IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "D" BENCH: NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.765/Del/2020
[Assessment Year : 2014-15]

ACIT, Circle-17(1), New Delhi.	vs	Mitsui & Co. India Pvt.Ltd., 4th Floor, World Mark, 3, Aero City, NH-8, New Delhi-110037. ***PAN-AADCM4488J***
APPELLANT		**RESPONDENT**

ITA No.467/Del/2020
[Assessment Year : 2014-15]

Mitsui & Co. India Pvt.Ltd., 4th Floor, World Mark, 3, Aero City, NH-8, New Delhi-110037. ***PAN-AADCM4488J***	vs	ACIT, SR-6, New Delhi.
APPELLANT		**RESPONDENT**

Appellant by	Shri Sanjay Kumar, Sr. DR
Respondent by	Shri Ved Jain, Adv., Shri Aman Garg & Ms. Supriya Mehta, CA
Date of Hearing	01.06.2023
Date of Pronouncement	26.07.2023

ORDER

PER KUL BHARAT, JM :

These two cross-appeals filed by the Revenue and the assessee are directed against the order of Ld.CIT(A)-37, New Delhi passed u/s 143(3) of the Income Tax Act, 1961 ("the Act") dated 25.11.2019 for the assessment year 2014-15. The appeals are taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

2. First, we take Revenue's appeal wherein Revenue has raised following grounds of appeal:-

1. *"Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs. 1,45,94,554/- on account of disallowance u/s 14A of the Income Tax Act 1961 (the Act) by ignoring finding of facts recorded by the Assessing Officer (the AO) that the assessee company has earned some exempt income during the year?*
2. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs. 63,11,221/- on account of disallowances of staff welfare expenses by ignoring finding of facts recorded by the Assessing Officer (the AO) that the assessee company has incurred expense of non-business nature in lieu of staff welfare expense during the year?*
3. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs. 5,12,23,226/- on account of disallowance of service fee paid to AE by ignoring finding of facts recorded by the Assessing Officer (the AO) that the assessee company the nature of services being offered by M/s Mitsui & Co (Asia Pacific) pte Ltd., Singapore, to the assessee is quite vague, Assessee has not furnished any detail regarding the actual service being provided to the assessee?*
4. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 51,27,74,699/- on account of non-deduction of TDS, u/s 40(a)(i) of the Income Tax Act 1961 (the Act) by ignoring finding of facts recorded by the Assessing Officer (the AO) that the AO of Mitsui Japan attributed 50% of the gross profit i.e. Rs. 31,52,12,348/-(50% of Rs. 63,04,24,697/-) as income attributable to Indian PE?*

5. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 51,27,74,699/- on account of non-deduction of TDS, u/s 40(a)(i) of the Income Tax Act 1961 (the Act) by ignoring findings of the fact recorded by the AO that Mitsui Japan being a non-resident, tax is payable by it in India on income attributable to Indian PE. Mitsui India should have deducted an amount of Rs. 12,60,84,939/-(40% of Rs. 31,52,12,348/-) as final tax payment of non-resident by way of TDS on its receipts, out of the payments of Rs.51,27,74,699/- it made to Mitsui Japan.*

6. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

3. Facts giving rise to the present appeal are that the assessee company is engaged in the business of general trading of materials & equipment required for industrial projects; commission agent acting as an intermediary between buyers and sellers who want to import, export or engaged in off-shore or domestic trading activities; and provides services i.e. information about the Indian market in general and for specific sectors which fall under the various verticals of Mitsui group. The return declaring income of INR 30,65,23,320/- was filed electronically on 28.11.2014. The case was selected for scrutiny assessment. In response to the statutory notices, Ld. Authorized Representative of the assessee attended the assessment proceedings. During the course of assessment proceedings, the Assessing Authority noticed that the assessee company carried out certain international transaction which was referred to Transfer Pricing Officer ("TPO") for the purpose of transfer pricing adjustment. The TPO passed order dated 23.10.2017 wherein no adverse inference was drawn by the TPO in respect of international transaction. The

