

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)

I.T.A. No.2473/Mum/2023
(Assessment year : 2013-14)

Feel Well Garments &
Accessories Pvt Ltd, 13/14,
3rd Floor, Model CHS,
Above Chira Motors, Sion East,
Sion S.O., Mumbai-400 022

PAN : AABCF8671L

APPELLANT

Vs Income Tax Department
Central circle-5(2),
Mumbai-20

RESPONDENT

Present for the Assessee : Shri Rajiv Khandelwal, CA
Present for the Department : Smt. Usha Gaikwad SR AR

Date of hearing : 14/12/2023
Date of pronouncement : 21/12/2023

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee, against the order dated 31/05/2023 impugned herein passed by the National Faceless Appeal Centre, Delhi (in short 'NFAC') /Ld. Commissioner' under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y. 2013-14.

2. The brief facts relevant for the adjudication of the instant appeal are that the Assessing Officer, while perusing the Profit & Loss Account observed that the Assessee has also debited Rs. 31,59,624/- under the head 'business promotion expenses' and vide letter dated 23/03/2016, has submitted a detailed note on the allowability of said expenses. The Assessing Officer further observed that the said amounts having been paid to V-Set Foundation, Anand Ashram, Icha Foundation, Time Watch Markers, Moraj Infra Pvt Ltd etc. Out of the said payments, the payments made to Anand Ashram, Icha Foundation and V-Set Foundation having been paid for the purpose of having recreational activities and setting up of Yoga Campus for staff and overseas buyers.

2.1 The Assessee, before the Assessing Officer, by filing its reply tried to justify the claim that for maintaining relaxation and mental equilibrium of its employees, however, as per assessment order, the Assessee failed to bring on record to suggest that the said expenses were indeed incurred for the recreational activities of clients and its employees therefore the AO held that the claim of the Assessee has not been substantiated with any documentary evidence and, therefore, does not fall good.

2.2 The Assessing Officer also by observing *“that with respect to the payment made to Time Watch Makers of Rs.8,35,100/-, the Assessee could not present any genuine or plausible documentary evidence suggesting that the said expenses were incurred for the purpose of business and the Assessee, in general, has benefited from the same in terms of increasing its clientele base or retaining the same and has failed to establish that the expenses debited under the head ‘business*

promotion' having been wholly and exclusively incurred for the purpose of business, disallowed the same as per the provisions of section 37(1) of the Act.

The AO ultimately added the amount of Rs.45,65,123/- in total in income of the Assessee.

3. The Assessee being aggrieved by challenging the other additions as made by the Assessing Officer, which are not in question before us, also challenged the aforesaid additions. The Ld. Commissioner by analyzing the facts and circumstances of the case, though sustained the addition made qua donations to the tune of Rs. 13,000,00/- Rs.3,00,000/- and Rs. 2,25,000/-, respectively paid to Anand Ashram Trust, Icha Foundation and Viswa Sewa Education Trust, **however allowed 50% of the said amount u/s 80G of the Act.**

3.1 The Ld. Commissioner, with regard to the payment of Rs.4,88,524/- paid to Moraj Infra Pvt Ltd allegedly paid to get the market survey in garment industry, observed *“that the Assessee has furnished a letter dated 21/06/2012 received by it which shows that Rs.4,88,524/- is towards trip Europe of Mrs. Priya Gurnani. Though the Assessee claims that this was for the purpose of garment survey, but no such evidence has been brought out hence, the Assessee has not proved the nexus of expenditure with the business in clear terms and that such expenses actually qualifies for deduction under section 37(1) of the Act,”* and ultimately upheld the addition of **Rs.4,88,524/-**.

3.3 The Ld. Commissioner in the absence of specific details qua purchase of two Rolex watches having gifted for business purposes, also upheld the addition of **Rs.8,35,100/-** paid to Time Watch Makers.

4. The Assessee being aggrieved against the aforesaid additions sustained, is in appeal before us.

5. Heard the parties and perused the material available on record. The first issue relates to the affirmation of the 50% of the amount of Rs.13,00,000/-, Rs.3,00,000/-, Rs.2,25,000/-, respectively paid to Anand Ashramam, Icha Foundation and Vishwa Sewa Education Trust and allegedly incurred for the purpose of recreational activities and setting up of yoga camp for staff and overseas buyers. We observe that though the Assessee has claimed the said expenses, however, failed to produce relevant evidences to support its claim. Therefore, by perusing the receipts issued by the said entities, which were in the nature of donation receipts, the Ld. Commissioner allowed the deduction @50% of the aforesaid amounts under section 80G of the Act.

Before us, in order to substantiate its claim, the Assessee produced a letter dated 10/01/2013 issued by Anand Ashram-671531, Kanjangad, Kerala having subject: Organizing Monthly Yoga Camp for foreign customers, vendors of the Assessee Company. In letter it has also been noted that in the telephonic conversation, the date of yoga camp proposed to be conducted on 26/01/2013 and 27/01/2013 has been confirmed and along with the letter, the list of attendees is also attached. The Assessee before us also filed a letter dated 10/09/2012 along with list of attendees for confirming the date of yoga camp conducted on 22/09/2012 and 23/09/2012. Admittedly, these documents were never produced before the authorities below and on being asked, the Assessee has claimed that authorities below never asked these documents.

We have given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the documents referred to above relates to the organizing the yoga camp by Anand Ashram Trust, Icha Foundation and Vishwa Sewa Education Trust goes to the root of the case and hence for the proper adjudication of the case and for the ends of justice, we are inclined to remand the instant issue pertaining to the confirmation of 50% of the amount of Rs. 13,00,000/-, Rs.3,00,000/- and Rs.2,25,000/- to the file of the Assessing Officer for decision afresh after considering the documents referred to above. Hence the instant issue is remanded accordingly.

We clarify that primary onus to substantiate its claim by submitting relevant documents qua organizing recreational activities and setting up of yoga camps for staff and overseas buyers, would be on the Assessee. The Assessing Officer shall take appropriate measures to summon the parties for the just decision of the case.

5.1 Now coming to the amount of Rs.4,88,524/- paid to Moraj Infra Pvt Ltd, the Assessee has claimed that this expenditure was incurred for getting the market survey in garment industry. However, as per Ld. Commissioner, the Assessee has not brought any evidence and also failed to prove the nexus of such expenditure with the business in clear terms that such expenses actually qualify for deduction under section 37(1) of the Act. It is not the case of the department here that the Assessee has not tried to establish / substantiate this claim. However, the determination of the Ld. Commissioner is that the Assessee has not proved the nexus of such expenditure with the business in clear terms. Hence, considering the peculiar facts and circumstances of the case in totality and for the proper adjudication of the issue and for the ends of justice, this issue pertaining to the

amount of Rs.4,88,524/- is also remanded to the file of the Assessing Officer for decision afresh. We clarify that onus would be upon the Assessee to produce the evidence and prove the nexus of such expenditure with the business in clear terms in order to qualify for deduction under section 37(1) of the Act.

5.2 Coming to the next issue which pertains to affirmation of the addition of Rs.8,53,100/- allegedly paid to Time Watch Makers, the Assessee by submitting invoices before the authorities below which pertains to purchase of two Rolex watches, claimed that the Assessee has gifted the same to its customers. However, the said claim was doubted by the Ld. Commissioner by holding that in the absence of specific details as to how the watches have been used for business purposes, it would be naive to hold that such costly gifts are made to two customers alone. We observe that the invoice of two Rolex watches have already been produced by the Assessee before the authorities below. The Assessee has filed a letter / confirmation issued by Rolex watches dealer, wherein it has been mentioned that the watches have been gifted on behalf of the Assessee to Ms. Julie Satinsky and her husband Me. Gwin residing in Philadelphia, hence considering the peculiar facts and circumstances, we are also remanding the instant issue to the file of the Assessing Officer for decision afresh. The Assessee shall produce relevant bills and the receipt of the two Rolex watches by two alleged customers and further to establish the business connection with the two customers to whom the watches have been gifted. The Assessing Officer shall also take proper measures to unearth the controversy and decide the issue in its right perspective.

6. In the result, appeal of the Assessee stands allowed for statistical purpose.

Order pronounced in the open court on 21/12/2023.

Sd/-

sd/-

(AMARJIT SINGH)	(NARENDER KUMAR CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private
Secretary
ITAT, Mumbai