

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**  
**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.2017/Ahd/2017**  
**Assessment Year : 2013-14**

M/s.Rotex Enterprises P.Ltd. 1 <sup>st</sup> Floor, Radhey Camp 52/A, Akota Vadodara PAN : AADCR 4420 K	Vs.	DCIT, Cir.2(1)(2) Vadodara.
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<b>(Applicant)</b>		<b>(Responent)</b>
Assesseeby :		Shri Shreekant S. Shah, AR
Revenue by :		Ms.Saumya Pandey Jain, Sr.DR.

सुनवाई की तारीख/Date of Hearing : 09/11/2023  
घोषणा की तारीख /Date of Pronouncement: 24/01/2024

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income Tax(A)-2, Vadodara [hereinafter referred to as "Ld.CIT(A)"]dated 6.6.2017 passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short]for the Asst.Year 2013-14.

2. The grounds raised in the appeal are as under:

- i) *The order of the Commissioner of Income-Tax (Appeals)-II (hereinafter referred to as Commissioner Appeals) is bad in law and erroneous as to facts inasmuch as he has exceeded the jurisdiction provided under section 251 of the Income-Tax Act, 1961 by discovering a new source of income viz. unexplained investment which was never the subject matter of the assessment before the Assessing Officer. In other words, the direction of the order of the Appellate Assistant Commissioner was to satisfy himself about the source of investment*

*of the assets. It is axiomatic that failure to prove the sources of investment will result in addition in the hands of assessee under a different provision of law and will not have much relevance in disallowance of interest income, travelling expenses and staff welfare expenses on ad-hoc basis.*

- ii) *The Commissioner Appeals ought to have followed the ratio laid down by Hon'ble Delhi Court in the case of Commissioner of Income Tax vs. Union Tyres - Delhi High Court 240 ITR 556 which summarized three orders of the Hon'ble Supreme Court as regards power of appellant authority holding that any addition on account of unexplained investments would constitute a new source of income which was not the subject matter before the Assessing Officer and therefore, it was not open to the first appellate authority to direct Assessing Officer to conduct enquiry regarding it.*
- iii) *The Commissioner Appeals also ought to have followed judgment of Hon'ble Delhi High Court in the case of CIT vs. Sardarilal & Co. (2002) 120 Taxman 595 (Delhi) which held that whenever question of taxability of income from a new source of income is concerned which had not been considered by Assessing Officer, jurisdiction to deal with same in appropriate cases may be dealt with under section 147/148 if requisite conditions are fulfilled and it is inconceivable that in presence of such specific provision a similar power is available to first appropriate authority.*
- iv) *The Commissioner Appeals ought to have followed the judgment of Hon'ble Supreme Court in the case of CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC) and also judgment of Hon'ble Supreme Court in the case of CIT vs. Raibahadur Hardutraji Motilal Chamaria (1967) 56 ITR 443 (SC).*
- v) *Without prejudice to the above, it is submitted that the Commissioner Appeals ought to have quashed the assessment order passed by Deputy Commissioner of Income-Tax, Circle-2(l), Vadodara as same is passed taking recourse of section 145(3) based on incorrect appreciation of facts on record and estimating income at 10% of the turnover by resorting to section 144 of the Act.*
- vi) *The Commissioner Appeals erred in disallowing 20% of the travelling expenses of Rs.26,25,946/- on ad-hoc basis when the Deputy Commissioner of Income-Tax has verified only 0.6% of the total travelling expenses which comes to Rs.68,559/- ignoring the past assessments in which disallowances were made to the extent of distinctively identified and not satisfied with the evidences.*
- vii) *The Commissioner Appeals has wrongly disallowed interest of Rs.16,07,853/- on borrowed funds, taking recourse to new source of income which was not being subject matter of the assessment before the Assessing Officer without giving opportunity to explain the same.*

- viii) *The Commissioner Appeals erred in disallowing Rs.50,000/- on account of staff welfare expenses on ad hoc basis without pointing out any defect in expenses. the staff welfare.*
- ix) *The appellant company prays to quash the order of Appellate Assistant Commissioner of Income-Tax u/s.251 of the Income-Tax and cancel the specific disallowances/ additions made by the Assessing Officer in computing total income of the assessee.*
- x) *The appellant company craves for leave to add, alter, amend or substitute any ground before final hearing.”*

3. The assessee has raised as many as ten grounds in the appeal memo. They are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963, and are a blend of descriptive and argumentative contents. In fact, a perusal of these grounds demonstrate that the assessee is aggrieved by the action of the Revenue in disallowing (i) travelling expenses of Rs.26,25,945/-; (ii) disallowance of interest expenses of Rs.16,07,853/- on borrowed funds, and (iii) disallowance of Rs.50,000/- on account of staff-welfare expenses. Therefore, we proceed to adjudicate the effective issues raised by the assessee hereinafter.

4. Brief facts of the case are that during assessment proceedings, the AO noted the assessee to be in the business of being a commission agent. On scrutiny of the books of accounts of the assessee he noted anomalies therein pertaining to the travelling expenses, which he found were not duly evidenced with regard to their business purpose, and with respect to salary expenses which he noted differed from the amount paid by the assessee through banking channel as compared to that claimed by the assessee in its books of accounts. Noting these anomalies, along with the fact that the assessee though being a marketing company having only sale commission income as its main income, it was incurring losses, which was not possible he therefore held that audited books of accounts of the assessee were not reliable and accordingly rejected

the same in terms of provisions of section 145(3) of the Act. After rejecting the books of accounts, he applied a net profit of 10% of the turnover of the company for the purpose of assessing the taxable income.

5. Aggrieved by the same, the assessee went in appeal before the Id.CIT(A) who after considering the facts of the case before him and the pleadings made by the assessee, held that it was not a case for application of GP rate, but specific disallowance was to be made. He found no anomaly in the claim of salary expenses, and vis-à-vis travelling expenses, though he agreed with the AO that their business purpose was not established he went on to make an *ad hoc* disallowance of 20% of the same. Further, the Id.CIT(A) noted that the assessee had no capital of its own, and in fact a negative capital; that it had taken huge interest bearing funds, and deployed in working in progress, which he found did not relate to the business of the assessee. Accordingly he disallowed 12% of the interest expenses claimed by the assessee in relation to the funds allegedly deployed in the WIP of the assessee. The Id.CIT(A) also made disallowance of staff welfare expenses on an *ad hoc* basis of 10% of the same amounting to Rs.50,000/-. Accordingly, the Id.CIT(A) deleted the assessment made by the AO of the net profit of the assessee at the rate of 10% of its turnover, and in turn directed specific disallowance to be made of interest expenses, staff welfare expenses and foreign travelling expenses as noted by us.

6. Aggrieved by the same, the assessee has come up in appeal before the Tribunal raising the grounds reproduced above.

7. Before us, primary and solitary contention of the ld.counsel for the assessee was that the order of the ld.CIT(A) was not sustainable for the reasons –

- i) That the Ld.CIT(A) had not given any finding dismissing AO's rejection of Books of the assessee and without doing so had gone on to *suo moto* make disallowance of specific expenses.
- ii) That the ld.CIT(A) went on to make disallowance of interest and staff welfare expenses which were not even within the radar of the assessment of the AO, and which was not even confronted to the assessee during the appellate proceedings;
- iii) That in terms of provisions of section 251 of the Act, which enshrined the powers of the ld.CIT(A) to expand the scope of the assessment, the ld.CIT(A) could not have exceeded the jurisdiction of the AO and dealt with issues which were completely untouched by the AO. He relied upon the following decisions in this regard –
  - a) CIT Vs. Union Tyres, 240 ITR 556 (Del)
  - b) CIT Vs. Sardar Lal & Co., (2002) 120 taxman 595 (Del)
  - c) CIT Vs. Shapoo ji Pallanji Mistry, (1962) 44 ITR 891(SC);
  - d) Motilal Champaria (1967) 56 ITR 443 (SC)

8. The assessee also pleaded that while making specific disallowance of interest expenses and staff welfare expenses, the assessee was not even confronted with the same, and therefore, the disallowance were made in violation of principle of natural justice.

The submissions in this regard in writing were filed before us as under:

- [1] While Passing an Assessment Order u/s 143 [3] for Asst year 2013-14, the learned Assessing Officer has invoked the provisions of Section 145 [3] and rejected books of accounts and made assessment on the basis of 10 % of net profit of the turnover, [Reference page no 16. of Assessment order which is also submitted at the time of filing form 36 and ground of appeal] on the basis of following grounds: -
- [a] Non-Availability of purpose for Travel in case of seven expenses vouchers total amounting to Rs 68,559/- out of total travel expenditure of Rs 1,02,42,990/- [domestic].
- [b] Failed to substantiate the business purposes of travelling amounted to Rs 28,87,554/- [ Foreign].
- [c] Difference between Net Salary Payments though NEFT in Bank and Gross Salary in Books Amounting to Rs 1,01,03,371/-.
- [d] Being Marketing Company and having sales Commission Income as being Main Income cannot make loss but the assessee company has made loss to the tune of Rs 1,72,01,235/-. So, audited accounts of the company are not reliable and learned A.O has arrived at his own formula for assuming net profit of the company at 10% of the turnover.
- [2] Aggrieved said order of A.O, the appellant company has made an appeal to Commissioner of Income Tax [ Appeals 2]- Vadodara.
- Based on facts and supporting submitted by the appellant company with CIT – Appeal- 2, material on records, legal provisions and applicable case laws judgements, the learned CIT Appeals observed that:



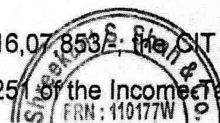
- [a] In case of Salary Expenditure differences," *As a matter of Fact, only net salary always paid after various deductions and hence it cannot be said that the appellant has incurred expenditure on account of salary only to the tune of amount paid through bank. Undisputedly, the gross expenditure has to be allowed.*" [ Reference Para No. 4.2.1 on page no.23 of appellate order which is also submitted at the time of filing form 36 and ground of appeal]
- [b] In case of Travelling Expenditure, out of total Travelling domestic expenditure of Rs 1,02,42,990/-, the A.O has found non availability of purpose of travel in seven vouchers amounting to Rs 68,559/- [ 0.06%] cannot be basis for rejection of audited books in toto.
- So as concluding decision, the learned CIT Appeals -2, has passed an order with following observation [ para 4.2.5 of CIT order -page 25 of the order] that "*In view of the above discussion, as well as factual position, thus I hold that instead of applying a net profit rate on the total turnover, specific disallowances are warranted in the case of appellant.*"
- [3] Thereafter, in the same para [ ref: para 4.2.5. of CIT appeals-2 Order] of appeal order, the learned CIT has contradicted his own decision and held that:
- "As already discussed, the travelling expenses including the foreign travelling expenses are not fully verifiable (though only 0.06% vouchers verified and such conclusion). And since the appellant has not maintained supporting documentary evidence as well as the purpose of the visit (despite of the fact that the appellant has provided all evidences and supporting as well as details of purpose of visit (reference page no 40 to 62 of paper book), learned CIT has jumped to strange conclusion of 20% disallowance out of travelling expenses which works out to Rs 26,25,946/- to meet the end of justice (whose justice?)."*
- Thus, in above matter the learned CIT contradicts his own judgment mentioned in para 4.2.5 as to specific disallowances to be made. [ ref page 25 of the order]
  - Even in past assessment, only these expenses which found not genuine were added. Summary of past assessment the status of travelling expenses and salary expenses vs Income earned is as under:

Financial Year	[ A ]		[ B ]		[ C ]		[ D ]	
	Commission Income	% Increase	Employee Benefit (Salary etc.)	% Of A	Travelling Expenses	% Of A	Net Profit/ Net Loss	% Of A
2008-09	30398029		18433007	60.63%	4531875	14.91%	773475	2.54%
2009-10	27423496	(-) 6.5%	19170050	67.44%	5200317	18.29%	-3771386	-13.26%
2010-11	44555663	(+)56.70%	25005847	56.12%	6014859	13.50%	2529948	5.68%
2011-12	51652082	(+)15.53%	40618407	78.63%	8852235	17.14%	-11664337	-22.58%
2012-13	63081963	(+)22.12%	51845260	82.18%	13129729	20.18%	-17005246	-26.95%

- However, up to F.Y 2009-2010 relevant to Asst Year 2010-2011, the assessing Officer has no grievance in accepting travelling expenses in toto. He realized that the purpose of travelling expenses is to increase the sales of two companies and earn Commission for the assessee company Purpose being open, it was never asked for.
- In F.Y 2010-2011 relevant to Asst Year 2011-2012 out of travelling expenses of Rs 6014859/- no additions were made being purpose was openly mentioned to increase sales of two companies and earned commission. This was verified from the resulted travelling expenses.
- The issue of travel expenditure disallowances amounting to Rs 26,25,946/- [ i.e. 20% of total travel exp] has been raised without considering the material on record. The fact is that the appellant company is getting commission income as main source of income, right from financial year 2008-09 and the commission income has increased from Rs.3,03,98,079 to 6,30,81,963/-. Almost income increased by 100%. The A. O as well as CIT has no objection to increase in commission income. They ought to have linked up with two components, one earning of Commission Income Vs expenses of travelling and salary without which commission would not have been earned or increased so magnificently. All throughout both has mentioned grievances that purpose is not shown. Both assessing authorities has never understood that in travelling vouchers expenses to and fro travelling expenses tickets, conveyance and loading and boarding is mentioned. Purpose is never mentioned in the voucher of traveling. Whenever inquiry comes from the customer sales persons discuss the purpose of visit, after visit he prepares the vouchers and submits his report and gets approval for his expenses. The details of travelling expenses are fully furnished vide page no 40 to 62 of paper book. and that foreign travelling vide pages 63 to 66 of paper book. Purpose is always mentioned in the visit reports, which samples are already on records vide page no.40 to 62 of paper book.
- To support further, the appellant referred in grounds of appeal Judicial pronouncements referred on page 86 to 90 of paper book, which also refers to specific disallowances.
- So, in light of above submission and on facts and considering relevant judicial pronouncements, addition in travel exp. of Rs 26,25,946/- to be deleted and only specific expenses where details not available to be disallowed, which in this case can not be more than Rs 68559/-

[4] The CIT Appeal has disallowed interest of Rs 1607853/- as new disallowance , which was not disallowed by A.O.

- By doing this disallowance of Rs 16,07,853/-, the CIT (Appeals) has exceeded the jurisdiction provided under section 251 of the Income Tax Act, 1961 by discovering a



new source of income vis. Unexplained investment which was never the subject matter of the assessment order before the Assessing Officer.

- Further while making the above referred disallowances, no opportunity was given to the appellant to rebut the same.
  - Reference is invited to the judgement of **CIT V/S Union Tyres-Delhi High Court 240 ITR 556** which summarized three orders of Hon'ble Supreme Court as regards power of appellant authority holding that any addition on account of unexplained investments would constitute a new source of income which was not the subject matter before the Assessing Officer to conduct inquiry regarding it".
  - Reference is also invited to the judgement of **CIT V/S Sardarlal & Co (2002) 120 Taxman 595 (Delhi)** which hold that whomever question of taxability of income from a new source of income is Concerned which had not been considered by Assessing Officer, Jurisdiction to deal with same in appropriate cases may be under section 147/148 if requisite Conditions are fulfilled and it is inconvincible that in presence of such specific provision a similar power is available to appropriate authority.
  - Reference is also invited to the judgement of **CIT V/S Shapoo ji pallanji Mistry (1962) 44 ITR 891(SC)** and also in the case of **Motilal Champaria (1967) 56 ITR 443 (S1)**.

[5] The CIT Appeal has erred in confirming disallowance of Rs 50000/- on account of Staff welfare expenses on adhoc basis without any defect in the staff welfare expenses just because same was disallowed in earlier years. [Reference Para 4.2.4 of page no. 24 of Appellate order.]

- As same disallowance to be deleted as no specific incidence of disallowance found during the assessment.

9. We have heard contentions of both the parties, and we have carefully gone through the orders of the authorities below.

As emanates from the record, and as pointed to us during the course of hearing, the AO had rejected the books of accounts of the assessee and estimated the income of the assessee by applying 10% to the gross turnover of the assessee. His reasons for rejecting the books of accounts of the assessee were –

- i) Unverifiable and un-evidenced travelling expenses;

- ii) Mismatch in salary as paid through bank and claimed in the books of accounts;
- iii) His general observation that the assessee being in the marketing business, earning commission income alone, it was showing loss which was not probably in this line of business.

10. As pointed out by the ld.counsel for the assessee, the ld.CIT(A) did not find any merit in the anomaly of salary mismatch between that reflected in the bank and that claimed by the assessee in its books as noted by the AO. But however, he concurred with the AO on the non-verifiability of travelling expenses. Having said so, we have noted that the ld.CIT(A) thereafter went onto hold that in the facts of the present case specific disallowances were to be made and gross profit rate was not to be applied. Impliedly, he has dismissed the rejection of the books of accounts by the assessee, holding them to be correct.

11. Going forward from here, the ld.CIT(A) went to make specific disallowance himself by adopting an *ad hoc* approach for the same that too without confronting the assessee on the disallowance of staff welfare expenses, interest expenses and on the disallowance of travelling expenses.

12. On the aspect of travelling expenses, the assessee had time and again reiterated that the AO had examined only 0.6% of the total expenses, and found them to be unverifiable. But that the ld.CIT(A) without giving any reason for not agreeing with the assessee's contention, went on to summarily hold that 20% of the expenses are to be disallowed, that too without giving any opportunity of hearing to the assessee before doing so.

13. Similarly, the staff welfare expenses were also disallowed to the tune of 10% of the same, without even giving an opportunity to the assessee or confronting the same to the assessee. In the same manner, the Id.CIT(A) has made disallowance of interest expenses on WIP without confronting the same to the assessee.

Clearly, the order passed by the Id.CIT(A) is in gross violation of the principles of natural justice and the additions made by him are not sustainable for this reason alone.

As for the arguments of the Id.counsel for the assessee that disallowance of staff welfare expenses and interest expenses was beyond the power of the Id.CIT(A), we find merit in the same. Though section 251 of the Act gives power to the Id.CIT(A) to expand scope of the assessment made, but the Hon'ble Supreme Court in various decisions has held that the scope cannot be expanded to discover new source of income. While explaining the wide scope of powers conferred on the first appellate authority by section 251 of the Act so as to include even enhancement of assessments, courts have held that they are not ordinary courts of appeals since only one party to the original decision is entitled to appeal and not the other party. That in view of this peculiar position the statute has conferred very wide powers on the first appellate authority once an appeal is preferred to him. That accordingly once an assessment comes before the first appellate authority, his competence is not restricted to examining those aspects of the assessment which are complained of by the assessee, but ranges over the whole assessment and it is open to him to correct the Assessing Officer not only with regard to matter raised in appeal but also with regard to all matters considered by the AO . He can revise every process which led to the ultimate computation or assessment. But this power cannot extend

to the Ld.CIT(A) discovering new sources of income. The Hon'ble apex court laid down this law in CIT vs Shapoorji Pallonji Mistry (1962) 53 ITR 225(SC) which was followed by the Hon'ble Bombay High Court in the case of Commissioner of Income Tax vs Union Tyres 240 ITR 556(Del) and by the Hon'ble Bombay High Court in the case of CIT vs Scindia Steam Navigation Co. Ltd. (1971) 80 ITR 589 (Bom).

In view of the same, we hold, that the disallowance made with respect to the staff welfare expenses and interest expenses, is not sustainable in law being beyond power of the Ld.CIT(A). The same is directed to be deleted.

In view of the above all the disallowances made by the Ld.CIT(A) are directed to be deleted.

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

**Order pronounced in the Court on 24<sup>th</sup> January, 2024 at Ahmedabad.**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 24/01/2024