

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 67/MUM/2023
Assessment Year: 2017-18
&
ITA No. 68/MUM/2023
Assessment Year: 2018-19

M/s Garware Finance Corporation
Limited,
1-A Kapur Mahal, Netaji Subhash
Road, Marine Drive,
Mumbai-400020.

PAN No. AAACG 2804 M
Appellant

Vs.

DCIT Central Circle-6(4),
1925, 19th floor, Air India
Building, Nariman Point,
Mumbai-400021.

Respondent

Assessee by : Mr. Ryan Saldanha, AR
Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 09/03/2023
Date of pronouncement : ___/03/2023

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the assessee are directed against two separate orders, both dated 15.12.2022, passed by the Ld. Commissioner of Income-tax (Appeals)-54, Mumbai [in short 'the Ld. CIT(A)'] for assessment years 2017-18 and 2018-19 respectively.



Being identical grounds raised in both these appeals, same were heard together and disposed off by way this consolidated order for convenience and avoid repetition of facts. The grounds of appeal for assessment year 2017-18 are reproduced as under:

1. *The Id CIT(A) erred in upholding the disallowance of foreign travelling expenses of Rs.5,41,634/- made by the AO without appreciating the fact that:*

- *The ledger and invoices were submitted.*
- *The expenditure on Foreign Travel was genuinely done towards business / marketing activities of the Director of the assessee company.*
- *The foreign travel expenditure pertained to Director Mr Nihal Garware who was an NRI*
- *Such travel expenditure is reasonable and commensurate with the sales of the company.*
- *The profitability of the company is extremely high from any given parameter.*

2. *The Id CIT(A) erred in upholding the disallowance of business promotion expenses of Rs. 1,81,075/- made by the AO without appreciating the fact that:*

- *The ledger and invoices were submitted.*
- *The expenditure on Business Promotion was genuinely done towards business / marketing activities of the Director of the assessee company.*
- *The nature of the expenditure is cost of Taj Mahal Hotel Chambers Membership.*
- *Such business promotion expenditure is reasonable and commensurate with the sales of the company.*



• *The profitability of the company is extremely high from any given parameter.*

3. *The appellant prays that aforesaid disallowance of travel and business promotion expenses made may be deleted.*

2. In the case of the assessee a defect memo was issued specifying the defect that the appeal was filed by the Director only. In response, the assessee submitted that a certificate to the effect that there was no Managing Director and therefore defect stands removed and appeal is admitted for adjudication.

3. Briefly stated, facts of the case are that the assessee company was engaged in the business of providing consultancy and financial services, trading in shares etc. For the year under consideration, the assessee filed return of income u/s 139(1) of the Income-tax Act, 1961 (in short 'the Act') declaring total income at Rs.1,00,18,070/-. A search action u/s 132 of the Act was carried out in the case of the assessee on 09.03.2021 along with other cases on "Nihal Garware" and consequently notice u/s 153A of the Act was issued. In the assessment completed u/s 153A of the Act dated 28.03.2022, the Assessing Officer made disallowance of travelling expense amounting to Rs.5,41,634/- and business promotion expenses of amounting to Rs.1,81,075/-.

4. On further appeal, the Ld. CIT(A) upheld the disallowance. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.



5. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. As far as Ground No. 1 relating to disallowance of foreign travelling expense is concerned, we find that assessee claimed total travelling expenses of Rs.10,17,746/- out of which amount of Rs.7,55,783/- was related to foreign travel. In the return of income filed, the assessee *suo motu* made disallowance of Rs.2,14,149/- related to travel expenses. However, the Assessing Officer observed that assessee failed to explain business expediency on foreign travels and therefore, he disallowed for balance foreign travelling expenses of Rs.5,46,334/-. The Ld. CIT(A) noted the submission of the assessee that foreign travel expenses relate to director Shri Nihal Garware who is a non-resident Indian and who resides outside India. According to assessee, he was required to frequently attend business affairs of the assessee company and therefore expenditure of foreign travel was justified.

5.1 Before us, the assessee has submitted ledger and invoices of the expenses claimed. On perusal of the financial statements of the assessee company, we find that during the year under consideration the assessee has shown revenue from operations of Rs.1,34,50,653/-. The main expenses claimed pertain to prior period expenses of Rs.11,00,340/- and travel expenses of Rs.10,70,746/-. In our opinion looking to the business operations of the assessee company and *suo motu* disallowance made by the



assessee, additional disallowance on foreign travel expenses by the Assessing Officer is not justified being a non-resident director, it was necessary for him to travel to India for looking after affairs of the assessee company. The Assessing Officer cannot dictate to the assesseeas how to manage affairs of the assessee. The case laws relied upon the Ld. CIT(A) by the distinguishable of facts. In the case of **Kanu Kitchen Kuulture (P.) Ltd. v. DCIT [2014] 49 taxmann.com 64 (Delhi-Trib.)** full details were not filed before the Assessing Officer and the case of **Spica Finstock Ltd. v. ACIT [2010] 1 ITR (Trib.) 437 (Ahmedabad)** expenses were incurred for the personal benefit of the assessee company. In the case of **SPI Technologies India (P.) Ltd. v. ACIT [2013] 33 taxmann.com 594 (Chennai-Trib.)** there was no evidence to show to that foreign travel expenses incurred for the purpose of business. Therefore, the ratio of these decisions cannot be applied over the facts of the instant case.

5.2 Before us, the Ld. Counsel of the assessee submitted that appeal for assessment year 2013-14 involving identical issue has been restored to the file of the Ld CIT(A) in ITA No. 2635/Mum/2018 and therefore he submitted that this issue may also to be set aside to the file of the Ld. CIT(A) for deciding afresh after verification of the vouchers and evidence in support thereof.



5.3 We find that in AY 2013-14 appeal has been restored to the file of Ld CIT(A) as same was dismissed in *limine* by the LD CIT(A) for non-filing of appeal in electronic format. In the present case we have already held that disallowance of travel expenses is not justified in view of suo-moto disallowance, quantum of travel expenses amount in proportion of business turnover and business expediency etc . In view of the facts and circumstances of the case, we set aside the finding of ld CIT(A) and delete the addition made by the Assessing Officer. The Ground No. 1 of appeal of the assessee is accordingly allowed.

6. The ground No. 2 of the appeal relates to disallowance of business promotion expenses of Rs.1,81,075/-. We have heard rival submission of the parties. The assessee has mainly claimed that expenses incurred for business promotion included expenses for meetings organized in hotels by the Director of the company. In our opinion, the assessee has justified the business expediency of the expenses. The Ld DR submitted that the assessee should produce the persons with whom he held meeting to support his contention of business expediency. We are of the view that it may not be possible for the assessee to produce all those persons with whom the director of the company had meeting in hotels. Looking to the quantum of expenses, as compared to the business turnover, we do not find the expense as excessive and hence, we set-aside the finding of Ld CIT(A) and delete the addition made by the AO.



6.1 The grounds raised in assessment year 2018-19 being identical to the grounds raised in assessment year 2017-18, same are decided *mutatis mutandis*.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the open Court on 30/03/2023.

**Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/03/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai