

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.782/M/2023  
Assessment Year: 2017-18**

Dy. Commissioner of Income Tax, Circle-16(2), Room No.625, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020  (Appellant)	Vs.	M/s. Svatantra Online Services Pvt. Ltd., Level 17, Sunshine Tower, Senapati Bapat Marg, Elephinston Road, Mumbai – 400 012 <b>PAN: AAWCS1965R</b>  (Respondent)
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**Present for:**

Assessee by : Shri Vijay Mehta, A.R.  
Revenue by : Smt. Sonia Kumar, D.R.

Date of Hearing : 22 . 05 . 2023  
Date of Pronouncement : 31 . 05 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The assessee by filing the present appeal, sought to set aside the impugned order dated 16.01.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

*“1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) was justified in deleting the disallowance of expenses of Rs.1,90,71,139/- being Advertisement & Marketing expenses. The expenses incurred are highly unreasonable and excessive.?”*

*2. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in exceeding his mandate in setting aside the issue of Advertisement & Marketing expenses for examination and not adjudicating on the issue concerned which needs further adjudication?*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding the expenses incurred for Conveyance Expenses, Office Expenses and Communication Expenses as revenue in nature without appreciating the fact that expenses involve personal element?*

*4. The appellant prays that the order of CIT(A) on the above grounds be set-aside and that of the Assessing officer be restored.*

*5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of selling of handcraft in India. For the year under assessment the assessee filed return of income declaring total loss of Rs.21,70,18,650/- which was subjected to scrutiny. The assessee claimed income from sale of product to the tune of Rs.1,23,21,431/- vis-à-vis last year at Nil. The assessee has also shown interest income of Rs.23,546/-. The assessee claimed expenditure (which includes cost of sale i.e. purchase of cost in trade of Rs.2,05,52,942/-) to the tune of Rs.8,69,88,002/- minus Rs.6,64,35,060/- inventory of stock, employees' benefit for Rs.4,56,19,965/-, finance cost of Rs.18,74,144/- and other expenses of Rs.15,43,72,388/-. Assessing Officer (AO) after declining the contentions raised by the assessee proceeded to conclude that the expenses incurred by the assessee are highly unreasonable and the unexcessive and the corporate fund has been diverted to personal fund which is not a business prudence and thereby disallowed 20% of the above expenses of Rs.9,53,55,695/- which comes to Rs.1,90,71,139/-. The AO also disallowed 20% of Rs.1,13,98,095/-

on account of travelling and conveyance, office expenses etc. which comes to Rs.22,79,619/-.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

#### **Ground Nos.1 & 2**

5. The AO made disallowance of Rs.1,90,71,139/- being 20% of the advertisement and marketing expenses claimed during the year under consideration on the ground that the expenses incurred are highly unreasonable and excessive and the corporate fund has been diverted to personal funds which is not business prudence. The AO has made disallowance without examining audited financials of the assessee and without rejecting the books of accounts of the assessee. Moreover, the AO cannot decide on behalf of the businessman as to how and which of the expenses are to be incurred. Keeping in view these facts the Ld. CIT(A) has directed the AO to pass a speaking order by examining the claim of the assessee by keeping in view the trade of the assessee by returning following findings:

*“7. It is found that the company has made payment during the year. Assessee's submission is considered but the contention is not acceptable in view of the overall business activity and its turnover shown during the year. The expenses incurred are highly unreasonable and excessive. The corporate fund has been diverted to personal fund which is not business prudence. Under the circumstance, for want of complete verification, the genuineness & reasonableness of expenditure on advertisement/marketing cannot be relied upon. Therefore 20% of above expense Rs.9,53,55,695/- which comes to Rs.1,90,71,139/- is disallowed considering the expenses not incurred for assessee's business for the year under consideration.*

*....”*

*AO had issued notices u/s 133(6) to some of the parties which were not responded by those parties which had provided advertising and marketing services to the appellant. Further, the AO observed that expenses incurred on these services are highly unreasonable and advertisement/marketing expenses. excessive, thereby disallowed 20% of advertisement/marketing expenses.*

*Here, the trade of appellant is to be kept in mind i.e. selling of handicraft in India and it has been second year of operation of appellant. In my considered view, AO has not given any conclusive finding with regard to the observation of 'highly unreasonable and excessive advertisement/marketing expenses'. Mere issue of notice and its non- response is not conclusive to prove that expenses are unreasonable. AO is advised and directed to examine these expenses again and pass speaking order.*

*The ground of appeal no.1 of appellant is allowed for statistical purpose.”*

6. When the AO has passed a cryptic order without examining the audited financials and submissions of the assessee rather proceeded to disallow the same on adhoc basis which is not sustainable in the eyes of law, the Ld. CIT(A) has rightly directed the AO to decide the issue afresh by keeping in mind that the assessee is into the business of selling handicrafts in India and this was its second year of operation. So in the given circumstances, we find no illegality or perversity in the impugned findings returned by the Ld. CIT(A). So ground Nos.1 & 2 raised by the Revenue are hereby dismissed.

**Ground No.3**

7. The Ld. CIT(A) deleted the disallowance made by the AO @20% of travelling and conveyance expenses and office expenses etc. of the total expenses of Rs.1,13,98,095/- claimed by the assessee by returning following findings:

*Ground no.2 disallowances aggregating to Rs.22,79,619/- as under:*

<i>Expenses Head</i>	<i>Amount</i>	<i>Disallowance @20%</i>
<i>Travelling and conveyance expenses</i>	<i>72,82,267</i>	<i>14,56,453</i>
<i>Office Expense</i>	<i>29,70,334</i>	<i>5,94,067</i>
<i>Communication Expenses</i>	<i>11,45,494</i>	<i>2,29,099</i>
<i>Total</i>	<i>1,13,98,095</i>	<i>22,79,619</i>

*AO regarding the above addition, in assessment order has observed as follows:-*

*“.....*

*Such huge expenses can't pass the test of prudence and business exigency for which payments have been made by assessee company. Further expenses incurred on account of travelling & conveyance, office expenses, communication expenses, involved personal element hence 20% of the expenses also disallowed 20% of Rs.1,13,98,095/- which comes to Rs.22,79,619/- is further disallowed and added to total income.*

*....”*

*As such, the ground taken by assessing officer while disallowing the above expenses is not explanatory and elucidative enough. AO was dissatisfied with reply during assessment proceedings, more information had to be called before going for adhoc or estimated disallowance. Hence, the ground of appellant is allowed and addition of Rs.22,79,619/- is deleted.”*

8. We are of the considered view that when all the necessary information/evidences/documents have been brought on record by the assessee which were otherwise not disputed by the AO, making adhoc disallowance is not sustainable in the eyes of law. Merely on the basis of the fact that the expenses claimed by the assessee involve personal elements, adhoc disallowance cannot be made. So

in view of the matter, we do not find any illegality or perversity in the impugned findings returned by the Ld. CIT(A), hence ground No.3 raised by the Revenue is hereby dismissed.

9. In view of what has been discussed above, the appeal filed by the Revenue is hereby dismissed.

**Order pronounced in the open court on 31.05.2023.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 31.05.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.