

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

ITA.No.846/Hyd/2018		
Assessment Year: 2009-10		
Ocean Park Multitech Limited, Mehdipatnam, Hyderabad.  PAN : AAACO5367P	Vs.	Asst.Commissioner of Income Tax, Central Circle – 16(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Ms. S. Sandhya, Advocate.
Revenue by:		Sri Jeevan Lal Lavidiya.
Date of hearing:		01.03.2023
Date of pronouncement:		14.03.2023

**ORDER**

**PER LALIET KUMAR, J.M.**

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals) – 4, Hyderabad for the AY 2009-10 on the following raised grounds :

*“1. The order of the learned Commissioner of Income-tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

*2) The learned Commissioner of Income-tax (Appeals) erred in confirming the action of the Assessing Officer in initiating proceedings u/s 147 of the I.T Act.*

*3) The learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.20,38,400/- without properly appreciating the explanation submitted.*

*4. The learned Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs.15,30,800/- made by the Assessing Officer on the ground that such expenses are not genuine.”*

2. The brief facts of the case are that assessee company filed its return of income for A.Y. 2009-10 on 31.12.2009 declaring income of Rs.17,22,786/-. Originally, the assessment u/s 143(3) of the Act was completed on 27-12-2011 by accepting the income returned. A survey was conducted u/s 133A of the I.T.Act in assessee's case and during survey proceedings, books of accounts, various other expenditures, investments, diversion of funds in the form of loans given to sister concerns, etc., have been examined by the Assessing Officer. Further, the expenditure incurred under various heads were also examined by the Assessing Officer and based on the impounded material, certain observations were made and accordingly notice u/s 148 was issued. As there was no response from the assessee, Assessing Officer issued show cause notice. In response to the show cause notice, assessee company filed reply without any supporting documentary evidences. Therefore, the Assessing Officer completed assessment after considering the impounding material and assessee's reply, by making additions of Rs.90 lakhs towards interest on diversified funds, Rs.20,38,400/- towards payments made under the head "Covers" and Rs.15,30,800/- towards maintenance expenditure. Thus, the Assessing Officer completed the assessment and passed order u/s 143(3) r.w.s. 147 of the Act on 31.03.2016.

3. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who granted partial relief to the assessee.

4. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

5. Ground Nos.1 and 5 are general in nature and requires no adjudication.

6. **Ground No.2:**

In the present case, the assessee has not challenged the non-recording of satisfaction before the ld.CIT(A) and therefore, it cannot be said that the assessee was aggrieved by the order passed by the ld.CIT(A). Moreover, for the purpose of raising the specific ground of non-recording of satisfaction, the additional ground is required to be agitated. However, it was noticed that the assessee has not pressed ground No.2 raised before us. Hence, the ground No.2 raised by the assessee is dismissed as not pressed.

**Ground No.3 - Payments made under the head "Covers"**

7. With respect to ground No.3, ld. AR has drawn our attention to 04.2 of the assessment order, wherein assessee had submitted vide letter dated 30.03.2016, document containing various expenses stating payments made to political leaders, police and others does not belongs to it and the assessee has not given the payments to anybody as mentioned in "Covers" and further it was submitted that it was a dumb document. The

Assessing Officer had confirmed the addition by holding that that the assessee could not file the evidence during the survey or thereafter and the Assessing Officer uphold that the payments made were in the nature of illegal payments and for which no expenditure can be claimed by the assessee.

7.1 Per contra, the ld. DR had submitted that the assessee has not provided the details before the Assessing Officer and ld.CIT(A). Hence, ld.CIT(A) confirmed the same as the assessee company failed to file the evidence to substantiate its ground by holding as under :

*“6.3 I have. carefully considered the assessment order and submissions of the appellant. During the course of appellate proceedings, the appellant company failed to file the evidences to substantiate its ground. Therefore, I am in agreement with the Assessing Officer for the detailed reasons mentioned in the assessment order and the addition made is hereby confirmed.”*

8. We have heard the rival submissions and perused the material on record. When any document or material, if any, was impounded from the premises of assessee, then burden lies on the assessee to prove that it does not belongs to it with any supporting documentary evidence. Here, in the present case, assessee simply stated that the document impounded from its premises does not belongs to it without filing any supporting evidence to its contention. Further, no expenditure can be allowed if it is made to the Police or Political parties or any other person unless it is directly or substantially related to the business of the assessee. In the present case, no evidence has been filed before us or before the lower authorities justifying the incurring of expenditure referred in “Covers” that it was done for the business purposes of the assessee. In view of the above, no deduction can be claimed u/s 37 of the Act. Hence, we are of the opinion that the ld.CIT(A) had rightly upheld the addition made by the

Assessing Officer. Thus, the ground No.3 raised by the assessee is dismissed.

**Ground No.4 – Expenditure towards Maintenance.**

9. During the course of assessment proceedings through the sworn statement of the Managing Director of the assessee recorded on 19.03.2010, Assessing Officer found that assessee had incurred expenditure on repairs and maintenance to the extent of Rs.76.54 lakhs at Ocean Park. When the assessee was called for to prove the genuineness of expenditure, assessee failed to prove the same though it was granted several opportunities.

9.1. Before us, ld. AR had submitted that the assessee had already submitted ledger extract to the department with respect to the expenditure on repairs and maintenance to the extent of Rs.76.54 lakhs vide its letter dt.30.03.2016. Ld. AR had drawn our attention to page 30 of the paper book wherein the details of Repairs and Maintenance were mentioned as under :

<b>A.Y. 2009-10</b>		
<b>Repairs &amp; Maintenance Rs.76,54,000/-</b>		
		Rs.
	Security expenses	3109703
	House Keeping expenses	2176088
	Repairs	701101
	Chemicals	556754
	Costumes	567640
	Snow making expenses	497928
	Wrist bands	73600
	<b>Total</b>	<b>7682814</b>

Ld. AR further submitted that the said payments were made through banking channels and therefore, there is no reason to disallow the expenditure claimed by the assessee.

9.2 Per contra, ld. DR had submitted that Ld.CIT(A) relying upon the order of the Assessing Officer had reasonably disallowed only 20% of the expenditure.

10. We have heard the rival submissions and perused the material on record. We find that Ld.CIT(A) had disallowed 20% of the expenditure on repairs and maintenance by holding as under :

*“7.3 During the appellate proceedings also the appellant had not furnished any information / details with regard to the expenditure of Rs.15,30,800/- to substantiate the claim of expenses. Therefore, the expenses are treated as not genuine. Hence, the addition made by the Assessing Officer is confirmed and the relevant ground raised by the appellant is dismissed.”*

10.1. We found that assessee had not furnished any evidence with regard to the said expenditure to prove the genuineness of expenditure and hence, we are of the opinion that the lower authorities had rightly treated the expenses as not genuine. The cursory look of pages 30 and 31 of the paper book, it is clear that most of the expenditure incurred by the assessee was towards the security expenses and house keeping expenses which together constitute more than Rs.52 lakhs out of total expenditure. The details and bifurcation of said expenses were not provided by the assessee and only a bald statement showing that the company had spent an amount of Rs.76.54 lakhs on labour and purchase of raw material was placed. The above said stand of the assessee was not corroborated with pages 30 and 31 of the paper book. In our view, neither the house-keeping nor the security expenses can said to have been incurred by the assessee for the purpose of its business. However, as the ld.CIT(A) had only restricted the addition to 20% of expenditure, therefore, we cannot enhance the

same as the majority of the expenditure was not supported by any documentary evidence like bills or agreements. In view of the above, we do not find any reason to interfere with the order of Id.CIT(A). Thus, this ground of assessee is dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 14<sup>th</sup> March, 2023.

**Sd/-**

**Sd/-**

<b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 14<sup>th</sup> March, 2023.

***TYNM/sps***

Copy to:

S.No	Addresses
1	Ocean Park Multitech Limited, 13-6-44/A/2, Ring Road, In Crystal Gardens, After Mehdipatnam, Hyderabad.
2	The Asst. Commissioner of Income Tax, Central Circle – 16(2), Hyderabad.
3	PCIT – 4, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*