AO while framing the assessment, noticed that in respect of exempt income, the assessee did not make *suo moto* disallowance u/s 14A of the Act as it had made in the last year. Therefore, the assessee was asked to show cause as to why disallowance u/s 14A of the Act should not be made. In response thereto, the assessee made an exhaustive reply. However, the AO did not accept the contention of the assessee and proceeded to make disallowance u/s 14A of the Act. The AO by invoking the provision of Rule 8D(ii) of the Income tax Rules, 1962 made disallowance amounting to INR 1,45,94,554/-. Further, the AO made disallowance on adhoc basis amounting to INR 63,11,221/- out of staff welfare expenses. The AO also made addition of INR 5,12,23,226/- in respect of remuneration paid to Mitsui & Co. India Pvt. Ltd. on the basis that the assessee could not substantiate rendition of any service for which remuneration was paid. The AO further made disallowance by invoking the provision of section 40(a)(i) of the Act on the ground that the assessee was liable to deduct tax of INR 12,60,84,939/- at the payment made to Mitsui Japan of INR 51,27,74,699/-. Thus, he assessed the income of the assessee company at INR 89,14,27,020/- against the disclosed income at INR 30,65,23,320/-.

4. Aggrieved against the assessment order, the assessee carried matter in appeal before Ld.CIT(A), who partly allowed the appeal. Thereby, the Ld.CIT(A) confirmed the addition in part out of staff welfare expenses. Rest of the additions were deleted.

5. Aggrieved against this, both the assessee and the Revenue have filed separate appeals before this Tribunal.

6. Apropos to **Ground No.1,** Ld.Sr.DR supported the orders of the authorities below.

7. On the other hand, Ld. Counsel for the assessee submitted that there has not been any exempt income during the year as is evident from schedule of other income placed at Paper Book, Volume 1 at page 42. He drew our attention to the schedule of other income. He submitted that on this issue, no disallowance is called for since there is no exempt income and this issue is squarely covered in favour of the assessee by the judgement of Hon'ble Jurisdictional High Court rendered in the case of ***PCIT vs M/s. Era Infrastructure (India) Ltd. 2033 (7) TMI 1093 dated 20.07.2022.***

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The issue in question is regarding disallowance made by the AO by invoking the provision of section 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962. It is pointed out by the Ld. Counsel for the assessee that no exempt income has been earned during the year under consideration. Reliance is placed on the various case laws including the judgmenet of Hon'ble Delhi High Court rendered in the case of ***CIT, Central-2 vs M/s ERA Infrastructure (India) Ltd.*** (supra). It is further contended that issue is also covered by the order of the Co-ordinate Bench of the Tribunal in assessee' own case for ***AYs 2009-10*** and ***2010-11*** in ***ITA No.813/Del/2014*** and ***1795/Del/2015*** respectively dated ***25.04.2016***. He further pointed out that this fact is duly recorded by Ld.CIT(A) in paras 5.2.1 and 5.2.2 of the impugned order. We find

that the Ld.CIT(A) in paras 5.2.1 and 5.2.2 of the impugned order, has decided the issue by observing as under:-

> *5.2.1. "In this case, disallowance u/s 14A of the act r.w.r 8D of Rs. 1,45,944/- has been contested by the appellant before me. The A.O. had made the disallowance u/s 14A of the act read with rule 8D on the basis of CBDT Circular no. 5/2014 dated 11.02.2014. The A.O has worked out disallowance under 8D (ii) and 8D (iii) of the Rules. Total disallowance made by the AO is Rs. 1,45,94,554/-. Admittedly, the appellant do not have any exempt income during the year under consideration. The appellant has relied on the following judgments of various High Courts wherein it has been held that no disallowance can be made in the absence of any exempt income:-*
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> - *Principal Commissioner of Income-tax-04 v. IL & FS Energy Development Company Ltd [2017] 399 ITR 483 (Delhi);*
> - *CHEMINVEST LIMITED VERSUS COMMISSIONER OF INCOME TAX-VI [2015] 378 ITR 33DELHI HIGH COURT;*
> - *PR COMMISSIONER OF INCOME TAX 18 VERSUS OIL INDUSTRIES DEVELOPMENT BOARD 2018 (2) TMI 1861-DELHI HIGH COURT;*
> - *CIT v. Holcim India Pvt. Ltd. in ITA No. 486/2014 and 299/2014 dated 05.09.2014;*
> - *Commissioner of Income Tax (li) Kanpur Versus M/s. Shivam Motors (P) Ltd., 88 of 2014-ALLAHABAD HIGH COURT*
> - *Commissioner of Income Tax -I Versus Corrtech Energy Pvt. Ltd., 2014 (3) TMI 856 GUJARAT HIGH COURT.*
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> *5.2.2. The above judgments are squarely applicable in case of the appellant since it has not earned any exempt income in the year under consideration. Therefore, the addition made u/s 14A of the Act is directed to be deleted. Ground No. 3 and 4 are allowed."*

9. The Revenue has not brought any adverse material contradicting the findings of Ld.CIT(A). We therefore, do not see any reason to disturb the

finding of Ld.CIT(A), the same is hereby, affirmed. Thus, Ground No.1 raised by the Revenue is dismissed.

10. **Ground No.2** raised by the Revenue is against the deletion of disallowance of INR 63,11,221/- in respect of staff welfare expenses.

11. Ld. Sr. DR supported the assessment order and submitted that the AO has rightly made the addition. He drew our attention to the assessment order where the AO has recorded the fact that the assessee failed to prove the expenses incurred for business purposes. He submitted that it is incumbent upon the assessee to prove that expenses in question were incurred wholly and exclusively for business purpose. If the assessee fails to do so, the AO would be justified for making disallowance of such expenditure.

12. On the other hand, Ld. Authorized Representative of the assessee opposed these submissions and submitted that during the year under consideration, the assessee has incurred expenses on medical insurance of INR 34,73,227/-; company function of INR 15,43,007/-; health care etc. of INR 13,94,377/-; shifting expenses of INR 63,11,267/-; social security expenditure of INR 1,71,73,766/-; and Japanese food of INR 41,60,465/-. Ld. Counsel for the assessee further submitted that the expenditure was incurred for the welfare of employees as a measure of commercial expediency. He submitted that the supporting evidences were submitted however, the AO without pointing out any defect or discrepancy in the evidence so filed, disallowed 20% of such expenditure on adhoc basis amounting to INR 63,11,221/-. However, Ld.CIT(A) out of the total expenditure of INR

3,40,56,108/- held that INR 2,20,41,370/- was for the business purpose and rest of the expenditure was treated as for non-business purposes. Out of this, he restricted the disallowance to the extent of INR 24,02,948/- i.e. 20% of INR 1,20,14,739/-. Against the deletion, Revenue is in appeal and against the confirmation, the assessee is in appeal. He submitted that both the authorities below have not doubted the incurrence of the expenses. The expense has been duly recorded in the books. However, the AO proceeded to disallow 20% of the total staff welfare expenses incurred by the assessee company without pointing out any defect in evidences, submitted by the assessee and by holding the expense incurred by the assessee company are of non-business nature. He submitted that both the authorities below have made and confirmed the addition purely on adhoc basis based on surmises which is clearly unwarranted. In support of this, he relied upon various case laws. Further, it is contended that the assessee had submitted the relevant evidences. The lower authorities have not brought any material to prove that the expenses were incurred for non-business purposes. Moreover, the total expenditure incurred by the assessee in this regard merely constitute only 1% of the total revenue which cannot be treated as excessive or higher. The expenses are made to maintain a healthy relationship between the company and its staff and therefore, incurred on account of business expediency thus, the allowable expenditure. He further relied upon following case laws:-

- *"Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram Vs CIT 37 ITR 288 (SC);*
- *Hon'ble Delhi High Court in the case of CIT Vs Ms. Shehnaz Hussain 267 ITR 572 (Del.);*
- *ACIT Vs M/s. Modi Rubber Limited, ITA No.1952/Del/2014 (ITAT Delhi);*

- ❖ *ACIT versus Precision Pipes & Profiles Co. Ltd., No.- ITA No.4257 & 4258/D/2012 [ITAT Delhi];*
- ❖ *Sonic Biochem Extractions P. Ltd. v. ITO (2013) 23 ITR 447/59 SOT 4(URO)(Mum.)(Trib.); and*
- ❖ *Seasons Catering Services P. Ltd. Vs. DCIT [2010] 127 ITD 50 (Delhi)/43 DTR 397 (Del).”*

13. Ld. Counsel for the assessee further reiterated the submissions as made in the synopsis. He submitted that the assessee is a Private Limited Company which is a distinct assessable entity as per the definition of “person” u/s 2(31) of the Act. The limited company is an inanimate person and there cannot be anything personal about such an entity. Hence, Ld.CIT(A) has rightly deleted the disallowance made on account of staff welfare expenses.

14. On the other hand, Ld.Sr.DR opposed these submissions and supported the assessment order. He contended that the assessee has claimed expenses incurred for business purposes. Therefore, Ld.DRP has rightly confirmed the proposal of the AO for making disallowance @ 20% of the amount.

15. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue by observing as under:-

> *5.3.3. “I have examined the facts of the case, finding of the AO, submission the appellant and the case laws relied upon by the appellant. On perusal of facts of the case, it is noticed that the appellant has incurred expenses in the nature of premium paid for social insurance, restaurant & dinner expenses, hotel functions and medical reimbursement etc.. The bifurcation of the staff welfare expenses are as follows:-*

S.No	Particulars	Amount
1.	Medical Insurance	34,73,227/-
2.	Company function	15,43,007/-
3.	Health care etc	13,94,377/-
4.	Shifting expenses	63,11,267/-
5.	Social Security Expenditure	1,71,73,766/-
6.	Japanese Food	41,60,465/-
	Total	3,40,56,108/-

The total expenditure under this head is Rs.3,40,56,108/- and out of this Expenses relating to hotel, dining charges, shifting charges etc. is Rs. 1,20,14,739/- and the balance is relating to medical insurance and social security expenditure. I have also perused the finding of the DRP for AY 2011-12 which is relied on by the AO for making 20% adhoc disallowance. The DRP in its order for AY 2011-12 for the purpose of making disallowance of 20% has observed that the bills of hotel function and food expenses has not any mention of beneficiaries. The AO in the year under consideration by relying on the said findings of DRP for AY 2011-12 made the disallowance of 20% in respect of total staff welfare expenses without looking into fact that whether it is related to dining charges, shifting charges or not. The appellant has submitted the bifurcation of staff welfare expenses along with supporting bills. The expenses amounting to Rs.1,20,14,739/- is related to hotel, dining charges, shifting charges etc. However, Expenses amounting to Rs. 2,20,41,369/- is related to medical insurance and social security expenditure for which no observation has been made by the DRP in its order for AY 2011-12. There cannot be any doubt regarding the commercial expediency of expenses of medical insurance and social security expenditure being incurred for business purpose. These expenses are purely for the purpose of welfare of the employees. Even the AO has not brought anything on the record to justify his claim that part of these expenses are not for the business purpose. Further it is noticed that the case of the appellant is not a case where the incurrence of the expenses are in doubt. The AO in the assessment order has not taken his observations to any logical conclusion so as to justify his action of disallowance of 20% of the expenditure related to medical insurance and social security expenditure. Regarding Expenses relating to

hotel, dining charges, shifting charges etc. in Rs.1,20,14,739/-, the facts of the case in identical to the facts of the case decided by the DRP. Therefore, following the order of the DRP 2011-12, the AO is directed restrict the disallowance of 20% only in respect of expenses related to hotel, dining charges, shifting charges etc. which comes to Rs.24,02,948 / - (20% of Rs. 1,20,14,739/-). The disallowance made by the AO to the extent of Rs.24,02,948 is confirmed and balance is deleted. This ground of appeal is partly allowed."

16. The grievance of the Revenue is that Ld.CIT(A) deleted part of the addition and gave substantial relief to the assessee. However, looking to the findings of Ld.CIT(A), it is clear that Ld.CIT(A) has considered the material on record that goes to prove that part of the expenditure that has been disallowance by the AO was infact incurred for the purposes of business of the assessee company. This finding on facts is not contradicted by the Revenue by placing any adverse material on record. Therefore, we do not see any reason to interfere in the findings of Ld.CIT(A). Moreover, the disallowance has been made purely on estimation basis. The AO has not given any basis as to why only 20% of such expenditure is disallowed. In our considered view, there has to be some basis for rejection of claim by the AO. The AO should have pointed out as to why out of total expenditure, 20% is not incurred for business purpose. In the absence of specific finding, action of AO for disallowance of expenditure would not be justified. Ground No.2 raised by the Revenue is thus, dismissed.

17. **Ground No.3** raised by the Revenue is against the deletion of addition amounting to INR 5,12,23,226/- made on account of disallowance of service fee.

18. Ld. Sr. DR vehemently argued that Ld.CIT(A) was not justified in deleting the addition. He strongly supported the assessment order.

19. On the other hand, Ld. Counsel for the assessee submitted that during the Financial Year 2013-14 relevant to Assessment year 2014-15. The assessee has paid a sum of INR 5,12,23,226/- for availing services from its Associated Enterprises ("AE") i.e. M/s. Mitsui & Co. (Asia Pacific) Pte.Ltd. located at Singapore. He submitted that the the AO disallowed the service fee holding to be non-business nature. He submitted that the issue is squarely covered by the decision of the Co-ordinate Bench of this Tribunal in assessee's own case for Assessment years 2009-10 & 2010-11 in ITA Nos. 813/Del/2014 & 1795/Del/2015. The order of the Tribunal is enclosed at pages 509 to 548 of the Paper Book Volume II.

20. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has deleted the addition by observing as under:-

> *5.4.2. "I have examined the finding of the AO, submission of the appellant. I have also perused the orders of DRP, CIT(A) and ITAT placed before me on the same issue in the case of the appellant. It is noticed that the same issue pertaining to service fees paid to Mitsui & Co. (Asia Pacific) Pte Itd. Singapore, was raised by the AO the assessment-year 2010-11 and 2011-12. The issue was first adjudicated by the DRP in the AY 2011-12 in the appellant's own case in its favour. The DRP in its directions u/s 144C(5) of the Act dated 14.12.2015 had directed as follows:-*
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> > ***"DRP Findings:** The panel went through the submission filed by the A' in relation to the expenditure claimed as above. The relevant paper book 1 consisting of 361 pages gone through minutely. The*

paper book contained copies of agreements along with supporting documents in respect of Intra-Group Services received by the A' from its AE's in the form of divisional operational including development and monitoring of the business plan for each department and allocation and appraisal of staff in each such department of the A', making decisions for business activities such as goods trading, project management, formulating strategies, building of relationships with partner companies in Asia Pacific regions, holding talks with corresponding business divisions in Tokyo in headquarters, Human resources, business process re-engineering, information systems, logistics management, legal and CFO unit, investment, planning & administration, etc.(Pages 32 to 39 of the paper book 1).

In the above respects we went through the emails exchanged between the officials of the AEs and those of the A. the correspondences centered on the following aspects of work:-

1. *Holding of Seminars to educate the Staff on the importance of Anti-competition laws and practices, global enforcement, case studies, anti-trust, cartel conduct, price fixing, refusal to deal, misuse of market power, predatory pricing, exclusive dealing/third line forcing, resale price maintenance relating to anti competition.*
2. *Trainings.*
3. *Seeking guidance from the officials regarding item classification for various commodities.*

Upon an analysis of the evidence filed as above by the A', it was noticed by us that the agreement under sub-articles 1 to 5 of Article 2 provided the basis of remuneration in consideration of the services rendered by the AES to the A' on page 37 &38 of the paper book 1. Having regard to all the above details the Panel feels inclined to allow the claim of the A'."

5.4.3 The above order of the DRP has been upheld by the Hon'ble ITAT, Delhi Bench in ITA No. 813/Del/2014 for AY 2009-10 and ITA No. 1795/Del/2015 for AY 2010-11 dated 24.05.2016 where it has been held as follows:-

> *35. The AO made an addition of Rs. 40,78,906/- by disallowing the same u/s 37(1) claimed by the assessee company as expenditure on account of payment of service fee paid to M/s West Japan Logistics Division of Mitsui & Co. Ltd., Japan and M/s Mitsui & Co. (Asia) Pte. Ltd., Singapore on the ground that the aforesaid expenditure has not been incurred wholly and exclusively for the purpose of business and on the ground that the assessee has merely submitted copies of the agreement of the assessee with the aforesaid companies and no evidence is available on the file. The AO has rejected the submissions made by the assessee company to justify the aforesaid expenditure. Keeping in view the fact that in the succeeding year, AY 2011-12, the DRP vide order dated 14.12.2015 has decided this issue in favour of the assessee and deleted the entire addition of service fee paid to the same parties to whom this fee was paid. So in view of the matter, this issue is required to be restored to the AO to decide afresh in the light of the order dated 14.12.2015 passed by the DRP qua AY 2011-12 in assessee's own case after providing an opportunity of being heard to the assessee. Consequently, this ground is determined in favour of the assessee.*

5.4.4 The issue has been adjudicated in the AY 2010-11 by CIT(A)-44 wherein the CIT(A) has relied upon the order of DRP in AY 2011-12 and held as follows:

> *"The material facts of the case at the same in the instant year also as the agreement and the arrangements between the parties and the nature of transactions is the same as in AY 2010-11. The DRP has given relief to the appellant in AY 2011-12 on the basis of similar documents submitted by the appellant during the course of appellate proceedings. Hence, there is no reason to take a view*

different from that taken by the DRP in AY 2011-12. In accordance with the principle of consistency, the doctrine of judicial discipline and respectfully following the order of the Hon'ble ITAT, Delhi Bench in ITA No. 813/Del/2014 for AY 2009-10 and ITA No.1795/Del/2015 for AY 2010-11 dated 24.05.2016 and the order of the DRP for AY 2011-12 dated 14.12.2015, the issue is decided in favour of the appellant as the service fee was paid to the same parties in AY 2010-11 as they were paid in AY 2011-12.

5.4.5 The facts of the case are the same in the instant year also as the agreement and the arrangements between the parties and the nature of transactions is the same as in AY 2010-11 and 2011-12. The DRP has given relief to the appellant in AY 2011- 12 on the basis of similar documents submitted by the appellant during the course of appellate proceedings. Hence, there is no reason to take a view different from that taken by the DRP in AY 2011-12. In accordance with the principle of consistency, the doctrine of judicial discipline and respectfully following the order of the Hon'ble ITAT, Delhi Bench in ITA No. 813/Del/2014 for AY 2009-10 and ITA No. 1795/Del/2015 for AY 2010-11 dated 24.05.2016 and the order of the DRP for AY 2011-12 dated 14.12.2015, the issue is decided in favour of the appellant. Ground of Appeal No. 6 is decided in favour of the appellant."

21. From the above, it is clear that Ld.CIT(A) has followed the decision of the Tribunal rendered in assessee's own case in ITA Nos. 813/Del/2014 & 1795/Del/2015 for Assessment years 2009-10 & 2010-11 and the order of Ld.DRP for AY 2011-12 dated 14.12.2015. For the sake of clarity, the relevant contents of the Tribunal's order are reproduced as under:-

35. "The AO made an addition of Rs.40,78,906/- by disallowing the same u/s 37 (1) claimed by the assessee company as expenditure on account of payment of service fee paid to M/s. West Japan Logistics Division of Mitsui & Co. Ltd., Japan and M/s. Mitsui & Co.

(Asia) Pte Ltd., Singapore on the ground that the aforesaid expenditure has not been incurred wholly and exclusively for the purpose of business and on the ground that the assessee has merely submitted copies of the agreement of the assessee with the aforesaid companies and no evidence is available on the file. The AO has rejected the submissions made by the assessee company to justify the aforesaid expenditure. Keeping in view the fact that in the succeeding year, AY 2011-12, the DRP vide order dated 14.12.2015 has decided this issue in favour of the assessee and deleted the entire addition of service fee paid to the same parties to whom this fee was paid. So in view of the matter, this issue is required to be restored to the AO to decide afresh in the light of the order dated 14.12.2015 passed by DRP qua AY 2011-12 in assessee's own case after providing an opportunity of being heard to the assessee. Consequently, this ground is determined in favour of the assessee."

22. The Revenue has not contradicted the fact that in earlier years, identical ground was raised by the assessee for AY 2009-10 & 2010-11. We therefore, taking the consistent view and more particularly, the Revenue has not brought to our notice any other binding precedent, reject the ground of appeal. Ground No.3 raised by the Revenue is dismissed.

23. **Ground Nos. 4 & 5** raised by the Revenue are inter-related and raised against the deletion of addition of INR 51,27,74,699/- made by the AO on account of non-deduction of tax at source by invoking the provision of section 40(a)(i) of the Act.

24. Ld.Sr.DR strongly supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the additions.

25. On the other hand, Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of Co-ordinate Bench of the Tribunal in assessee's own case for AYs 2009-10 & 2010-11. He further contended that the order of the Co-ordinate Bench of the Tribunal have been affirmed by the Hon'ble Jurisdictional High Court. He submitted that the issue is squarely covered by the decision of the Co-ordinate Bench of this Tribunal and affirmed by the Hon'ble High Court.

26. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the issue by observing as under:-

> *5.5.3. "On perusal of submissions of the appellant and observations of the AO in the assessment order, it is noticed that the whole premise of the AO in making disallowance under section 40(a)(i) was the assessment completed in the case of Mitsui& Co. Ltd (Japan) for the year under consideration where the AO of the said company has relied upon the observations of the AO in the assessment completed in the case of said company for the A.Y. 2005-06. It is further noticed that the assessment order for the A.Y. 2005-06 in the case of Mitsui& Co. Ltd (Japan) was challenged by the assessee in ITAT and the appeal before the ITAT now stands disposed off (relevant extract of the order of ITAT quoted above) wherein the observations of the AO that the Mitsui India Pvt. Ltd. (appellant company in the instant case) is a Dependent PE agent of Mitsui& Co. Ltd (Japan) have now been decided by the ITAT. The ITAT has already held that the appellant is not the PE of Mitsui& Co. Ltd (Japan), hence in view of said findings of the ITAT there is no question of attribution of any profit of Mitsui& Co. Ltd (Japan) to the appellant company. Accordingly, there is no question of deduction of tax on the same.*

5.5.4 Further the issue is covered by this office order dated 25.07.2019 in the case of the appellant itself for the A.Y. 2009-10. In view of the same, the disallowance made by the AO under section 40(a)(i) of the Act, is directed to be deleted. These grounds of appeal are allowed."

27. From the above findings of Ld.CIT(A), it is clear that the issue related to deduction of tax has been examined in earlier years. There is no change into facts and circumstances of the case and the decision of the Tribunal in earlier years related to AYs 2009-10 & 2010-11 in ITA Nos. 813/Del/2014 & 1759/Del/2016 have been affirmed by the Jurisdictional High Court. In view of the binding precedent, we do not see any merit in the grounds of appeal. Ground Nos. 4 & 5 raised by the Revenue are thus, dismissed.

28. **Ground No.6** raised by the Revenue is general in nature, needs no separate adjudication.

29. In the result, the appeal filed by the Revenue is dismissed.

ITA No.467/Del/2020[Assessment Year : 2014-15]

30. Now, we take assessee's appeal wherein the assessee has raised following grounds of appeal:-

1. *"On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*
2. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in sustaining the disallowance of Rs. 24,02,948/- made by the AO on account of staff welfare expenses holding the same to be personal in nature.*
   (ii) That the above disallowance has been confirmed despite the fact that these expenses have been incurred wholly & exclusively for the business activities of the assessee.

(iii) That the above disallowance has been confirmed despite the fact that the same has been made on estimation of 20% without there being any basis of the same.

(iv) That the above disallowance has been confirmed ignoring the settled law that company being an inanimate person, there cannot be any personal expenses attributed to it.

3. *That the appellant craves leave to add, amend or alter any of the grounds of appeal."*

31. The only effective ground raised by the assessee is against the confirmation of addition made on account of disallowance of staff welfare expenses amounting to INR 24,02,948/-. Since the **Ground Nos. 1 & 3** are general in nature, need no separate adjudication, hence dismissed.

32. Ld. Counsel for the assessee reiterated the submissions as made in the Revenue's appeal in ITA No.765/Del/2020 for AY 2014-15 by arguing **Ground No.2.**

33. Ld.Sr.DR reiterated the submissions as were made in ITA No.765/Del/2020.

34. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. The issue relates to adhoc disallowance out of staff welfare expenses. Ld.CIT(A) has partly allowed relief to the assessee and the same has been confirmed by us in Revenue's appeal. The assessee has challenged confirmation of part disallowance of expenses. The submissions of the Ld. Counsel for the assessee in this regard are that the lower authorities have made and confirmed the addition purely on adhoc basis. Such approach of the

lower authorities is contrary to the settled legal position. In this regard, the assessee has relied upon following case laws enumerated as under:-

- *Hon'ble Supreme Court in the case of Lalchand Bhagat Ambica Ram vs CIT 37 ITR 288 (SC);*
- *Hon'ble Delhi High Court in the case of CIT vs Ms. Shehnaz Hussain 267 ITR 572 (Del.);*
- *ACIT vs M/s. Modi Rubber Limited, ITA No.1952/Del/2014 (ITAT, Delhi);*
- *ACIT vs Precision Pipes & Profiles Co.Ltd., ITA No.4257 & 4258/D/2012 (ITAT Delhi);*
- *Sonic Biochem Extractions P.Ltd. vs ITO (2013) 23 ITR 447/59 SOT 4 (URO)(Mum.)(Trib.);*
- *Seasons Catering Services P.Ltd. vs DCIT [2010] 127 ITD 50 (Delhi)/43 DTR 397 (Del).*

35. Further, it is contended that the bills and invoices of staff welfare expenses were duly submitted to lower authorities. The AO has not pointed out any defect or discrepancy in respect of the expenditure claimed for staff welfare. The expenditure is otherwise, 1% of total Revenue which is not excessive. The expenditure is related to staff welfare measures to and instill of feeling of team work. The Ld. Counsel for the assessee relied upon the decision of the Co-ordinate Bench of the Tribunal rendered in the case of ***British as India (P.) Ltd. vs DCIT, 2011 (4) TM 877*** dated ***08.04.2011*** and ***Chrys Capital Investment Advisors India (P.) Ltd. vs DCIT, Circle-3(1), New Delhi [2012] (8) TMI 730*** dated ***18.03.2011*** wherein it has been held that the expenditure incurred for lunch and dinners is allowable expenditure. We find that Ld.CIT(A) partly confirmed the action of AO, treating the expenditure for

non-business purpose. For the sake of clarity, relevant findings of Ld.CIT(A) is reproduced as under:-

5.3.3. "I have examined the facts of the case, finding of the AO, submission the appellant and the case laws relied upon by the appellant. On perusal of facts of the case, it is noticed that the appellant has incurred expenses in the nature of premium paid for social insurance, restaurant & dinner expenses, hotel functions and medical reimbursement etc.. The bifurcation of the staff welfare expenses are as follows:-

S.No	***Particulars***	***Amount***
1.	*Medical Insurance*	*34,73,227/-*
2.	*Company function*	*15,43,007/-*
3.	*Health care etc*	*13,94,377/-*
4.	*Shifting expenses*	*63,11,267/-*
5.	*Social Security Expenditure*	*1,71,73,766/-*
6.	*Japanese Food*	*41,60,465/-*
	Total	*3,40,56,108/-*

The total expenditure under this head is Rs.3,40,56,108/- and out of this Expenses relating to hotel, dining charges, shifting charges etc. is Rs. 1,20,14,739/- and the balance is relating to medical insurance and social security expenditure. I have also perused the finding of the DRP for AY 2011-12 which is relied on by the AO for making 20% adhoc disallowance. The DRP in its order for AY 2011-12 for the purpose of making disallowance of 20% has observed that the bills of hotel function and food expenses has not any mention of beneficiaries. The AO in the year under consideration by relying on the said findings of DRP for AY 2011-12 made the disallowance of 20% in respect of total staff welfare expenses without looking into fact that whether it is related to dining charges, shifting charges or not. The appellant has submitted the bifurcation of staff welfare expenses along with supporting bills. The expenses amounting to Rs.1,20,14,739/- is related to hotel, dining charges, shifting charges etc. However, Expenses amounting to Rs. 2,20,41,369/- is related to medical insurance and social security expenditure for which no observation has

been made by the DRP in its order for AY 2011-12. There cannot be any doubt regarding the commercial expediency of expenses of medical insurance and social security expenditure being incurred for business purpose. These expenses are purely for the purpose of welfare of the employees. Even the AO has not brought anything on the record to justify his claim that part of these expenses are not for the business purpose. Further it is noticed that the case of the appellant is not a case where the incurrence of the expenses are in doubt. The AO in the assessment order has not taken his observations to any logical conclusion so as to justify his action of disallowance of 20% of the expenditure related to medical insurance and social security expenditure. Regarding Expenses relating to hotel, dining charges, shifting charges etc. in Rs.1,20,14,739/-, the facts of the case in identical to the facts of the case decided by the DRP. Therefore, following the order of the DRP 2011-12, the AO is directed restrict the disallowance of 20% only in respect of expenses related to hotel, dining charges, shifting charges etc. which comes to Rs.24,02,948 / - (20% of Rs. 1,20,14,739/-). The disallowance made by the AO to the extent of Rs.24,02,948 is confirmed and balance is deleted. This ground of appeal is partly allowed."

36. From the finding of Ld.CIT(A), it is clear that he did not advert to other expenses. He merely affirmed the action of AO without pointing out as to how the remaining expenses are not for business purpose. It is well settled that the AO should not resort to adhoc disallowance. If the expenditure is not incurred for business purpose, there has to be a specific finding in this regard unless expenditure for personal use and business purpose are mixed and cannot be segregated. In the case in hand, this is not the case, we therefore, direct the AO to delete the impugned addition. The ground raised by the assessee is allowed.

37. In the result, the appeal of the assessee is allowed.

38. In the combined result, the appeal of the Revenue in **ITA No.765/Del/2020 [AY 2014-15]** is dismissed and the appeal of the assessee in **ITA No.467/Del/2020 [AY 2014-15]** is allowed.

Order pronounced in the open Court on 26th July, 2023.

Sd/-	***Sd/-***
(M.BALAGANESH)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI