

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "F" NEW DELHI]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 9748/DEL/2019 (A.Y 2015-16)

<p>M/s. Peerless Consultancy Services Pvt. Ltd., C/o. R. C. Rai & Associates, 203, 2nd Floor, Akash Deep Building, 26-A, Barakhamba Road, New Delhi – 110 001. PAN No. AACCT0544M</p>	Vs.	<p>ACIT, Central Circle : 16, New Delhi. (RESPONDENT)</p>
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AND

I.T.A. No. 9750/DEL/2019 (A.Y 2017-18)

<p>M/s. Peerless Consultancy Services Pvt. Ltd., C/o. R. C. Rai & Associates, 203, 2nd Floor, Akash Deep Building, 26-A, Barakhamba Road, New Delhi – 110 001. PAN No. AACCT0544M (APPELLANT)</p>	Vs.	<p>ACIT, Central Circle : 16, New Delhi. (RESPONDENT)</p>
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Assessee by	Shri R. C. Rai, Advocate; & Ms. Kamal Sharma, Adv.;
Department by	Shri T. Kipgen, [CIT] - D. R.;

Date of Hearing	05.01.2023
Date of Pronouncement	16.02.2023

ORDER**PER YOGESH KUMAR U.S., JM**

These two appeals are filed by the assessee against two separate orders of the Id. Commissioner of Income Tax (Appeals)-XXVI [hereinafter referred to CIT (Appeals) New Delhi, dated 25.10.2019 and 28.10.2019 respectively for assessment years 2015-16 and 2017-18.

I.T.A. No. 9748/DEL/2019 :-

2. The assessee has raised the following substantive grounds of appeal:-

“1. On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming the action of Ld. Assessing Officer for disturbing the item of regular assessment without any incriminating material found and seized during the search and post search inquiry, hence the impugned assessment order is ab initio void, bad in law and without jurisdiction.

2. On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming the action of Ld. Assessing Officer for using the material recovered from third party/ other person not related to appellant without bringing any material on record to show that in fact alleged amount was paid/belong to assessee.

3. On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly

erred in confirming the disallowance of expenses of Rs.93,40,135/- incurred exclusive for business purpose of the assessee and adding the same u/s 69C of the Income Tax Act,1961.

4. On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming the action of Ld. Assessing Officer

- I. Alleging that the business expenses are not genuine and are in the nature of personal expenses.*
- II. Alleging that assessee failed to discharge onus casted on it to prove the genuineness of expenses.*
- III. Not providing adequate and proper opportunity of being heard and to produce the evidences.*

5. On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in upholding the addition of Rs.1,00,00,000/- based on dumb document without any corroborative material on record to support the addition.

6. On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming the action of Ld. Assessing Officer using the rough loose paper having no evidential/financial value without any corroborative evidences or any material on record to substantiate the allegation that the transaction under reference in fact culminated in earning the income which was not disclosed by appellant.

7. *The appellant crave leave to amend, alter, add/modify any or all grounds of appeal.”*

I.T.A. No. 9750/DEL/2019 :-

3. The assessee has raised the following substantive grounds of appeal:-

“1. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in upholding the disallowance of expenses of Rs.71,270/- made by Ld. Assessing Officer incurred exclusively for business purpose of the assessee and adding the same u/s 69C of the Income Tax Act, 1961.*

2. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming the action of Ld. Assessing Officer:-*

I. Using the material recovered from third party/other person not related to appellant without bringing any material on record to show that in fact alleged amount was paid/belong to assessee.

II. Alleging that the business expenses are not genuine and are in the nature of personal expenses.

III. Alleging that assessee failed to discharge onus casted on it to prove the genuineness of expenses.

IV. Not providing adequate and proper opportunity of being heard and to produce the evidences.

3. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming upholding the addition of Rs.5,39,22,747/- made by Ld. Assessing Officer on treating existing liability as cessation of liability and adding the same u/s 41(1) of the Income Tax Act, 1961.*

4. *On the facts and in the circumstances of the case as well as in law the Ld. Commissioner of Income Tax (Appeals) grossly erred in confirming the action of Ld. Assessing Officer:-*

I. Alleging that the creditors outstanding from more than 3 years in the books of accounts deemed to have ceased to exist and added the same.

II. Not providing adequate and proper opportunity of being heard and to produce the evidences.

5. The appellant crave leave to amend, alter, add/modify any or all grounds of appeal.”

I.T.A. No. 9748/DEL/2019 :-

4. Brief facts of the case are that, a search and seizure operation u/s 132 of the Income Tax Act, 1961 ('Act' for short) was carried out at the business/residential premises of Paras Mal Lodha Group and during the course of the search certain documents belonging to assessee were seized on the basis of the document seized, proceedings u/s 153A of were initiated in the case of the assessee. The assessee has filed the return declaring a loss of Rs.32,16,042/- in response to notice u/s 153A of the Act.

5. The assessment order u/s 153A/143(3) of the Act came to be passed on 31/12/2018 for the Assessment Year 2015-16 by making addition of Rs.93,40,135/- as unexplained expenditure u/s 69C read with Section 115BBE of the Act and further, made addition of Rs. 1,00,00,000/- as unexplained money u/s 69A read with Section 115BBE of the Act. Accordingly, the income of the assessee was assessed at Rs.1,61,24,093/- as against returned loss of Rs. 32,16,042/-.

6. The assessee has preferred an appeal before the CIT(A) who confirmed the disallowance of expenses of Rs. 93,40,135/- made by the Ld. A.O. u/s 69C of the Act and also upheld the addition of Rs. 1,00,00,000/-made u/s 69A of the Act.

7. Aggrieved by the order dated 25/10/2019 the assessee has preferred the present appeal on the mention above.

Ground No. 1 to 4.

Addition u/s 69C of Rs.93,40,135/-:

8. It was submitted before us that the “Event of Marriage” was sold to M/s Cinemine Entertainment Pvt. Ltd. vide Memorandum of Understanding (MOU) dated 11/06/2014 and all the “payments” were made by Cinemine Entertainment Pvt. Ltd. directly to Hotel Leela Palace, Chanakyapuri and the assessee has not incurred any expenses nor debited any amount in the P&L

account of the company. The said contention of the assessee has been turned down by the revenue authorities while making the addition of Rs.93,40,135/- u/s 69C of the Act.

9. We have perused the copy of agreement entered with M/s Cinemine Entertainment Pvt. Ltd. and copy of Ledger of Sales Promotion account to show that event was sold and payment was directly made by buyer of the event.

10. The Ld.CIT(A) has held that, since the assessee has debited only Rs.14,29,002/- in its profit and loss account, directed the A.O. to verify the same and restricted the addition to the extent of Rs. 14,29,002/-. In respect of balance amount of Rs. 79,11,133/-, the A.O. has been directed to verify as to who has paid. During the appellate proceedings before the CIT(A), the assessee brought the material on record in form of Memorandum of Understanding attested by the Notary dated 11/06/2014 to substantiate its contention that the event of marriage of daughter of Directors was in fact purchased by M/s Cinemine Entertainment Pvt. Ltd. It is evident from the Clause 3 of the MOU, the buyer of event M/s Cinemine Entertainment Pvt. Ltd. has agreed to pay/reimburse the expenses directly to Hotel Leela Palace, Chanakyapuri. It is the specific case of the assessee is that whole expenses were borne by buyer of the event and no payment was made by the assessee.

11. Since, the amounts have not been debited by the assessee and in fact paid by the buyer M/s Cinemine Entertainment Pvt. Ltd., the addition

made by the A.O. u/s 69C which was sustained by the CIT(A) is deserves to be deleted.

Ground No. 5 & 6

Addition as unexplained money of Rs.1,00,00,000/-:

12. Brief facts are that a MOU between the assessee and M/s Rajat Pharmachem Ltd. was seized. During the course of assessment proceedings the assessee was asked to explain the transaction and to produce the proof to show that it has been accounted for the books. The assessee had furnished the reply on 21/12/2018 wherein submitted as under:-

“ Documents seized from...to provide legal assistance to Rajat Pharma Chem Ltd. However this understanding did not materialized executed due to non suitability of commercial terms and conditions. Hence, it do not have any evidentiary value.”

13. The A.O. was of the opinion that the assessee had failed to discharge its primary onus to explain the incriminating document seized from its premises and an amount of Rs. 1 crore was added to the income of the assessee as unexplained money u/s 69A & Section 115 BBE of the Act. During the appeal proceedings before the Ld. CIT(A), the assessee filed copy of the cancellation letter of MOU by Rajat Pharmachem Ltd.

claiming that the security deposit of Rs. 1 crore was not en-cashed and further submitted that as per Clause (VI) (B) of the MOU the Rajat Pharchem Ltd. has kept the security deposit with assessee company which was liable to be encashed after the expiry of 75 days from the date of execution of MOU. However, the Id. CIT(A) confirmed the order of the Assessing Officer on this issue.

14. Before us, both the parties relied on the arguments taken up before the authorities below.

15. We have heard the parties, perused the material available on record and gave our thoughtful consideration. It is found that the addition of Rs. 1 crore has been made based on the seized material i.e. MOU entered into between the assessee and Rajat Pharmachem Ltd. During the appellate proceedings, the assessee has produced the cancellation letter of MOU by Rajat Pharmachem Ltd. wherein and the same has been refused to be accepted by the Ld.CIT(A) on the ground that “cancellation of MOU is not notarized and is not verifiable on what date the same has been actually made.”.

16. We find that the said cancellation of MOU has been mentioned with the date of coming into effect as 06/06/2014. As per Clause 7 of the Memorandum of Understanding dated 04/04/2014 the MOU came into force once it is executed and valid for a period of one year the said MOU

has been cancelled on 06/06/2014 itself and the security deposit of Rs.1,00,00,000/- was liable to be encashed after expiry of 75 days from the date of execution of the MOU. Since the cancellation has been done within the 60 days from the date of execution of the MOU, the question of encashing Rs. 1,00,00,000/- by the assessee does not arise. **The revenue has not brought anything on record to prove that the amount has been debited from the account of the Rajat Pharmachem Ltd. or credited into the account of the assessee.**

17. Hence, in the absence of any evidence to prove either the payment from the bank or in the form of cash by the payer or receipt of the amounts into the bank or otherwise by the assessee, the addition made cannot be sustained.

18. In the result, Appeal filed by the assessee in ITA No. 9748/Del/2019 is allowed.

ITA No. 9750/Del/2019 (A.Y 2017-18)

Ground No. 1 & 2

19. The Ground No. 1 & 2 are against disallowance of unexplained expenditure u/s 69 of the Act. The Ld. A.O. has issued show cause notice informing the assessee that survey action at Hotel Lila Kampinsic, Chanakyapuri was carried out wherein the ledger account of the assessee

company was found showing the bills raised and payment made by the assessee of Rs. 1,15,10,433/- should not be disallowed. In response, the assessee informed the A.O. that the expenses were incurred exclusively for the business purpose of the assessee and since customers of the assessee and Director used to visit Delhi for the business purpose, hence, claimed the same as business expenses. To prove the position, the assessee submitted the bank book and ledger showing that payments were made through banking channels and suitably accounted for in the books of accounts and disclosed in the P&L account under the head of travelling and conveyance.

20. Not satisfied with the explanation of the assessee, the A.O. has made addition of Rs. 71,270/- u/s 69C as unexplained expenditure and added back to the income of the assessee. The Ld. Counsel for the assessee argued that the expenses were incurred through proper banking channel, disclosed in books of accounts and debited in profit and loss account under the head of travelling and conveyance, hence the addition u/s 69C of the Act cannot be sustained.

21. We have heard the parties perused the material available on record and gave our thoughtful consideration.

22. It is found that disallowance of the expenses u/s 69C of the Act has been made alleging that expenses are not debited in P & L Account and not disclosed. But in the remand proceedings, the A.O. accepted that the expenses

have been accounted by the assessee in its books of accounts and the payment has been made through the banking channels. However, the A.O. took stand that the said expenditure is not incurred wholly and exclusively for the purpose of business. Since, we find that the travelling expense are part of the business expenses and incurred for the business purposes, the addition made by the AO is being deleted.

Ground No. 3

23. The Ground No. 3 is against confirming the addition of Rs. 5,39,22,747/- made by the A.O. on treating existing liability is cessation of liability u/s 41(1) of the Act.

24. The Ld. A.O. had invoked the provisions of Section 41(1) of the Act and the said addition has been made based on the suspicion that the liabilities are outstanding more than 3 years and no confirmation from the creditors are field during the assessment proceedings. During the appellate proceedings before the Ld.CIT(A) the assessee filed confirmation from the creditors as per Rule 46A of the Income Tax Rule, 1962. The Ld.CIT(A) has also called for remand report from the AO who in turn has called information u/s 133(6) of the Act from the creditors.

25. Apart from the above, it is found that only one creditor namely E R Textile Ltd. had responded to the notice issued by the A.O. during the remand proceedings and the Ld. CIT(A) concluded that demand outstanding shown by

the said creditor is Rs. 5,57,725/- only.

26. It was submitted that on 31.03.2012 Mynah Industry Ltd. amount Rs. 4,00,00,000/- which narration shown being loan taken from M/s Peerless Consultancy amount received by Mynah Industry Ltd. now accounted and on 31.12.2012 Mynah Industry Ltd. amount Rs. 23,17,142/- which narration shown being amount received from M/s Peerless Consultancy on our behalf from Mynah Industry Ltd. Thus, the creditor ER Textiles Ltd. credited the amount receivable from the assessee to the extent of Rs. 4,23,17,142/- by way of general entry which claim to be loan given by the assessee to Mynah Industry Ltd. which is group company of the creditors, whereas in the book of accounts and balance sheet of the assessee, the above amount of Rs. 4,23,17,142/- receivable from Mynah Industry Ltd. is shown under the head of "Loan and Advances" in the assets side which is receivable till date.

27. In view of the above facts and circumstances, we are of the opinion that the Ld. CIT(A) has committed an error in upholding the addition accordingly, the addition made by the assessee which has been upheld by the CIT(A) is hereby deleted by allowing the Ground No.3 of the Assessee.

28. In the result, Appeal filed by the assessee in ITA No. 9750/Del/2019 is allowed.

Order pronounced in the Open Court on : 16.02.2023.

Sd/-
(Dr. B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 16/02/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

MEHTA/R.N, Sr. PS

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI