

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

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

**ITA No. 5967/Del/2017
Assessment Year: 2013-14**

Addl. CIT, Spcl. Range-7, Versus Peregrine Guarding Pvt. Ltd.,
New Delhi. RZ-1B, Kapashera Crossing,
New Delhi.
(Appellant) (Respondent)

**ITA No. 6613/Del/2019
Assessment Year: 2016-17**

Peregrine Guarding Pvt. Ltd., Versus Addl. CIT, Spcl. Range-7,
RZ-1B, Kapashera Crossing, New Delhi.
New Delhi.
PAN: AADCP2498P
(Appellant) (Respondent)

Revenue by : Sh. S.L. Verma, Ld. Sr. DR
Assessee by : Sh. Ajay Mankotia, Ld. Adv.

Date of hearing: 19.01.2023
Date of order : 10.02.2023

ORDER

PER N.K. CHOUDHRY, J.M.

These appeals filed by Revenue Department and the Assessee arises respectively against the orders dated 15.06.2017 and 12.06.2019 for assessment years 2013-14 and 2016-17, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- 38, New Delhi (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act').

2. Brief facts, relevant for adjudication of the appeal filed by the Revenue are that the Assessing Officer in addition to making other additions/disallowances of interest on delayed payments and income tax refund also made disallowances of Rs.8,17,84,664/- and of Rs.60,93,623/- respectively on account of late deposit of employees' contribution towards EPF/ESIC and on account of sponsorship fee of Mr. Angad Rajain, son of one of directors of the Assessee company for pursuing MBA in USA respectively, which are under consideration before us.

2.1 The Assessee also challenged the additions under consideration before the Id. Commissioner, who vide para

No. 3 of his order, deleted the addition made by the Assessing Officer qua late deposit of EPF/ESIC contribution of employees. Further vide para No. 4 also allowed the expenditure claimed to the tune of Rs.60,93,623/- on account of sponsorship fee paid by the Assessee on account of fees for Mr. Angad Rajain (son of one of the directors) for pursuing MBA in USA u/s. 37(1) of the Act.

3. The Revenue being aggrieved is in appeal before us.

4. Heard the parties and perused the material available on record. With regard to ground no. 1 which pertains to late deposit/delayed payment of EPF/ESIC deductions on behalf of the employees, we observe that recently, the Hon'ble Supreme Court in the case of Checkmate Services P. Ltd. Vs. Commissioner Of Income Tax-1 (Civil Appeal No. 2833/2016) dated 12.10.2022 has considered the claim of the late deposit/delayed payment of EPF/ESIC deductions on behalf of the employees. The Hon'ble Apex Court ultimately held that employees contribution qua EPF and ESIC, if not deposited within due dates as prescribed under the relevant Act, i.e., EPF and ESIC, then the deduction cannot be claimed as disallowance u/s. 2(24)(x) read with section 36(1)(va) of

the Act. For ready reference, the concluding part of the judgment of Hon'ble Apex court is reproduced herein below:

“ In the opinion of this Court, the reasoning in the impugned judgment that the nonobstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and

deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under Section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction.”

4.1 The Id. AR did not refute/controvert the dictum laid down by Hon'ble Apex Court as claimed by the Id. DR, hence, we are inclined to reverse the decision of the Id. Commissioner on the issue under consideration and consequently restore the addition/disallowance made by the Assessing Officer u/s. 24(x) read with section 36(1)(va) to the tune of Rs.8,17,84,664/-. **Consequently, Ground No. 1 raised by the Revenue Department stands allowed.**

5. With regard to **Ground no. 2** which pertains to the deletion of addition/disallowance of Rs.60,93,623/- on account of sponsorship fee for higher education of director's son u/s. 37(1) of the Act, before us, though the Revenue Department mainly raised the issue that the Assessee has relied upon a self serving agreement which does not prove any nexus between the expense claimed and the business

purpose of the Assessee, however has not distinguished the facts of the instant case as involved in the judgment referred to by the Id. Commissioner.

5.1 We observe that the Id. Commissioner thoroughly considered the copy of the Agreement dated 26.07.2012 executed between the Assessee and Shri Angad Rajain, as well as other documents in support of the fact that Shri Angad Rajain had complied with all the conditions set out in the agreement and before coming to the conclusion also perused and relied upon various judgments which have been rendered qua admissibility of claim of deduction of sponsorship fee u/s. 37(1) of the Act specifically by the Hon'ble Delhi High court in the case of M/s. Kostub Investments Ltd. vs. ACIT in ITA No. 10/2014.

5.2 We further observe that Hon'ble coordinate Bench vide order dated 24.11.2021 in ITA No. 5968/Del/2017 also dealt with the identical issue and set aside the issue to the file of the Id. Assessing Officer for examining the services rendered by the son of the director after completing studies.

5.3 Considering the peculiar facts and circumstances of the case and the order of the coordinate Bench referred to

above, we are also inclined to remit the issue under consideration to the file of the Assessing Officer for examining the facts as whether the son of the director has worked in the company after completing his studies and if the Assessee would be able to substantiate its claim, then the Assessing Officer shall grant appropriate relief qua disallowance as claimed by the Assessee. Needless to say, the Assessee shall be afforded reasonable opportunity of being heard. Consequently **Ground no. 2** is allowed for statistical proposes.

6. In the result, the appeal filed by the Revenue stands partly allowed for statistical purposes.

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7. In this appeal, the Assessee by way of **Ground No. 1**, has challenged the disallowance on account of sponsor fee of Rs.79,22,987/- which has been claimed to have been incurred by the Assessee company on Shri Anuj Rajain son of the director Shri Manjit Rajain for his MBA degree from Yale University, USA. In view of our decision in ITA No. 5967/Del/2017, the instant issue is also remanded to the file of the Assessing Officer with the same directions as

enumerated above. Consequently, **Ground No. 1** is allowed for statistical purposes.

8. By ground No. 2, the Assessee challenged the upholding the disallowance of petty cash expenditure to the tune of Rs.6,66,500/- incurred on business promotion expenses u/s. 40A(3) of the Act claimed to be covered within the exemption prescribed under Rule 6DD of the Income-tax Rules, 1962 (in short "the Rules").

We observe that the Assessing Officer during the course of assessment proceedings by observing the facts that the Assessee had made cash payments of expenses exceeding Rs.20,000/-, show caused the Assessee on 14.12.2017 as to why the said expenses made in cash may not be disallowed. The Assessee in response, filed is reply dated 17.12.2018 whereby the Assessee claimed as under :

"The assessee has incurred some expenses in cash for business promotion which are above the limit prescribed u/s 40A(3) of the IT Act, 1961. The assessee is carrying on its business on PAN India basis and its some locations are on very interior site. Hence the assessee gives some lump sum amount to the person incharge of the said location who incurs the petty expenses on food, tea, local conveyance etc. throughout the month. Further to have control on

such expenses the assessee has kept the limit of expenses. Hence the person incharge is given only the said restricted amount and he has to manage the expenses within that limit. It is the necessity of business to incur such expenses and hence it has been incurred in the interest of business.

Kindly find the above in order and complete the assessment.”

8.1 The Assessing Officer though considered the reply of the Assessee, however, not found the same as tenable and consequently held that the Assessee has incurred the expenses on account of business promotion in violation of section 40A(3) of the Act as all the payments have been made in cash exceeding Rs.20,000/-. The Assessing Officer consequently disallowed the expenses of Rs.6,66,500/- and added to the income of the Assessee.

9. The Assessee by challenging the said addition before the Id. Commissioner, claimed that the said expenditure was incurred due to its locations situated in interior side.

However, the Id. Commissioner by considering and reproducing the provisions of section 40A(3) of the Act held that exceptions to the provisions of section 40A(3) of the Act

are stated in Rule 6DD of the Rules. The Assessee has not been able to prove that the case lies in these exceptions. Therefore, ground is dismissed. Consequently, the Id. Commissioner upheld the addition made by the Assessing Officer u/s. 40A(3) of the Act.

10. We observe that the Assessee not only before the Assessing Officer but also before the Id. Commissioner failed to substantiate its claim with regard to the applicability of exceptions to the provisions of section 40A(3) of the Act as carved out in Rule 6DD of the Rules. Consequently, we are inclined not to interfere in the decision of the Id. Commissioner in dismissing the ground raised before him and sustaining the addition in hand. Consequently, **Ground No. 2** raised by the Assessee stands dismissed.

11. Ground No. 3 is general in nature, hence, needs no independent adjudication.

12. In the result, the appeal filed by the Assessee stands partly allowed for statistical purposes.

13. In the result, both the appeals filed by the Revenue and the Assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 10/02/2023.

Sd/-

(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-