all the details before the A.O as was called during assessment proceedings. The appellant's attempt to not providing details to the A.O and then raising the matter to get adjudicated at the appellate level disregarding the authority of the Assessing officer cannot be accepted. Therefore, A.O is justified in rejecting the claim of interest payment amounting to Rs.73,51,253/-. Appellant's ground of appeal on this issue is dismissed."

- 4.** The Assessee, being aggrieved, is in appeal before us.

- 5.** We have given thoughtful consideration to the peculiar facts and circumstances of the case. The authorities below in their orders recoded the concurrent findings that the Assessee has failed to substantiate its claim and also failed to discharge its primary legal onus of proving the expenses to be laid down or expanded wholly and exclusively for the purpose of business/profession. It also appears from the orders passed by the authorities below that the Assessee

also failed to provide any details as to the business expediency, therefore, the authorities below decided the issue on the basis of materials available before them. The Id. Commissioner consequently justified the rejection of claim of interest expense to the tune of Rs.73,51,253/-.

5.1 The Id. AR before us claimed that though the Assessee has provided all the details before the authorities below as filed before the Tribunal as well, however, the authorities below have not taken into consideration, the documents submitted by the Assessee. However we observe as it clearly appears from the orders passed by the authorities below, the facts show contrary and therefore, Considering the peculiar facts and circumstances, at this juncture, we are not dwelling into the controversy with regard to the submission or non-submission of documents.

Further, considering the magnitude of issue involved, in the interest of justice, for the ends of litigation and for just decision of the case, we are inclined to remit the issue under consideration to the file of the Assessing Officer for decision afresh, suffice to say, by affording reasonable and proper opportunity of being heard to the Assessee.

The Assessee is also directed to cooperate with the assessment proceedings and appear if requires and file the relevant documents, if any, to be needed in addition to the paper book filed before us.

6. In the result, in the aforesaid terms, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 31/01/2023.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

*aks/-

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER