

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.4222/Del/2017  
Assessment Year: 2012-13

Bhalla Chemical Works P. Ltd., M-237, Greater Kailash-II, New Delhi 110048 <b>PAN AAACB 4077 D</b>	vs.	The DCIT,Circle 4(2), New Delhi
(Appellant)		(Respondent)

For Assessee :	Shri Rajat Jain, CA Shri Ashish Mendiratta, AR
For Revenue :	Shri Kanav Bali, Sr. DR

Date of Hearing :	13.06.2023
Date of Pronouncement :	13.06.2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.**

This appeal has been filed against the order of CIT(A)-2, New Delhi dated 28.02.2017 for AY 2012-13.

2. When the matter was called for hearing the learned counsel for the assessee submitted at the outset the he seeks to press only ground no. 3, ground no. 4 and ground no. 6 of the grounds of appeal and other grounds raised in the appeal memo may be treated as withdrawn.

3. In the light of submission made, remaining other grounds are dismissed and remaining grounds are adjudicated here under:-

*3. Addition on account of Car expenses.*

*The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs 232,709/- on account of Car Expenses due to personal use of directors on adhoc basis @ 15% of total expenses.*

*4. Disallowance of Club Expenses*

*The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of expenditure of Rs 204,234/-incurred at Club for entertainment of official Guests.*

*6. Addition of Rs 37,25,803/- on account of unverified Creditors*

*The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs 37,25,803/- on account of alleged unverified Creditors.*

3. Ground no. 3 relates to estimated disallowance of Rs. 2,32,707/- on account of personal user of the car. The Assessing Officer based on the observations in the tax audit report has estimated ad-hoc disallowance at the rate of 15% such car expenses including depreciation thereon. The aforesaid action of the estimated disallowance has been confirmed by the Ld. CIT(A) in the first appeal.

3.1 In this regard the assessee contends that the estimation has been made solely on the basis of observation in the tax audit report without examining the ground realities. The assessment framed u/s. 143(3) for A.Y.2010-11 was referred and it was submitted that no such disallowance was carried out on account of such estimation.

3.2 Having regard to the general observations made in the tax audit report read with assessment order for A.Y. 2010-11, the assessee contends that in all fairness the disallowance may be restricted to 10% instead of 15% carried out by the revenue.

3.3 The learned DR for the revenue although relies upon the order of the lower authorities submits that a benign view may be taken in the matter.

3.4 In the totality of the circumstances and having regard to the fact that there is a possibility of personal user and keeping in mind the observations of the tax auditor, the estimations of disallowance at the rate of 10% would be just and proper in the facts of

the case. The disallowance made on this score is therefore modified and restricted to 10% of car expenses including depreciation thereon.

3.5 The assessee thus gets partial relief on the point.

4. Ground no. 4 relates to disallowance of club expenses amounting to Rs. 2,04,234/- on the ground that such expenses have been incurred for personal benefit of the directors and does not involve any commercial expediency. The learned counsel for the assessee in defense submits that as per the assessment order for A.Y. 2010-11, the AO has estimated 5% of such expenses towards personal user.

4.1 In Keeping with the view taken by the AO in the earlier years the disallowances of club expenses in toto is not justified. Such disallowances of expenses are thus restricted to 5% on estimated basis in tune with the assessment order for A.Y. 2010-11.

4.2 The assessee thus gets partial relief on the issue.

5. We now advert to ground no. 6 of the appeal of the assessee concerning addition of Rs. 37,25,803/-on account of unverified creditors.

5.1 The Assessing Officer in the assessment order noted that the aforesaid amount of Rs. 37,25,803/- in aggregate represents outstanding amount in relation to four parties namely; M/s. Baba Haridas Oil Carriers, M/s. G-4 Securities Guarding Pvt. Ltd., Rajdhani Sales Corporation and M/s. Jayco Agencies Pvt. Ltd. The Assessing Officer invoked section 68 of the Act and disallowed the outstanding credits on the ground that either the notice u/s. 133(6) was unserved or un-responded or lower amount has been confirmed in one case i.e. M/s. Jayco Agencies Pvt. Ltd.

5.2 The learned counsel submits that in respect of M/s. Baba Haridas Oil Carriers, the outstanding amount of Rs. 6,79,523/- has been included in the P&L account of A.Y. 2014-15. Likewise in respect of M/s. G-4 Securities Guarding Pvt. Ltd. the outstanding of Rs. 7,72,632/- has been reversed and booked as income in A.Y. 2017-18. In respect of third party namely Rajdhani Sales Corporation, the assessee submits that Rs.

6,64,000/- shown as outstanding has been paid and the liability has been liquidated in the A.Y. 2013-14. As regards Jayco Agencies Pvt. Ltd., the learned counsel of assessee contends that the additions on account of differential amount of outstanding credit and amount confirmed corresponding by the parties which difference stands at 16,09,648/- is wholly unjustified. The corresponding party as admittedly acknowledged the transaction but however has confirmed the lower outstanding on the account of subsequent events. The lower amount has been confirmed on account of mismatch of financial year in one of the transaction.

5.3 The learned counsel contends that these facts were presented before Ld. CIT(A) along without formal application under rule 46A of the I.T Rules. The learned counsel thus submits that merely on account technical defect committed before the first appellate authority, the denial of relief in wholesale would result in serious miscarriage of justice.

5.4 The learned DR for the revenue on the other hand submits that in the absence of formal application under Rule 46A, the Ld. CIT(A) had no option but to ignore such evidences.

5.5 On appraisal of the facts and circumstances, we find merit in the plea of the assessee. Rule 46A is founded on the principles of nature justice. The Ld. CIT(A) while performing the appellate function is vested with express powers under section 250(4) of the Act to call for the records and evidences as may be necessary for discharging the appellant function. Such power is not fettered and limited by Rule 46A. Hence considering the circumstances existing in the case, the additional evidences appears quite essential to determine the bonafides of the outstanding credit in question.

5.6 Hence we remit the issue back to the file of the designated AO to reexamine the issue in the light of such evidences as may be placed by the assessee before him. The assessee shall be liberty to adduce all evidences as may considered necessary before the AO for determination of the issue afresh. Needless to say, proper opportunity shall be given to the assessee in this regard. The assessee shall dutifully assist the revenue

and promptly respond to the queries of the AO. The AO after taking note of all the facts and evidences, shall determine the issue afresh in accordance with law.

5.7 Ground no. 6 is thus allowed for statistical purposes.

6. In the result, the appeal of the assessee is partly allowed.

Order dictated and pronounced in the open court on 13.06.2023.

Sd/-

(CHANDRA MOHAN GARG)

JUDICIAL MEMBER

Sd/-

(PRADIP KUMAR KEDIA)

ACCOUNTANT MEMBER

Dated: 13<sup>th</sup> June, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi