

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2256/Del/2023
(ASSESSMENT YEAR 2012-13)**

Deepak Enterprises 95A/1, Gautam Nagar New Delhi-110 016 PAN-AAEFD 7578G (Appellant)	Vs.	ACIT Circle-32(1) New Delhi (Respondent)
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Appellant by	Sh. S. N. Bhargava, Adv.
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	12/12/2023
Date of Pronouncement	14/12/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the assessee against the order of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 12/06/2023 for Assessment Year 2012-13. Grounds taken in this appeal are as under:

"1. That ld. ACIT has erred in law as much as on the fact of the case by an arbitrary to restrict the deduction allowable under section 10AA to Rs.34,16,742/- instead of Rs.99,31,128 as claimed by the appellant. Hence ld. ACIT is not justified disallow Rs.65,14,386/- under section 10AA of the Act, 1961. Further ld. ACIT has not given the reasonable opportunity to the appellant to the justify the Claim of Rs.99,31,128/-. No such disallowance made in earlier year and similar disallowance made in AY 2011-12 was deleted in Appeal.

2. The ld. ACIT has erred in law and facts of the case in disallowing foreign exchange loss of Rs.10,25,545/- of SEZ unit on the ground that loss of Rs.17,46,499/- is already claimed in Non-SEZ unit. Without allowing reasonable opportunity to the appellant.

3. The ld. ACIT has erred in law as much as on the facts of the case he arbitrarily disallow the following expenses out of the total expenses under section 37 of Income Tax Act 1961.

Following expenses disallowed by 10%:-

1. Vehicle running & maintenance total exp Rs.439142/- disallowed Rs.43914.2/-
2. Depreciation on vehicle total exp. Rs.272696/- Disallowed Rs.27270/-
3. Insurance exp. total exp.42870/- disallowed Rs.4287/-.
4. Staff welfare total exp.279598/- disallowed Rs.27950/-
5. Tour & travelling Total exp.Rs.2336326/- Disallowed Rs.233633/-
6. Telephone Total exp 3037956/- Disallowed Rs.303797/-

4. The ld. ACIT has erred in law in as much as on the fact of the case he arbitrarily disallowed sum of Rs.600000/- payment made on 31.03.2012 in cash without giving reasonable opportunity to explain, on the ground that payment was made a person in a day otherwise than by account payee Cheque or bank overdraft exceeding Rs.20000/-. Fact is that the payment was made to 32 employee incentive ranging between Rs.15000/- to Rs.20000/- Depending on their emolument.

5. The ld. ACIT has erred in law in arbitrary charging interest without application of mind.

6. The ld. ACIT has erred in law in ignoring the penalty proceeding under section 271(1)(c) of the Act on the aforesaid unwarranted disallowance of Rs.65,14,386/- under section 10AA of the Act and Rs.1025545 being foreign exchange loss without application of mind.

Prayer:-

It is therefore kindly prayed that the aforesaid unwarranted disallowance under various section i.e., 10AA general and 37 of the Act to Rs.8519198/- may kindly be deleted after providing an opportunity of being heard to the appellant.”

2. The brief facts of the case are that return of income of Rs.1,05,93,800/- was filed by the assessee. The case was selected for scrutiny under CASS and the assessment order came to be passed on 10/03/2015 by making disallowances of deduction of Rs.65,14,386/- claimed u/s 10AA of the Act, Rs.10,25,545/- claimed by the assessee as foreign exchange loss, Rs.6,00,000/- disallowance u/s 40A(3) of the Act, disallowance of expenses of Rs.75,471/- claimed for vehicle running and maintenance and Rs.3,03,796/- claimed by the assessee as other expenses. Accordingly, the Ld. A.O. disallowed/added total at Rs.85,19,198/- vide assessment order dated 10/03/2015.

3. As against the assessment order dated 10/03/2015, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 10/03/2015 dismissed the appeal filed by the assessee. Aggrieved by the order of the Ld. CIT(A) dated 10/03/2015 the assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee vehemently submitted that the order of the Ld. CIT(A) in confirming the disallowance made by the AO is erroneous as the ld. ACIT has not given the reasonable opportunity to the assessee to justify the claims. Further, the ld. AR submitted that the appeal was pending before the Ld. CIT(A) for 8 ½ years and the appeal has been finally dismissed by the

Ld. CIT(A) without considering the submissions made by the assessee, thus, sought for the intervention of this Tribunal.

5. The Ld. DR relying on the orders of the lower authorities submitted that the assessee had appeared and submitted written submissions which have been duly considered by the Ld. CIT(A), therefore, by relying on the orders of the lower authorities sought for dismissal of the appeal.

6. We have heard both the parties and perused the materials available on record. It is found that the assessee filed the appeal before the Ld. CIT(A) in the year 2015, the order impugned came to be passed after 8 ½ years i.e., on 12/06/2023. As per the Ld. AR the assessee had been participating in the appellant proceedings and submitted various documents and also made both written and oral submissions, but the Ld. CIT(A) has not considered any of the submissions and the grounds of appeal have been dismissed without considering the documents on record and the submissions made by the assessee.

7. The Ld. CIT(A) while dealing with the grounds of appeal, dismissed the same without referring the documents claimed to be produced by the assessee in support of the expenditures incurred by the assessee and in support of the claim of the assessee. The relevant portion of the order of the Ld. CIT(A) is as under:

“6. Decision: I have gone through the grounds of appeal, statement of facts, order passed by the AO and submissions made by the appellant.

6.1 First ground is general in nature.

6.2 Ground No. 2 - It has been raised by the appellant regarding disallowance made by the Assessing Officer worth Rs. 65,14,386/-, the Assessing Officer has made disallowance worth Rs.65,14,386/- as excess deduction taken by the appellant u/s 10AA of the Income Tax Act, 1961. The Assessing Officer asked the appellant to furnish the details of direct and indirect expenses claimed in SEZ and Non-SEZ units. The appellant failed to furnish any genuineness, basis or justifications of bifurcation of expenses between SEZ and Non-SEZ units. The Assessing Officer noted that the expenses of Partner's remuneration, Advertisement expenses, audit Fee, Interest expenses, postage & stationery, Rent expenses, Property tax, installation and maintenance charges, bad debts etc. have been claimed 100% against Non-SEZ units. The Assessing Officer noted that The Auditor in his Audit Report submitted in form no. 56F has also not given any proper computation of exemption u/s 10AA and no justification of bifurcation of expenses has been furnished. Hence, the Assessing Officer rejected the book result of the appellant u/s 145 of the Income Tax Act, 1961 and made disallowance of Rs. 65,14,386/-.

Now before me in the appellate proceedings, written submission has been filed. I have gone through them. Details of expenses have been filed. No reason of apportionment bifurcation of expenses in SEZ and Non-SEZ Units have been filed Hence, I agree with the contention of the Assessing Officer. Addition made by the Assessing Officer worth Rs. 65,14,386/- is confirmed and the appeal of the appellant on this ground is dismissed.

6.3 Ground No. 3. The Assessing Officer has made disallowance of Rs. 10.25.545/- on account of Foreign Exchange Loss. The appellant has claimed Foreign Exchange Loss and debited to SEZ unit. No apportionment/bifurcation is made in the Non-SEZ unit. Hence, it is clear that the appellant is interested in raising the income of the SEZ unit.

Now before me in the appellate proceedings, no proper reply have been filed why it has been debited in SEZ unit only. Hence, I agree with the contention of the Assessing Officer, Addition made by the Assessing Officer worth Rs. 10.25.545/- is confirmed and the appeal of the appellant on this ground is dismissed.

6.4 Ground No. 4. Addition of Rs. 75 471 out of vehicle maintenance expenses, disallowance of Rs. 303.796 out of staff welfare, Tour & Travelling and Telephone Expenses.

The Assessing Officer made the addition as bills and vouchers and log book were not made available before the Assessing Officer. Hence, the Assessing Officer made the addition as the expenses, incurred for non-business uses.

Now before me in the appellate proceedings, no proper reply have been filed. No vouchers and books of accounts have been produced. Hence, I agree with the contention of the Assessing Officer. Addition made by the Assessing Officer on ad-hoc basis is confirmed and the appeal of the appellant on this ground is dismissed.

6.5 Ground No. 5 is the disallowance of Rs. 6,00,000/- out of misc expenses als 40(A)(3) of the Income Tax Act, 1961. The Assessing Officer made the addition as the payment has been made in cash on 31.03.2012.

Now before me in the appellate proceedings, no proper reply have been filed. No cash book and books of accounts have been produced. Hence, I agree with the contention of the Assessing Officer. Addition made by the Assessing Officer on ad-hoc basis is confirmed and the appeal of the appellant on this ground is dismissed.”

8. In our considered opinion, the above said order of the Ld. CIT(A) is cryptic and not well reasoned. By considering the fact that the appeal was lying before the Ld. CIT(A) for more than six years and the partner of the assessee is claimed to be senior citizen, we deem it fit to restore the matter to the file of the Ld. CIT(A) for deciding the same with reasonable time frame by considering the submissions made by the Assessee and the documents produced thereon. Accordingly, the issues involved in the present appeal are restored to the file of the Ld. CIT(A) with a direction to decide the appeal within six months from the date of service of this order. The office is directed to serve the copy of the order to the respondent forthwith.

7.

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9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in open Court on 14th December, 2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 14/12/2023

Pk/R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI