

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 5338/Del/2018  
Assessment Year: 2013-14**

Green Airways Pvt. Ltd.,  
Dang Farm No.79, KH-86,  
Green Drive Silver Oak Farms,  
Ghitorni, New Delhi

**PAN: AADCG6164H**

(Appellant)

Versus ACIT, Circle 10(2),  
New Delhi

(Respondent)

Assessee by: Sh. Satyajeet Goel, Ld. CA  
Sh. Rajat Garg, Ld. CA  
Assessee by: Sh. Anuj Garg, Ld. CA

Date of hearing : 27 /03/2023  
Date of order : 31/03/2023

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 22.06.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-35, New Delhi (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2013-14.

**2.** In the instant case, the Assessee by raising grounds of appeal mainly challenged three additions/disallowances. The first disallowance of Rs.50,50,000/- pertains to business promotion expenses which was made by the Assessing Officer. The Assessing

Officer from Profit and loss account of the Assessee company noticed that the Assessee company has debited an amount of Rs.81,01,771/- on account of business promotion expenses. Therefore, vide letter dated 16.06.2015, asked the Assessee to submit the details of expenses which increased more than 50% as that of the last year. In compliance, the Assessee submitted the details of business promotion expenses.

Thereafter, on going through the details/ledger copies of the Assessee company, noticed that the Assessee has purchased precious items like gold jewellery 18 KT amounting to Rs.24,13,092/- and other Cut & Polished Diamond amounting to Rs.26,36,908/- under the head business promotion expenses and therefore show caused the Assessee. In response, the Assessee claimed that the Assessee has distributed costly gifts to the officials of Go-Air in order to procure business. The Assessing Officer by considering the provisions of section 37(1) of the Act, held the incurring of said expenses being un-ethical practice and involvement of personal element cannot be ruled out, as the expenses of Rs.50,50,000/- are not incurred wholly and exclusively for the purpose of business and there is no nexus between the expenses incurred on such precious items with the business activities of the Assessee company, disallowed the said expenses of Rs.50,50,000/-. The Id. Commissioner affirmed the said disallowance on the similar footings as observed by the Assessing Officer.

**3.** The Assessee challenged the said addition before the Tribunal and to support the expenses of Rs.50,50,000/- filed an application for admission of additional evidence under Rule 29 & 30 of ITAT Rules, 1963 and claimed that Shri Harcharanjeet Singh

Dang who was the Main Owner/Incharge of the management of Assessee company for a long time and during the assessment proceedings as well, was not well and ultimately died on 02.04.2016 within few days of the passing of the assessment order. As the affairs of the Assessee company were handled by Late Shri Harcharnjeet Singh, therefore, correct position with regard to claim of expenses could not be brought out before the Assessing Officer as well as before the Id. Commissioner, which resulted into the findings that the Assessee has distributed the costly gifts to the officials of the Go-Air for procuring business orders, which in fact is factually incorrect as the sale promotion expenses have been made on account of gifts distributed to the Cargo Agents who have achieved the sale targets. The Assessee in support of its claim also filed copy of sales promotion scheme launched by the Assessee company, chart giving details of achievement of sales figures, sample copies of appreciation certificates issued to the customers and photographs showing distribution of diamonds and gold coins.

**4.** On the contrary, the Id. DR by drawing our attention to the ITR acknowledgement dated 30.09.2013 for the A.Y. under consideration, claimed that in the instant case ITR was filed by Shri Tejinderjeet Dang therefore, the claim of the Assessee is not genuine. Further, both the authorities below on the basis of the claim made by the Assessee, given concurrent findings and therefore, the decision of the Id. Commissioner in affirming the addition under consideration, do not call for any interference.

**5.** We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that though there are

concurrent findings of the authorities below qua the addition in hand, however, from the copy of the Scheme launched by the Assessee for diamond, gold cargo offer (page 58 of the paper book), achievement certificates to different persons and photographs handing over the gifts, the claim of the Assessee prima facie appears to be legitimate and in our considered opinion goes to the root of the addition under consideration and also essential for just decision of the controversy in hand, hence, we by taking into the peculiar facts and circumstances, referred to above, are inclined to remand the instant issue to the file of the Assessing Officer for decision afresh, suffice to say, by affording reasonable opportunity of being heard to the Assessee.

The Assessee is directed to file the relevant documents (specifically page 58 to 74 of the paper book before us) in original before the Assessing Officer in order to substantiate its claim. We clarify that onus would be on the Assessee to substantiate its claim by producing the original documents (page 58 to 74 of the paper book filed before us) and the persons to whom achievement certificates have been given and the persons appearing in the photographs (page 70 to 74 and other photographs if any). Consequently, ground No. 1(i) to 1(iii) stands allowed.

**6.** Second issue pertains to the sustenance of the addition to the extent of Rs.9,11,947/- on account of repair and maintenance expenses incurred at registered office of the Assessee. We observe that during the year under consideration, the Assessee has incurred expenses of Rs.39,28,099/- in respect of different locations of the Assessee company including its registered office out of which the amount of Rs.38,99,299 (20,75,405 + 1823,894)

was incurred in Gurgaon office and registered office, in Delhi which is also the residence of the Director.

On being asked, the Assessee produced the books of account which were test checked and found that the expenses debited under the above mentioned heads were supported with some self produced vouchers and most of them have been paid in cash and relates to renovation and addition of furniture and fixtures. Therefore, the Assessing Officer held the same cannot be held as current repair as it has enduring benefit. Consequently, the Assessing Officer held the same as capital in nature and allowed the depreciation @ 15% and capitalized the amount of Rs.33,43,204/- and added back in the income of the Assessee.

The Id. Commissioner accepted the revenue expenditure which have been incurred on the rented premises and ultimately rejected the treatment of expenses of Rs.38,99,099/- as capital in nature by the Assessing Officer. Further, the Id. Commissioner by considering the peculiar facts that the Assessee has incurred the amount of Rs.18,23,894/- as expenses under the head repair and maintenance on the premises which is registered office as well as residence of the director, restricted the disallowance at 50% of the amount of Rs.18,23,894/- which comes to Rs.9,11,947/- and added back to the income of the Assessee.

**7.** We have given thoughtful consideration to the facts of the case and observe that it is not in dispute that the expenses of Rs.18,23,894/- have been incurred by the Assessee qua registered office which is owned by the Director who is also residing therein. There is no such finding that half half of the expenses of Rs.18,23,894/- have been incurred respectively on the registered

office and on residence of the Director. Hence, for just decision of the case and for substantial justice and fair play, we are inclined to restrict the disallowance @ 25% of the total expenses of Rs.18,23,894/- incurred on the registered office. Consequently, the ground No. 2(i) to 2(iv) stand partly allowed.

**8.** The third issue relates to upholding the disallowance of Rs.3,14,829/- which pertains to period from 1<sup>st</sup> April, 2012 to June, 2012. On being asked to explain and justify the said claim of prior period expense, the Assessee could not furnish any satisfactory submission, therefore, the said amount was added in the income of the Assessee by the AO on the ground that the Assessee company is following mercantile system of accounting. The Id. Commissioner affirmed the said addition.

The Assessee being aggrieved claimed that the expenses have been crystallized during the year under consideration. Therefore, the same would have been allowed, as the genuineness of the expenses is not in dispute and there being no adverse revenue implication. Consequently, no such disallowance is called for.

**9.** Considering the peculiar facts and the claim of the Assessee that the expenses have been crystallized during the year under consideration and the genuineness of the expenses is not in dispute and there is no legal impediment for not allowing such prior period expenses, we are inclined to remand the instant issue to the file of the AO for factual determination qua crystallization of expenses in the year under consideration and on finding the claim of the Assessee correct, grant the relief accordingly. Consequently, ground No. 3(i) to 3(iii) stand allowed for statistical purposes.

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

Order pronounced in the open court on 31.03.2023.

Sd/-

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-

Copy forwarded to:

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

Assistant Registrar  
ITAT New  
Delhi

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