

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.2728/Del./2012
(ASSESSMENT YEAR : 2005-06)**

DCIT, Central Circle 6,
New Delhi.

vs.

M/s. Sahara India Limited,
1, Kapoorthala Complex,
Aliganj,
Lucknow (Uttar Pradesh).

(PAN : AADCS4482J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri J.J. Mehrotra, FCA
Shri Devasish A. Mehrotra, Advocate
Shri Hardeep Singh, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 28.03.2023
Date of Order : 06.04.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of Id. CIT
(Appeals)-I, New Delhi pertaining to AY 2005-06.

2. The grounds of appeal taken by the Revenue read as under :-

“On the facts and in the circumstances of the case the Ld.
CIT(A) has erred in:-

1. "The CIT(A) is not correct in law and facts

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowances of various expenses amounting to Rs.1,84,12,166/- made by the Assessing officer as the assessee failed to establish the genuineness or justification of such huge expenditure.

3. On the facts and in the circumstances of the case, the Ld CIT(A) has erred in directing the Assessing Officer to treat the interest income of amounting to Rs.66,578 and miscellaneous income of Rs.1,793/- as business income as shown by the assessee as against income from other sources treated by Assessing officer.

4. The order of Ld. CIT(A) is perverse in law and on facts.”

3. Brief facts of the case are that the Assessing Officer in para 2 to 5 of the assessment order has discussed the disallowance of expenses of Rs.1,84,12,166/-. As per the Assessing Officer, this was the first year when the assessee company was appointed as a sole Corporate Agent for M/s. Sahara India Life Insurance Company Limited from which commission income has been shown to have been received by the assessee amounting to Rs.63,79,879/-. As against the said income, the assessee has claimed expenditure of Rs.1,41,02,056/- under the head remuneration to employees and benefit and administrative expenses and interest on loan of Rs.16,42,192/-. The Assessing Officer thereafter has analysed the arrangement between M/s. Sahara India Limited and M/s. Sahara India Life Insurance Company Limited and reached to the conclusion that apparently no efforts have been made for bringing any additional business by the assessee company for M/s. Sahara India Life

Insurance Company Limited while agreeing that the commission which has been paid to the assessee is the maximum which is permitted in the Life Insurance Act. Thereafter he has referred to allowance of only 7.5% commission in the hands of M/s. Sahara India Life Insurance Company Limited out of the commission paid to the assessee company and has proceeded to restrict the expenditure in the hands of the appellant to 25% of the total expenditure while referring to number of branches and number of employees which were employed by the assessee company during the year while stating he is unable to understand as to how 32 offices and 300 employees can be operated by total expenditure of Rs.1,15,000/- on account of rent which has been incurred by the assessee when during the year the assessee has not submitted employees-wise details in the format required by him and has only submitted company of form no.16 and thereafter he has proceeded to allow the expenses by estimating allowable expenses at 25% of the total commission received which comes to Rs.15,94,968/- and has disallowed the balance expenses of Rs.1,84,12,1661- on estimation only.

4. Upon assessee's appeal, Id. CIT (A) gave finding that it is not a must to generate matching income for allowance of expenditure. Further, he observed that assessee is under no obligation to justify the expenditure if he has incurred the expenditure and if it has been incurred for the

purpose of business. We may gainfully refer to the Id. CIT (A) order in this regard as under :-

“4.5 The submission given by the appellants and the observations of the Assessing Officer has been considered. In the concluding para of the assessment order the Assessing Officer has observed that the appellant could not justify the number of 300 employees which it had hired as well as the 32 offices which it has taken on rent. On this basis the Assessing Officer had disallowed the expenditure of Rs.1,84,12,166/- and has allowed the expense amounting to Rs.15,94,968/- against a commission of Rs.63,79,875/-. Any expenditure which has been incurred wholly and exclusively for the purposes of business has to be allowed u/s 37 of the I T Act. The appellant is under no obligation to justify the expenditure if he has incurred the same for the purposes of business. Here the Assessing Officer has not carried out any investigation to substantiate that the expenditure was not for the purposes of business. The appellant had given a copy of form No.24 for the employees and the details of rent paid by it. The Hon'ble Supreme Court in the case of Sassoon J.David and Co. (P) Ltd. v. CIT 118 ITR 261 [1979] has observed that " it has to be observed here that the expression 'wholly and exclusively' used in section 10(2)(xv) of the Act [section 37(1) of the present Act] does into mean 'necessarily'. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and it is incurred for promoting the business and to earn profits, the assessee can claim deduction u/s 10(2)(xv) of the Act even though there was no compelling necessity to incur such expenditure. "

4.6 Thus the requirement u/s 37 is not that there should be a matching income to the expenditure incurred. In John Moore v. Stewarts & Lloyds Ltd., 6 TC 501 (C.Cess) [1906] Lord Pearson observed at page 507 that the statue did not require the party claiming deduction to show that any profit was in fact earned by the expenditure in question In Hughes (Inspector of Taxes) v. Bank of New Zealand [1938] 6 ITR 636 (HL) , Lord Thankerton observed at page 644 that" expenditure in course of the trade which is unremunerative is non-the-less a proper

deduction if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit side to justify the deduction of an expense."

4.7 Thus in order that an expenditure may be allowed as a deduction u/s 37, it need not be incurred with the object of gaining a direct benefit. Hence the appellant can incur expenditure with a long term perspective and if he has employed the necessary number of persons whom he things are essential for running the business then the expenditure incurred on it is allowable. Similarly if the assessee has opened its business in various cities expecting future income from these places then such expenditure has been incurred wholly and exclusively for the purposes of business. The Assessing Officer has no where been able to establish that the expenditure on salary and rent have not been incurred for the purposes of business. Moreover, while discussing the issue of salary and rent the Assessing Officer has disallowed a proportion of the entire expenditure which is not understandable. As per the above discussion since the expenditure has been incurred wholly and exclusively for the purposes of business the disallowance of Rs.1,84,12,166/- made by the Assessing Officer is hereby deleted. This ground is decided in favour of the appellant."

Furthermore, apropos ground no.3, the ld. CIT (A) has held as under :-

"5. The appellant has taken two additional grounds the first being the action of Assessing Officer in treating the interest income received by the appellant amounting to Rs.65,578/- and miscellaneous income amounting to Rs.1793/- as income from other sources as against regular business income shown by the assessee. I have considered the submission of the assessee and the two additional grounds are admitted.

5.1 The Assessing Officer has held that the business carried out by the appellant is illegal and therefore, he taxed the above amount as income from other sources.

5.2 The appellant pointed out that this issue has been decided by CIT(A)-I, Kanpur in her order dated 2.12.2005 in appeal No.CIT(A)-I 1198/CC-IILKO/05-06, in their favour. Even in

the earlier assessment years it has been held to be business income by the CIT(Appeals), therefore, the Assessing Officer is directed to treat the same as business income.

6. The second additional ground is against the fact that the Assessing Officer has not considered the revised return though it was filed within the stipulated time.

6.1 The Assessing Officer is directed to verify if the revised return is legally correct and within time and if so he is directed to consider the revised return for the purposes of determining the taxable income for the year.

5. Against the above order, Revenue is in appeal before us.

6. We have heard both the parties and perused the records. As regards the disallowance of expenditure by AO is concerned, we find that ld. CIT (A) has passed a well-reasoned order. We do not find any infirmity in the same. The other small issue whether CIT (A) has given direction to the AO is also in the interest of justice. Hence, we uphold the same also.

7. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court on this 6th day of April, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 6th day of April, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.
