

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: SMC: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.7260/Del/2018
Assessment Year: 2015-16

Uday Management Services Private Limited, M-38/1, Middle Circle, Connaught Place, New Delhi 110001 PAN AAACU1484B	vs.	The ACIT Circle 27(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Pradeep Batra, Advocate
For Revenue :	Shri Om Prakash, Sr DR

Date of Hearing :	19.12.2022
Date of Pronouncement :	06.03.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal filed by the assessee is directed against the order dated 14.08.2018 of the Ld. CIT(A), New Delhi, relating to Assessment Year 2015-16.

2. The learned assessee representative (AR) submitted that the AO as well as Ld. CIT(A) has erred in law and facts by

confirming the disallowance made u/s. 37(1) of the Act on account of foreign travelling merely on the basis of surmises and conjectures. The Ld. AR also submitted that the copies of the assessment orders for immediately preceding years for A.Y. 2013-14 & 2014-15 clearly reveals that the Assessing Officer has made a disallowance of 30% and 20% respectively on same account and foreign travelling expenses. Therefore the Ld. AR submitted that even if the personal element in the trip is considered then also entire claim of foreign travelling expenses cannot be disallowed.

3. Replying to the above the Ld. Senior DR strongly opposed to the contention of the Ld. AR of the assessee and submitted that the assessee is consistently incurring expenditure on foreign travel and claiming the same for the purpose business of assessee of the authorities below may kindly be upheld.

4. On careful consideration of above submissions first of all I note that undisputedly rather admittedly the disallowance on similar expenditure for A.Y. 2013-14 & 2014-15 was made by the AO to the tune of 30% & 20% respectively by taking into consideration element of personal benefit. In the present case also

the basis taken by the AO and Ld. CIT(A) for making impugned disallowance is that the Director is making trip to USA for the purpose of visiting his family members which has no relation with the furtherance of business. The Ld. CIT(A) confirming the disallowance by relying the order of his predecessor for A.Y. 2011-12. It is a well accepted proposition that the principle of *res judicata* is not applicable to the tax cases but the rule of consistency is always respected by the tax authorities. In the present case as I have noted above the Assessing Officer made disallowance of 30% for A.Y. 2013-14 and 20% for A.Y. 2014-15. The present assessment year is 2015-16 which is immediately succeeding year to A.Y. 2014-15. In the above back drop of facts and circumstances I am of the considered opinion that since the assessee is a company engaged in the providing full facility plans to it clients including fully furnished and air conditioned offices, power back up electricity & maintenance, housekeeping, security and many other facilities. Looking into the nature of business of assessee company, though I am not in complete agreement with the contention of assessee company on this issue that the company is not paying any

remuneration for the above services being rendered by Mr. Anand S. Gupta and the amount reimbursed is much lesser than the remuneration generally payable to someone with similar background, experience, track record and commitment. At the same time the claim of assessee Company cannot be dismissed at the threshold on account of personal element in the foreign travel. Therefore keeping in view rule of consistency I hold that the instead of disallowance of entire claim the 30% of total foreign travel expenses is sufficient to cover all possible leakage of revenue. Therefore the grounds of assessee are partly allowed and disallowance is restricted to 30% of total claim.

9. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 06.03.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated:06th March, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi