

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 675/Kol/2022
Assessment Year : 2018-19

M/s. Chengmari Tea Company Ltd.	Vs.	ACIT, Circle-4(1), Kolkata
PAN: AABCC 0672 Q		
Appellant		Respondent

Date of Hearing	08.06.2023
Date of Pronouncement	31.07.2023
For the Assessee	Shri Sunil Surana, CA
For the Revenue	Shri Vijay Kumar, Addl. CIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

The present appeal has been preferred by the assessee against the order dated 14.10.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee has raised the following grounds of appeal:

"1. For that the ld. CIT(A) erred in confirming the action of AO disallowing club expenses of Rs. 15,32,485/- when the same was fully incurred for business purposes and allowable under the law.

2. For that the Ld. CIT (A) erred in confirming the action of AO by treating the club expenses as personal in nature only on the basis of its disclosure in the TAR where it was nowhere mentioned that the expenses were personal in nature.

3. For that the Ld. CIT (A) erred in confirming the action of AO even otherwise the disallowance, if any, should be restricted to 40% of the amount of Rs. 15,32,485/- since the remaining 60% is already exempt as per Rule 8 of IT Act."

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2018-19 declaring total income at Nil and claiming loss of Rs. 1,09,70,000/- followed by issued of notices u/s 143(2) and 142(1) of the Act. Subsequently, Assessing Officer completed the assessment by making an addition of Rs. 15,32,485/- on account of personal expenditure in the form of club subscription and club charges as claimed by the assessee. The Assessing Officer assessed the total loss at Rs. 94,37,515/- in the hands of assessee.

3. Aggrieved by the above order, assessee preferred an appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Dissatisfied with the above order, assessee is in appeal before the Tribunal raising multiple grounds of appeal. However, main grievance of the assessee is that the ld. CIT(A) erred in confirming the disallowance made by the ld. AO of Rs. 15,37,515/- incurred by the assessee towards club subscription fees and club services. The ld. counsel for the assessee stated that the said disallowance made by the ld. AO is bad in law since they are fully incurred for the business purposes and allowable under the provisions of Act.

5. On the other hand, ld. DR submitted that the alleged expenses are personal in nature and has indicated in tax audit report based on which alleged disallowance has been made.

6. We have heard the rival contentions and perused the relevant record placed before us. We notice that the assessee incurred club subscription and club services of Rs. 15,32,485/- and same has been stated in tax audit report filed by the assessee. The ld. AO has stated that alleged expenses are personal in nature and are not incurred wholly and exclusively for the purpose of business of the assessee.

7. We observe from the facts of the case and material available on record and in the contention of the assessee that the expenses were incurred primarily for the business purposes and for promoting the interest of the company and, therefore, allowable u/s 37 of the Act. The case of the assessee supported from the decision of Hon'ble Supreme Court in the case of CIT vs United Class Manufacturing Co. Ltd. reported in (2012) 28 taxmann.com 429 (SC) wherein it was held that such expenses are purely business expenses. The Hon'ble Apex Court further noted that various high courts in series of decisions have held that club membership fees incurred by assessee is business expenses u/s 37 of the Act and none of the decision challenged in this court. Similarly, in the case of Otis Elevator Co. (India) Ltd. vs CIT (1995) 195 ITR 682 (Bom) and CIT vs Samtel Color Limited reported in (2010) 326 ITR 425. Similar issue has been decided in favour of the assessee by holding that club charges, admission fee paid towards business expenses is wholly and exclusively incurred for the purpose of business.

8. Considering these facts and ratio laid down in above decision, we are inclined to set aside the order of ld. CIT(A) by directing the AO to delete the addition.

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

Order pronounced in the open court on 31.07.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 31.07.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- M/s. Chengmari Tea Company Ltd., S.B. Towers, 37, Shakespeare Sarani, Kolkata-700017.
2. Respondent – ACIT, Circle-4(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata