

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.3059/Chny/2019
निर्धारण वर्ष/Assessment Year: 2013-14

Shri Lokanathan Neelakantan,
FF-1, Akshaya, No. 12, Chamiers
Road, Nandanam, Chennai 600 035.

Vs. The Income Tax Officer,
Non Corporate Ward 1(4),
Chennai 600 034.

[PAN: AATPN2547A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Miss. N.V. Lakshmi, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 29.03.2023
घोषणा की तारीख /Date of Pronouncement : 21.04.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 2, Chennai, dated 19.07.2019 relevant to the assessment year 2013-14.

2. The appeal filed by the assessee is delayed by 24 days in filing the appeal before the Tribunal. The assessee has filed a petition for condonation of delay in the form of an affidavit, against which, the Id. DR has not objected. Since the assessee was prevented by reasonable

cause, we hereby condone the delay of 24 days in filing the appeal and admit the appeal for adjudication.

3. Brief facts of the case are that the assessee has filed his return of income for the assessment year 2013-14 admitting a total income of ₹.15,42,880/-. After following due procedure, the Assessing Officer has completed the assessment under section 143(3) of the Income Tax Act, 1961 ["Act" in short] assessing the income of the assessee at ₹.60,49,350/- after making various disallowances.

4. With regard to the confirmation of disallowance of travel expenses, the Assessing Officer has observed that out of the total travelling expenses of ₹.6,94,696/-, an amount of ₹.5,17,007/- was shown to have been incurred towards "Travel Air Madras". Since no evidence was furnished in the course of assessment proceedings, the Assessing Officer disallowed the same stating that the expenditure claimed had no connection with the assessee's business. Moreover, in the remand report, the Assessing Officer has observed that only a copy of the ledger account of Travel Air Madras Pvt. Ltd.' was produced and that no verifiable evidence was furnished by the assessee. Since the assessee failed to furnish the requisite evidence to prove that the expenses were incurred for business purposes, The Assessing Officer disallowed ₹.5,17,007/- and

brought to tax. On appeal, after considering the submissions of the assessee and affording an opportunity by remanding the matter to the Assessing Officer, in the absence of any material evidence, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including the details of invoices for travelling expenditure. On perusal of the invoices, we find that the assessee has made foreign trip along with family members to various countries. However, the assessee has not explained the business connection for this foreign visit either before the Assessing Officer or before the Id. CIT(A) or even before the ITAT. Thus, we find no infirmity in the order of the Id. CIT(A) in confirming the disallowance made by the Assessing Officer and accordingly, the ground raised by the assessee is dismissed.

6. The next ground raised in the appeal of the assessee relates to confirmation of disallowance of service tax under section 43B of the Act. In the assessment order, the Assessing Officer has observed that out of the total sum of ₹.43,37,180/- debited towards service tax, the assessee could not produce any challan the tune of ₹.52,700/-. Further, no proof was furnished with regard to payment of service tax of ₹.29,41,214/-

within the due date as per the provisions of the Act. Therefore, the Assessing Officer has disallowed a total amount of ₹.29,93,914/- [₹.52,700 + ₹.29,41,214) and brought to tax. On appeal, after considering the submissions of the assessee, the Id. CIT(A) has held that the Assessing Officer has rightly treated the service tax as a trading receipt and thereby considering the same under section 43B of the Act since the assessee failed to actually pay service tax to the Government account and accordingly confirmed the disallowance made by the Assessing Officer. In this case, the service tax was claimed as 'provisions and service tax' and even before the ITAT, the assessee has failed to brought on record any material evidence towards actual payment of service tax. Accordingly, we confirm the orders of authorities below and thus, the ground raised by the assessee is dismissed.

7. The next ground raised in the grounds of appeal is reproduced as under:

"4. The learned CIT(A) erred in dismissing the grounds 8-9 as not pressed is contrary to the law and justice and in any event not authorised by the appellant hence the said grounds qualify deduction on the facts of the case."

8. In the appellate order, the Id. CIT(A) has held that the assessee did not press ground Nos. 6 to 9 and therefore, the same are dismissed as not pressed. However, before us, the Id. Counsel for the assessee has

submitted that no petition for not pressing the grounds were submitted before the Id. CIT(A) and thus, prayed for adjudication of the grounds No. 8 and 9 raised before the Id. CIT(A).

8.1 with regard to ground No, 8 raised before the Id. CIT(A) relates to disallowance of conveyance expenditure of ₹.26,888/-, the Id. Counsel for the assessee has submitted that the assessee has debited an amount of ₹.1,07,553/- towards conveyance and also produced vouchers. After verifying the vouchers produced by the assessee, the Assessing Officer has noted that some vouchers are found to be self made vouchers and thereby 25% of the expenditure was disallowed and the resultant amount of ₹.26,888/- was added back to business income.

8.2 The Id. Counsel for the assessee has submitted that it is not the case of the Department that the entire vouchers produced by the assessee for the claim of conveyance expenses are found to be self made, in fact, wherever not possible, the assessee has claimed the expenses through few self made vouchers and moreover, since the Assessing Officer has not doubted the claim of the assessee, he prayed for allowance of entire claim of the assessee.

8.3 We have considered the submissions of the Id. Counsel. Since the

element of personal usage cannot be ruled out, we direct the Assessing Officer to disallow 10% of the total amount of ₹.1,07,553/- debited towards conveyance expenses.

8.4 With regard to the ad-hoc disallowance made by the Assessing Officer, the assessee has debited following expenses into the profit and loss account:

Head of expenditure	Amount debited
Telephone & internet charges	₹.1,43,612/-
Vehicle maintenance	₹.2,14,280/-
Depreciation for vehicle	₹.1,57,883/-
Vehicle insurance	₹.1,01,691
Total	₹.6,17,466/-

Out of the above expenses claimed by the assessee, the Assessing Officer disallowed 25% on the ground that the element of personal usage cannot be ruled out. The Id. Counsel for the assessee has submitted that the expenses towards telephone & internet charges, vehicle insurance, etc. are under fixed packages. 25% of disallowance of total expenses is in higher side and prayed for relief.

8.5 We have considered the submissions of the Id. Counsel. Since the element of personal usage of vehicle, etc. cannot be ruled out, we direct the Assessing Officer to disallow 10% of the total expenditure of

₹.6,17,466/- debited into the P & L. account.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 21st April, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 21.04.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &
6. गार्ड फाईल/GF.