

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH :H: DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT &  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.4372/Del/2019  
Assessment Year: 2015-16**

Kartikeya Enterprises GI-40,1, Lawrance Road, Industrial Area, New Delhi-1100 35 (PAN:AAHFK6223A)	Vs.	ACIT, Circle 51(1), New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Mukesh Gutpa, CA  
Respondent by : Shri Ramdhan Meena, Sr. DR

Date of Hearing : 05.07.2023  
Date of Pronouncement : 06.07.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of learned Commissioner of Income-Tax(Appeals)-17, New Delhi vide Appeal No.10100/2017-18 dated 30.04.2019 against the order under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 26.12.2017 passed by ACIT, Circle 51(1), New Delhi for the assessment year 2015-16.

2. The ground taken by the assessee is as under:

Whether on the facts and in the circumstances of the case, learned lower authorities has grossly erred in law and on facts in making and confirming the following additions:

i)	Interest paid on loan:	Rs.27,500
ii)	Commission paid to Shri Rakesh Tiwari.	Rs.2,10,000
iii)	Brokerage paid to Shri Sumit Chitkara for arranging property on rent.	Rs.40,500
iv)	Professional charges paid to Shri Rajiv Dutta.	Rs.82,000
	Total	----- Rs,3,60,000

2.1 Assessee has also raised additional ground vide application dated 25.05.2022 which is as under:

“Whether the learned lower authorities has grossly erred in law and on facts in making and confirming the following additions:

i)	For personal use of car, 50% of petrol and maintenance expenses:	Rs.9,603
ii)	1/5 <sup>th</sup> of car depreciation.	Rs.9,070

3. Brief facts of the case are that the assessee is a partnership firm which filed its return of income on 30.09.2015 reporting total loss of Rs.8,05,514. In the course of assessment, from the perusal of profit and loss account, learned Assessing Officer observed that assessee has incurred certain expenditures for which assessee could not offer tenable explanation and thus completed the assessment by making disallowances/additions for which the assessee is in appeal before the Tribunal. In this respect, learned Commissioner of Income-tax(Appeals)

had repeated the findings given by learned Assessing Officer and had confirmed the additions so made.

4. Learned counsel for the assessee has placed on record a paper book containing 90 pages to corroborate the claim made by it. We take up each of the additions of disallowances as stated in the grounds of appeals, seriatim.

5. The first disallowance is in respect of interest of loan of Rs.27,500. Assessee had taken a loan of Rs.2,00,000 from Shri Yesh Aneja during the year. Learned counsel referred to the corroborative documentary evidence placed in the paper book which includes reply submitted before the learned Assessing Officer vide submission dated 22.02.2017 whereby copy of confirmation of loan and copy of ITR of the lender was furnished. Learned counsel also referred to copy of confirmation and TDS certificate in Form 16A to demonstrate that TDS was done on this interest payment. He also referred to the bank statement to substantiate that the transaction of loan as well as interest was made by cheque through banking channel. It was also submitted that no addition has been made in respect of the loan amount which was taken during the year. Thus, casual and baseless observation by the authorities below that assessee could not offer any tenable explanation is de void of any merit. The addition so made is ought to be deleted.

5.1 In respect of addition made towards commission paid to Shri Rakesh Tiwari amounting to Rs.2,10,000. Learned counsel referred to the written submission made before the authorities below as well as to the confirmation, Form 16A, TDS done and bank statement to substantiate and corroborate the claim of commission. It was submitted that Shri Rakesh Tikwari is associated with the assessee since 2005 and is working with the assessee till the present day. He procures the orders for the assessee and he is responsible for collection of sale proceeds and attending the complaints of the customers. He also maintains stock inventory and supervises the go-down. Accordingly, the claim of expense for payment of commission to Shri Rakesh Tiwari is a bona fide and legitimate business expenditure incurred by the assessee .

5.2 For the brokerage of Rs.40,500 paid to Shri Sumit Chitkara, learned counsel submitted that assessee had taken a property on rent which was arranged by Shri Sumit Chitkara. To substantiate this, learned counsel referred to the copy of rent agreement which is placed at page 50 of the paper book. He further referred to copy of confirmation letter, Form 16A for TDS done on this payment and bank statement. Thus, learned counsel claimed that it is legitimate business expenditure incurred by the assessee for the purpose of its business and is an allowable expenditure.

5.3 For the addition of professional charges paid to Shri Rajiv Dutta of Rs.82,000, learned counsel submitted that Shri Rajiv Dutta is a post-graduate diploma holder in management from All India Institute of Management, New Delhi which is equivalent to MBA from any University. He is working with the assessee since 2011. Prior to this, he had worked with a company TTK Prestige Ltd. from 1991 to 2011 which deals in utensils and pressure cookers, similar to the line of business in which the assessee is also engaged. Shri Rajiv Dutta out of his qualification and experience assisted the assessee in drawing policies for sales promotions for the assessee. Further, learned counsel referred to various supporting and corroborative documents including reply furnished before the learned Assessing Officer, confirmation letter, forms 16A for the TDS done, bank statement for the payment made by cheque and copy of ITR of Shri Rajiv Dutta who had offered the same in his income. He thus claimed that this is a bona fide legitimate business expense which is ought to be allowed.

5.4 In respect of addition in respect of depreciation of car, learned counsel asserted that depreciation being a statutory allowance, cannot be restricted on the basis of personal use of the car. According to him, the condition to be satisfied is that assets should be owned by the assessee and it should be used for the business or profession. Since, both the conditions are satisfied, personal use of car cannot fetter the

granting of the statutory allowance. He, therefore, claimed that disallowance made of depreciation on car be deleted.

5.5 In respect of disallowance of 50% towards petrol and maintenance expenses of car, learned counsel submitted that car is a business asset of the assessee and that assessee is a firm engaged in the business of utensils and cookware items. The same is used for business purposes only and, therefore, ad hoc disallowance made by taking 50% of the expenses as personal in nature is not justified.

6. Per contra, learned Sr. DR submitted that contention of the learned counsel have been discussed by the learned CIT(A). He further stated that in respect of commissions paid by the assessee, copy of bank statement of the recipient and the rate at which it has been paid has not been furnished. He placed reliance on the order of learned CIT(Appeals).

7. We have heard the rival contentions and perused the material on record. Except for disallowance made towards petrol and maintenance expenses on car, we find that assessee had substantiated the claim of its expense with corroborative documentary evidence which are justified taking into account the line of business in which it is engaged. We note from the order of learned Assessing Officer that nothing specific has been pointed out to justify the disallowances/additions made except for a general statement that claim of the assessee is not tenable. We have gone

through the documents referred by the learned counsel as stated above and find force in the submissions so made. The expenses claimed by the assessee as stated above are legitimate business expenses which are allowable under Section 37(1) of the Act (depreciation on car under Section 32 of the Act). The conditions prescribed under Section 37(1) and 32 of the Act have not been violated by the assessee, since, nothing is brought on record by the authorities below as well as by the learned Sr. DR to demonstrate otherwise. Accordingly, we delete the addition/disallowances made by the learned Assessing Officer for which the assessee is in appeal before the Tribunal except for expenses toward petrol and maintenance of car which have been disallowed by restricting it to 50% by the learned Commissioner of Income-tax(Appeals). For the disallowance made towards petrol and car maintenance expenses of Rs.9,603, the addition is sustained. Accordingly, grounds taken by the assessee except for the one towards petrol and car expenses are allowed.

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

**Order is pronounced in the open court on 06.07.2023.**

**Sd/-**

**(Saktijit Dey)  
Vice-President**

**Sd/-**

**(Girish Agrawal)  
Accountant Member**

***Dated: 06 July, 2023***  
**\*Mohan Lal\***

Copy forwarded to:

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

By Order

Assistant Registrar  
ITAT, Delhi Benches, New Delhi