

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'E', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 6346/Del/2018 : Asstt. Year: 2014-15

Magnum International Trading Company Pvt. Ltd, 48/12, Commercial Centre, Malcha Marg, Chanakyapuri, New Delhi-110021	Vs.	DCIT, Circile-16(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM8173B		

Assessee by: Sh. Anil Bhalla, CA

Revenue by : Sh. Ajay Kumar Arora, Sr. DR

Date of Hearing: 08.12.2022

Date of Pronouncement: 03.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-6, Delhi dated 23.02.2017.

2. The assessee company was set up in 1975 dealing in business of export of textiles, garments, leather and other products. The only ground pertains to disallowance of consultancy charges.

Disallowance of Consultancy Charges:

3. The assessee claimed expenses of Rs.37,48,030/- on account of consultancy charges. The Assessing Officer held that the consultancy charges paid were higher when compared to the consultancy charges paid in the earlier year. The Assessing

Officer held that inspite of decline of revenue recognized by the assessee, the consultancy charges paid were more.

4. The Assessing Officer restricted the consultancy charges paid @ 0.24% of the revenue recognized during the year and computed that disallowance as under:

A.Y.	Revenue Recognized	Consultancy charges in (Rs.)	Consultancy charges in (%)
2013-14	121,75,58,516	29,90,056	0.24
2014-15	59,50,55,814	37,48,030	0.62
	Total allowable amount - $595055814 \times 0.24\% = 14,28,134$		
	Total disallowance amount - $3748030 - 1428134 = 23,19,896$		

5. On this issue, we have gone through the adjudication of the Id. CIT(A) who held as under:

"4.2.1 The AO restricted the expenses claimed on account of consultancy charges since it was found that consultancy charges paid during A.Y. 2013-14 were 0.24% of the revenue recognised whereas in the year under consideration, the same were 0.62%. The claim of the assessee under the head was restricted to 0.24% of the revenue recognised and an amount of Rs. 23,19,896/- was disallowed since the assessee had failed to establish why the consultancy charges were higher than the previous year despite a decline in the revenue recognised. The appellant has submitted that only 50% of the total expenses of Rs. 37,48,030/- have been claimed and the rest of the 50% have been capitalised to project cost. It has also been submitted that the increase in consultancy expenses was due to regular increase in consultancy fee every year.

4.2.2 I have considered the assessment order and the submissions of the appellant. Though it may not be correct to restrict the expenditure to be allowed on the basis of the percentage of the

consultancy charges vis-a-vis revenue recognised of the immediately preceding previous year, it is also a fact that the main contention with regard to claim of expenditure is that only 50% of the consultancy charges have been claimed as expenditure and 50% of the charges have been capitalised to project cost. No explanation has been put forth in support of the contention as regards why 50% of the expenditure has been capitalised. Hence, the disallowance of Rs. 23,19,896/- is restricted to Rs. 18,74,015/-. Ground of appeal No. 2 is partly allowed."

6. From the record of the revenue, we find that the assessee has claimed only 50% of the total expenses incurred as revenue expenditure and the rest has been capitalized to project cost. Assessing Officer has disallowed an amount of Rs.23,19,896/- on a rationale of revenue recognition and allowed expenses @ 0.24%. The Id. CIT(A) restricted this disallowance to Rs.18,74,015/-. We find that similar matter stands adjudicated by the ITAT in the case of a group company Mansarover Builders Pvt. Ltd. in ITA No. 85/Del/2012 for A.Y.2008-09 and ITA No. 4334/Del/2014 for A.Y. 2010-11 has allowed the claim of consultancy expenses by holding as follows:

"35. It is observed that consultancy expenses paid by assessee were towards legal and professional charges, project management fees supervisory charges etc. Looking into nature of business carried on, the assessee needs consultants for handling various issues of projects. Assessee is carrying on with business of real estate which requires services of specialized consultants like architects, interior decorators etc.

36. It is observed that Ld. CIT(A) confirmed the addition as assessee did not explain the nature of services and basis of apportioning the expenses into 75:25.

37. Assessee has incurred similar expenses in the preceding assessment years which has not been disputed by Ld. AO. In fact for A.Y. 2006-07, which has been argued before us, no such disallowance have been observed to have been made by Ld AO Ld AO has also not disputed the consistent method of allocation of consultancy in the preceding assessment years. Hon'ble Delhi High Court in the case of CIT vs ARJ Securities Printers, reported in 264ITR 276 has held as under:

"Although each assessment year being independent of the other, the principle of res -judicata c estoppels by record which applies to Civil Courts, does not apply to Income Tax proceedings, ye for the sake of consistency and for the purpose of finality in all litigations, including litigation arising out of fiscal states, earlier decisions or the same question should not be reopened unless some fresh facts are found in the subsequent year."

38. In our considered opinion, when there is no change in the business of assessee consultancy expenses incurred towards consultancy charges to an extent of 25% cannot be disallowed. Accordingly this ground raised by the assessee is partly allowed for statistical purposes.

In the result appeal filed by assessee for A.Y. 2008-09 is allowed".

7. In view of the order of the Co-ordinate Bench of ITAT, we hereby hold that the disallowance on account of consultancy charges is liable to be deleted.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 03/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/03/2023

Subodh Kumar/AK, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR